



COMPLIANCE REVIEW REPORT

OFFICE OF TAX APPEALS

Compliance Review Unit
State Personnel Board
July 10, 2024

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INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authorities' personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training, to ensure compliance with civil service laws and Board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews.

Pursuant to Government Code section 18502, subdivision (c), the SPB and the California Department of Human Resources (CalHR) may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." SPB and CalHR, by mutual agreement, expanded the scope of program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices, and deter waste, fraud, and abuse.

The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the Office of Tax Appeals (OTA) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

Area	Severity	Finding
Examinations	In Compliance	Examinations Complied with Civil Service Laws and Board Rules
Appointments	In Compliance	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules
Personal Services Contracts	Serious	Unions Were Not Notified of Personal Services Contracts ¹
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers ²
Mandated Training	Very Serious	Sexual Harassment Prevention Training Was Not Provided for All Supervisors ³
Compensation and Pay	In Compliance	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

¹ Repeat finding. The OTA's December 10, 2020, compliance review report identified that the OTA did not notify unions prior to entering into all nine of the PSC's reviewed.

² Repeat finding. The OTA's December 10, 2020, compliance review report identified that the OTA did not provide ethics training to 12 of 32 existing filers. In addition, the OTA did not provide ethics training to 14 of 22 new filers within 6 months of their appointment.

³ Repeat finding. The OTA's December 10, 2020, compliance review report identified that the OTA did not provide sexual harassment prevention training to all of its existing supervisors every two years.

Area	Severity	Finding
Compensation and Pay	Very Serious	Alternate Range Movements Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines ⁴
Compensation and Pay	In Compliance	Arduous Pay Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Very Serious	Incorrect Authorization of Out-of-Class Pay
Compensation and Pay	In Compliance	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Serious	Performance Appraisals Were Not Provided to All Employees

⁴ Repeat finding. The OTA's December 10, 2020, compliance review report identified one incorrect alternate range movement for the two reviewed.

BACKGROUND

The OTA is an independent and impartial appeals body created by the Taxpayer Transparency and Fairness Act of 2017. The OTA was established to adjudicate appeals from California taxpayers regarding taxes and fees administered by the California Department of Tax and Fee Administration and the Franchise Tax Board. Tax disputes involving personal income, corporate franchise and income, sales and use, excise, and other taxes and fees are decided by three-member expert panels of Administrative Law Judges. The OTA is independent of the state's tax agencies and reports directly to the Governor's Office. The OTA is headquartered in Sacramento and holds hearings in Sacramento, Fresno, and Los Angeles.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the OTA's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes⁵. The primary objective of the review was to determine if the OTA's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

A cross-section of the OTA's examinations was selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the OTA provided, which included examination plans, examination bulletins, job analyses, and scoring results. The OTA did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the OTA's appointments was selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the OTA provided, which included Notice of Personnel Action forms, Request for Personnel Actions, vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The OTA did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the OTA did not make any additional appointments during the compliance review period.

⁵ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

The OTA's appointments were also selected for review to ensure the OTA applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the OTA provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: arduous pay, monthly pay differentials, alternate range movements, and out-of-class assignments. During the compliance review period, the OTA did not issue or authorize hiring above minimum requests, red circle rate requests, bilingual pay.

The review of the OTA's EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee.

The OTA's PSC's were also reviewed.⁶ It was beyond the scope of the compliance review to make conclusions as to whether the OTA's justifications for the contracts were legally sufficient. The review was limited to whether the OTA's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The OTA's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, that all supervisors, managers, and those serving in Career Executive Assignments (CEA) were provided leadership and development training, and that all employees were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the OTA's monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely and ensure the department certified that all leave records have been reviewed and corrected if necessary. The CRU selected a small cross-section of the OTA's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the OTA's employees' employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the CRU reviewed a selection of the OTA employees who used

⁶If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of OTA positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

Moreover, the CRU reviewed the OTA's policies and processes concerning nepotism, workers' compensation, and performance appraisals. The review was limited to whether the OTA's policies and processes adhered to procedural requirements.

The OTA declined to have an exit conference to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the OTA's written response on June 3, 2023, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931, subd. (a).) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) The final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, January 1, 2023, through September 30, 2023, the OTA conducted one examination. The CRU reviewed the examination, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Staff Services Analyst (General)	Departmental Promotional	Written ⁷	12/30/22	5

IN COMPLIANCE	FINDING NO. 1 EXAMINATIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES
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The CRU reviewed one departmental promotional examination which the OTA administered in order to create eligible lists from which to make appointments. The OTA published and distributed examination bulletins containing the required information for all examinations. Applications received by the OTA were accepted prior to the final filing date. Applicants were notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. The CRU found no deficiencies in the examinations that the OTA conducted during the compliance review period.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire candidates who will be successful. (Cal. Code Regs., tit. 2, § 250, subd. (b).) Interviews shall be conducted using job-related criteria. (*Ibid.*) Persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. (Cal. Code Regs., tit. 2, § 250, subd. (d).) While persons selected for appointment may meet some or most of the preferred or desirable qualifications, they are not required to meet all the preferred or desirable qualifications. (*Ibid.*) This section does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250, subd. (e).)

⁷ A written examination is a testing procedure in which candidates' job-related knowledge and skills are assessed through the use of a variety of item formats. Written examinations are either objectively scored or subjectively scored.

During the period under review, January 1, 2023, through September 30, 2023, the OTA made 13 appointments. The CRU reviewed four of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Attorney III	Certification List	Permanent	Full Time	1
Associate Personnel Analyst	Certification List	Permanent	Full Time	1
Program Specialist III, Franchise Tax Board	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1

IN COMPLIANCE	FINDING NO. 2 APPOINTMENTS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES
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The OTA measured each applicant’s ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the four list appointments reviewed, the OTA ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CRU found no deficiencies in the appointments that the OTA initiated during the compliance review period. Accordingly, the CRU found that the OTA’s appointments processes and procedures utilized during the compliance review period satisfied civil service laws and Board rules.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department

to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795, subd. (a).)

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

IN COMPLIANCE	FINDING NO. 3 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES
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After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the OTA's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Director of the OTA. The OTA also provided evidence of its efforts to promote EEO in its hiring and employment practices and to increase its hiring of persons with a disability.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the state. (Cal. Code Regs., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include, but are not limited to, private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the period under review, January 1, 2023, through September 30, 2023, the OTA had five PSC's that were in effect. The CRU reviewed all of those, which are listed below:

Vendor	Services	Contract Amount	Justification Identified?	Union Notification?
General Logistics Systems US, Inc	Parcel Delivery	\$3,500.00	Yes	Yes
Kennedy Court Reporters, Inc	Stenographic Court Reporters	\$49,999.99	Yes	Yes
National Judicial College	Judicial Ethics Training	\$13,538.00	Yes	Yes
Avantpage	Written Translation Services	\$9,999.00	Yes	No
WindDancer	Moving Services	\$2,500.00	Yes	Yes

SEVERITY: SERIOUS	FINDING NO. 4 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS
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Summary: The OTA did not notify unions prior to entering into one of the five PSC's reviewed. This is the second consecutive time this has been a finding for the OTA.

Criteria: Before a state agency executes a contract or amendment to a contract for personal services conditions specified within Government Code section 19130, subdivision (b), the agency shall notify all organizations that represent state employees who perform or could perform the type of work that is called for within the contract, unless exempted under Government Code section 19132, subdivision (b)(1). (Cal. Code Regs., tit. 2, § 547.60.2.)

Severity: Serious. Unions must be notified of impending personal services contracts in order to ensure they are aware contracts are being proposed for the type of work that their members could perform.

Cause: The OTA states their new contract analyst did not realize union notifications were required when using a California Multiple Award Schedule.

Corrective Action: Departments are responsible for notifying all organizations that represent state employees who perform or could perform the type of work to be contracted prior to executing a PSC. The PSC's reviewed during this compliance review involved several services and functions which various rank-and-file civil service classifications perform. The OTA asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the OTA must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure conformity with the requirements of California Code of Regulations section 547.60.2.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a) and (b), & 19995.4, subd. (b).) Additionally, the training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).)

Within 12 months of the initial appointment of an employee to a management or CEA position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*)

New employees must be provided sexual harassment prevention training within six months of appointment. Thereafter, each department must provide its supervisors two hours of sexual harassment prevention training and non-supervisors one hour of sexual harassment prevention training every two years. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code, § 19995.4.)

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the OTA's mandated training program that was in effect during the compliance review period, October 1, 2021, through September 30, 2023. The OTA's ethics training and sexual harassment prevention training was found to be out of compliance, while the OTA's supervisory training was found to be in compliance.

SEVERITY: VERY SERIOUS	FINDING NO. 5 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS
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Summary: The OTA did not provide ethics training to any of its existing 52 filers. In addition, the OTA did not provide ethics training to 17 of 18 new filers within six months of their appointment. This is the second consecutive time this has been a finding for the OTA.

Criteria: New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

Severity: Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.

Cause: The OTA states their Training and Development Unit was lacking key personnel to effectively monitor its mandatory training requirements.

Corrective Action: The OTA asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the OTA must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure conformity with Government Code section 11146.3.

SEVERITY: VERY SERIOUS	FINDING NO. 6 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS
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Summary: The OTA did not provide sexual harassment prevention training to their one new supervisor within six months of appointment. This is the second consecutive time this has been a finding for the OTA.

Criteria: Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code, § 19995.4.)

Severity: Very Serious. The department does not ensure that all new and existing supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

Cause: The OTA states that although notifications were provided to their new supervisor, they failed to complete the training timely.

Corrective Action: The OTA asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the OTA must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure that all employees are

provided sexual harassment prevention training in accordance with Government Code section 12950.1.

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee’s salary rate⁸ upon appointment depending on the appointment type, the employee’s state employment and pay history, and tenure.

Typically, agencies appoint employees to the minimum rate of the salary range for the class. Special provisions for appointments above the minimum exist to meet special recruitment needs and to accommodate employees who transfer into a class from another civil service class and are already receiving salaries above the minimum.

During the period under review, January 1, 2023, through September 30, 2023, the OTA made 13 appointments. The CRU reviewed two of those appointments to determine if the OTA applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Program Specialist III, Franchise Tax Board	Certification List	Permanent	Full Time	\$10,434
Staff Services Manager I	Certification List	Permanent	Full Time	\$7,041

IN COMPLIANCE	FINDING NO. 7 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the salary determinations that were reviewed. The OTA appropriately calculated and keyed the salaries for each appointment and correctly

⁸ “Rate” is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination (within same classification)

If an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges. (Cal. Code Regs., tit. 2, § 599.681.) However, in many instances, the CalHR provides salary rules departments must use when employees move between alternate ranges. These rules are described in the alternate range criteria. (CalHR Pay Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to Rule 599.681.

During the period under review, January 1, 2023, through September 30, 2023, the OTA employees made two alternate range movements within a classification. The CRU reviewed all of those alternate range movements to determine if the OTA applied salary regulations accurately and correctly processed each employee's compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Information Technology Associate	B	C	Full Time	\$5,552
Staff Services Analyst (General)	B	C	Full Time	\$4,933

SEVERITY: VERY SERIOUS	FINDING NO. 8 ALTERNATE RANGE MOVEMENTS DID NOT COMPLY WITH CIVIL SERVICE LAWS, RULES, AND CALHR POLICIES AND GUIDELINES
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Summary: The CRU found one error in the two alternate range movements reviewed. This is the second consecutive time this has been a finding for the OTA:

Classification	Description of Finding	Criteria
Staff Services Analyst (General)	Department did not round salary up to the nearest whole dollar, resulting in the employee being undercompensated.	Cal. Code Regs., tit. 2, section 431, subd. (a)(5) and Pay Scales Section 6

Criteria: Alternate ranges are designed to recognize increased competence in the performance of class duties based upon experience obtained while in the class. The employee gains status in the alternate range as though each range were a separate classification. (Classification and Pay Guide Section 220.)

Departments are required to calculate and apply salary rules for each appointed employee accurately based on the pay plan for the state civil service. All civil service classes have salary ranges with minimum and maximum rates. (Cal. Code Regs., tit. 2, § 599.666.)

Severity: Very Serious. In one circumstance, the OTA failed to comply with the requirements outlined in the state civil service pay plan. Incorrectly applying compensation laws and rules not in accordance with CalHR's policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay amounts.

Cause: The OTA states that the finding was a result of human error in rounding during the salary determination process.

Corrective Action: The OTA asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the OTA must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure that employees are compensated correctly. The OTA must establish an audit system to correct current compensation transactions as well as future transactions.

Arduous Pay

Effective July 1, 1994, appointing authorities were provided the discretion to provide additional compensation for employees exempt from the Fair Labor Standards Act (FLSA) who perform arduous work that exceeds the normal demands of state service employment. (Human Resources Manual Section 1702.) The work must be extraordinarily demanding, time-consuming, and significantly exceed employees' normal workweek. The employee cannot be entitled to receive any other sort of compensation such as overtime. Eligible employees are FLSA-exempt employees who do not receive compensation in recognition of hours worked in excess of 40 hours per week. The duration of the arduous period must be at least two weeks or more. (*Ibid.*)

Excluded and represented employees who are FLSA-exempt and assigned to Work Week Group E are eligible to receive up to four months of pay per fiscal year, or per event for emergencies, if the following conditions are met:⁹

- There is a non-negotiable deadline or extreme urgency;
- Work exceeds normal work hours and normal productivity;
- Work is unavoidable;
- Work involves extremely heavy workload;
- Employee is eligible for no other compensation, and
- The circumstances that support this pay differential are documented.

Departments have delegated authority to approve arduous pay for excluded employees who are FLSA-exempt, but CalHR approval is required for any arduous pay issued to represented employees.

Although departments have delegated authority to approve arduous pay,¹⁰ they are required to fill out CalHR Form 777, documenting the circumstances, assessment and rationale behind all arduous pay approvals. A new Form 777 should be filled out for every employee receiving the pay differential, every time an employee is approved to receive a new pay differential, and every time an employee wants to extend their arduous pay. Extensions are only granted in rare circumstances. Departments must keep the Form 777 on file and retain the form for five years after the approval date. (*Ibid.*)

During the period under review, January 1, 2023, through September 30, 2023, the OTA issued Arduous Pay to two employees. The CRU reviewed the arduous pay authorizations, listed below, to ensure compliance with applicable CalHR policies and guidelines:

Classification	Bargaining Unit	Work Week Group	Time Base	Total Compensation	No. of Months Received
Attorney, Assistant Chief Counsel	M02	Exempt	Full Time	\$4,800	4
Staff Services Manager I	S01	Exempt	Full Time	\$2,400	4

⁹ Applicable Memorandum of Understandings or Bargaining Unit Agreements detail other specific criteria.

¹⁰ Pay Letter 94-32 established Pay Differential 62 regarding arduous pay for Bargaining Units 1, 7, 9, 17, 19, and 21, and Excluded employees.

IN COMPLIANCE	FINDING No. 9 ARDUOUS PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found that the arduous pay authorizations that the OTA made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Pay Differentials

A pay differential is special additional pay recognizing unusual competencies, circumstances, or working conditions applying to some or all incumbents in select classes. A pay differential may be appropriate in those instances when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or, recruitment and retention. (Classification and Pay Manual Section 230.)

California State Civil Service Pay Scales Section 14 describes the qualifying pay criteria for the majority of pay differentials. However, some of the alternate range criteria in the pay scales function as pay differentials. Generally, departments issuing pay differentials should, in order to justify the additional pay, document the following: the effective date of the pay differential, the collective bargaining unit identifier, the classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, January 1, 2023, through September 30, 2023, the OTA authorized 24 pay differentials.¹¹ The CRU reviewed all of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount	No. of Positions
Administrative Law Judge	National Judicial College Differential Pay	5%	8
Senior Administrative Law Judge	National Judicial College Differential Pay	5%	12

¹¹ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Pay Differential	Monthly Amount	No. of Positions
Supervising Administrative Law Judge	National Judicial College Differential Pay	5%	4

IN COMPLIANCE	FINDING NO. 10 PAY DIFFERENTIAL AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the pay differentials that the OTA authorized during the compliance review period. Pay differentials were issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

Out-of-Class Assignments and Pay

For excluded¹² and most rank-and-file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

According to the Classification and Pay Guide, OOC assignments should only be used as a last resort to accommodate temporary staffing needs. All civil service alternatives should be explored first before using OOC assignments. However, certain MOU provisions and the California Code of Regulations, title 2, section 599.810 allow for short-term OOC assignments to meet temporary staffing needs. Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provisions or salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the time period outlined in applicable law, policy or MOU expires. (Classification and Pay Guide Section 375.)

During the period under review, January 1, 2023, through September 30, 2023, the OTA issued OOC pay to two employees. The CRU reviewed both of these OOC assignments

¹² “Excluded employee” means an employee as defined in Government Code section 3527, subdivision (b) (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to Government Code section 18801.1.

to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Associate Governmental Program Analyst	R01	Staff Services Manager I	2/1/23 - 4/30/23
Senior Administrative Law Judge	R02	Supervising Administrative Law Judge	5/15/23 - 6/30/23, 8/2/23 - 10/15/23

SEVERITY: VERY SERIOUS	FINDING NO. 11 INCORRECT AUTHORIZATION OF OUT-OF-CLASS PAY
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Summary: The CRU found one error in the two OOC pay assignments reviewed:

Classification	Out-of-Class Classification	Description of Finding	Criteria
Senior Administrative Law Judge	Supervising Administrative Law Judge	Employee was overcompensated for June 2023, and undercompensated for May, August - October 2023.	Pay Differential 91

Criteria: Employees may be compensated for performing duties of a higher classification provided that: the assignment is made in advance in writing and the employee is given a copy of the assignment; and the duties performed by the employee are not described in a training and development assignment or by the specification for the class to which the excluded employee is appointed and, are fully consistent with the types of jobs described in the specification for the higher classification; and the employee does not perform such duties for more than 120 days in a fiscal year. (Cal. Code Regs., tit. 2, § 599.810, subd. (b)(1)(3)(4).)

For excluded employees, there shall be no compensation for assignments that last for 15 consecutive working days or less. (Cal. Code Regs., tit. 2, § 599.810, subd. (c).) An excluded employee performing in a higher class for more than 15 consecutive working days shall receive the rate of pay the excluded employee would receive if appointed to the higher class for the entire duration of the

assignment, not to exceed one year. (Cal. Code Regs., tit. 2, § 599.810, subd. (d).) An excluded employee may be assigned out-of-class work for more than 120 calendar days during any 12-month period only if the appointing power files a written statement with the CalHR certifying that the additional out-of-class work is required to meet a need that cannot be met through other administrative or civil service alternatives. (Cal. Code Regs., tit. 2, § 599.810, subd. (e).)

Severity: Very Serious. The OTA failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in accordance with CalHR's policies and guidelines. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The OTA states that the finding was a result of human error.

Corrective Action: The OTA asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the OTA must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure conformity with California Code of Regulations, title 2, section 599.810 and Pay Differential 91.

Leave

Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of 9 months in any 12 consecutive months is not exceeded. The ATW method of counting time is used to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all the working days of a month. When counting 189 days, every day worked, including partial days¹³ worked and paid absences¹⁴, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day are not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-

¹³ For example, two hours or ten hours count as one day.

¹⁴ For example, vacation, sick leave, compensating time off, etc.

consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Additionally, according to Government Code section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June), regardless of the number of state employers, without reinstatement, loss or interruption of benefits.

At the time of the review, the OTA had three positive paid employees whose hours were tracked. The CRU reviewed two of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Tenure	Time Frame	Time Worked (Hours)
Business Tax Specialist III	Retired Annuitant	7/1/22 – 6/30/23	735
Tax Counsel IV	Retired Annuitant	7/1/22 – 6/30/23	558

IN COMPLIANCE	FINDING NO. 12 POSITIVE PAID EMPLOYEES’ TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The OTA provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

Administrative Time Off

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. (*Ibid.*) ATO can also be granted when employees need time off for reasons such as blood or organ donation, extreme weather preventing safe travel to work, states of emergency, voting, and when employees need time off to attend special events. (*Ibid.*)

During the period under review, July 1, 2022, through June 30, 2023, the OTA authorized 29 ATO transactions. The CRU reviewed 23 of these ATO transactions to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
Administrative Law Judge	9/23/22, 10/25/22, 12/6/22-12/9/22	6 Days, 3 Hours
Associate Governmental Program Analyst	11/21/22-11/23/22, 11/28/22-11/30/22, 12/1/22-12/2/22	8 Days
Associate Governmental Program Analyst	11/28/22-11/30/22	3 Days
Associate Governmental Program Analyst	9/26/22-9/30/22, 10/3/22-10/7/22	10 Days
Associate Governmental Program Analyst	8/25/22, 1/5/23-1/6/23, 2/22/23-2/24/23, 2/27/23-2/28/23, 3/1/23-3/2/23, 3/6/23	11 Days
Business Tax Specialist III	8/16/22-8/17/22	2 Days
Business Tax Specialist III	9/12/22-9/13/22	2 Days
Deputy Director	11/16/22	1 Day
Information Technology Manager I	7/19/22-7/21/22	3 Days
Office Technician General	8/15/22-8/18/22	4 Days
Senior Administrative Law Judge	9/29/22-9/30/22	2 Days
Senior Legal Typist	2/13/23	3 Hours
Staff Services Analyst	7/6/22-7/8/22, 7/11/22-7/12/22	5 Days
Staff Services Analyst	7/5/22	1 Day
Staff Services Manager I	8/11/22, 1/12/23	2 Days
Supervising Administrative Law Judge	8/18/22-8/19/22, 11/28/22	3 Days, 2 Hours

Classification	Time Frame	Amount of Time on ATO
Tax Counsel	11/29/22-11/30/22, 12/1/22-12/2/22, 12/5/22	5 Days
Tax Counsel	7/28/22-7/29/22, 8/1/22-8/3/22, 8/8/22-8/9/22	8 Days
Tax Counsel III, Specialist	7/5/22-7/7/22, 7/11/22-7/13/22	6 days
Tax Counsel III, Specialist	8/24/22-8/26/22, 8/29/22-8/30/22	5 Days
Tax Counsel III, Specialist	7/20/22-7/22/22	3 Days
Tax Counsel III, Specialist	7/5/22-7/6/22	2 Days
Tax Counsel IV	10/27/22-10/28/22, 10/31/22, 11/1/22-11/2/22	5 Days

IN COMPLIANCE	FINDING NO. 13	ADMINISTRATIVE TIME OFF AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The OTA provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

Leave Auditing and Timekeeping

Departments must keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665.)

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall create an audit process to review and correct leave input errors on a monthly basis. The review of leave accounting records shall be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. (*Ibid.*) If an employee's attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*) Accurate and timely attendance reporting is required of all departments and is subject to audit. (*Ibid.*)

During the period under review, April 1, 2023, through June 30, 2023, the OTA reported 9 units comprised of 97 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	No. of Employees	No. of Timesheets Reviewed	No. of Missing Timesheets
April 2023	200	20	20	0
May 2023	301	7	7	0
June 2023	100	5	5	0

IN COMPLIANCE	FINDING NO. 14 LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU reviewed employee leave records from three different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The OTA kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

State Service

The state recognizes two different types of absences while an employee is on pay status, paid or unpaid. The unpaid absences can affect whether a pay period is a qualifying or non-qualifying pay period for state service and leave accruals.

Generally, an employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service.¹⁵ (Cal. Code Regs., tit. 2, § 599.608.) Full-time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

Hourly or daily rate employees working at a department in which the full-time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period or

¹⁵ Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, and 19997.4 and California Code of Regulations, title 2, sections 599.609, 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.776.1, 599.787, 599.791, 599.840 and 599.843 provide further clarification for calculating state time.

accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. (Cal. Code Regs., tit. 2, § 599.609.)

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs., tit. 2, § 599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs., tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees¹⁶ shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

Permanent intermittent employees also earn leave credits on the pay period following the accumulated accrual of 160 hours worked. Hours worked in excess of 160 hours in a monthly pay period, are not counted or accumulated towards leave credits.

During the period under review, January 1, 2023, through September 30, 2023, the OTA had two employees with qualifying and non-qualifying pay period transactions. The CRU reviewed all transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time Base	No. Reviewed
Non-Qualifying Pay Period	Full Time	2

IN COMPLIANCE	FINDING NO. 15	SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU determined that the OTA ensured employees with non-qualifying pay periods did not receive vacation/sick leave, annual leave, and/or state service accruals. The CRU found no deficiencies in this area.

¹⁶ As identified in Government Code sections 19858.3, subdivisions (a), (b), or (c), or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subdivision (c), or California Code of Regulations, title 2, section 599.752, subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

Policy and Processes

Nepotism

It is the policy of the State of California to hire, transfer, and promote all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. (Cal. Code Regs., tit. 2, § 87.) (*Ibid.*) All appointing powers shall adopt an anti-nepotism policy that includes the following components: (1) a statement that the appointing power is committed to merit-based hiring and that nepotism is antithetical to a merit-based civil service system; (2) a definition of "nepotism" as an employee's use of influence or power to hire, transfer, or promote an applicant or employee because of a personal relationship; (3) a definition of "personal relationship" as persons related by blood, adoption, current or former marriage, domestic partnership or cohabitation; (4) a statement that prohibits participation in the selection of an applicant for employment by anyone who has a personal relationship with the applicant, as defined in section 83.6; (5) a statement that prohibits the direct or first-line supervision of an employee with whom the supervisor has a personal relationship, as defined in section 83.6; (6) a process for addressing issues of direct supervision when personal relationships between employees exist. (*Ibid.*)

IN COMPLIANCE	FINDING NO. 16 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU verified that the policy was disseminated to all staff and emphasized the OTA's commitment to the state policy of hiring, transferring, and promoting employees on the basis of merit. Additionally, the OTA's nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

Workers' Compensation

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers' compensation law. (Cal. Code Regs., tit. 8, § 9880, subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee's "personal physician," as defined by Labor Code section 4600. (Cal. Code

Regs., tit. 8, § 9880, subd. (c)(7) & (8).) Additionally, within one working day of receiving notice or knowledge that the employee has suffered a work-related injury or illness, employers shall provide a claim form and notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401, subd. (a).)

Public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.) Workers' compensation coverage is not mandatory for volunteers as it is for employees. (*Ibid.*) This is specific to the legally uninsured state departments participating in the Master Agreement. (*Ibid.*) Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers. (*Ibid.*)

IN COMPLIANCE	FINDING NO. 17	WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU verified that the OTA provides notice to their employees to inform them of their rights and responsibilities under California's Workers' Compensation Law. Furthermore, the CRU verified that when the OTA received workers' compensation claims, they properly provided claim forms within one working day of notice or knowledge of injury.

Performance Appraisals

According to Government Code section 19992.2, subdivision (a), appointing powers must "prepare performance reports." Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee's probationary period.

The CRU selected 19 permanent OTA employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

SEVERITY: SERIOUS	FINDING NO. 18	PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES
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Summary: The OTA did not provide annual performance appraisals to 5 of 19 employees reviewed after the completion of the employee's probationary period.

- Criteria:** Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule. (Gov. Code, § 19992.2, subd. (a).) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in each twelve calendar months following the end of the employee's probationary period. (Cal. Code Regs., tit. 2, § 599.798.)
- Severity:** Serious. The department does not ensure that all employees are apprised of work performance issues and/or goals in a systematic manner.
- Cause:** The OTA states that despite initiating a process to conduct annual evaluations in February each year, all managers and supervisors were not responsive to the requests and reminders.
- Corrective Action:** The OTA asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the OTA must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798.

DEPARTMENTAL RESPONSE

The OTA's departmental response is attached as Attachment 1.

SPB REPLY

Based upon the OTA's written response, the OTA will comply with the corrective actions specified in these report findings. Within 90 days of the date of this report, a written corrective action response including documentation demonstrating implementation of the corrective actions specified must be submitted to the CRU.



State of California
Office of Tax Appeals

SENT VIA E-MAIL TO QUYNH.SLOAN@SPB.CA.GOV

June 3, 2024

State Personnel Board
Suzanne Ambrose - Executive Officer
801 Capitol Mall
Sacramento, CA 95814

Re: Response to Final SPB Compliance Review

Dear Ms. Ambrose:

The Office of Tax Appeals (OTA) would like to thank the State Personnel Board's (SPB) Compliance Review Unit (CRU) for reviewing information and providing valuable feedback. OTA reviewed SPB's draft report. Overall, we find the report to be thorough and accurately summaries OTA's processes during the review period. We take our responsibilities seriously and are committed to correcting all deficiencies noted in the report and strive to comply with mandated requirements by adjusting our practices and procedures.

OTA is providing the following responses to the findings as presented by SPB.

FINDINGS NO. 4 Unions Were Not Notified of Personal Services Contracts

Cause: OTA acknowledges that we failed to notify the unions on one (1) of the five (5) Personal Services Contracts we processed under this compliance review. This review provided a great learning opportunity for this missed notification. One of our new contract analysts did not realize union notifications are required when using a California Multiple Award Schedule (CMAS).

Action Plan: OTA Contracts Manager has provided additional on-the-job training to its contracts and procurement analysts and has implemented a procurement file checklist that incorporates the requirements under CCR § 547.60.2, which contract analysts will utilize to ensure compliance.

FINDINGS NO. 5 Ethics Training Was Not Provided for All Filers

Cause: OTA's Training and Development Unit was still lacking key personnel to effectively monitor its mandatory training requirements. While human resources staff were assisting in sending out notifications to its new filers to complete the Ethics Training, they were not following-up or accounting for completion due to their own workload demands.

Action Plan: OTA has hired a new Training Officer who is responsible for monitoring all mandatory training to ensure compliance and we are in the process of implementing our Learning Management System, which serves as an additional aid in tracking training.

FINDINGS NO. 6 Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Cause: OTA's Training Officer, in partnership with our Equal Employment Opportunity (EEO) Officer, monitors and tracks all Sexual Harassment Prevention Training. While notifications were provided to one (1) of our new supervisors, they failed to complete the training timely.

Action Plan: OTA copies the employee's manager on training reminders, and we are in the process of implementing our Learning Management System, which serves as an additional aid in tracking training.

FINDINGS NO. 8 Alternate Range Movement Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Cause: OTA acknowledges that one (1) of the two (2) alternate range movements processed during this review period was keyed incorrectly. The cause was human error in rounding during the salary determination process, which resulted in the employee being undercompensated.

Action Plan: The 335 transaction has been corrected and the employee has been fully compensated. OTA's human resources staff will be provided on-the-job training using examples noted in this audit report as sample scenarios. Peer and management review will be conducted on all salary determinations going forward.

FINDINGS NO. 11 Incorrect Authorization of Out-of-Class Pay

Cause: Human error was the cause of miscalculating an employee's out-of-pay (OOC) compensation coupled with adding the pay differential to which the employee was entitled.

Action Plan: OTA is correcting the employee's OOC compensation and has implemented peer/management review on all salary determinations going forward.

FINDINGS NO. 18 Performance Appraisals Were Not Provided for all Employees

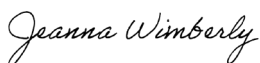
Cause: OTA acknowledges that we did not provide five (5) of the 19 annual performance appraisals that were due. While OTA has initiated a process to conduct annual evaluations in February each year, all managers and supervisors were not as responsive to the requests and reminders.

Action Plan: The Human Resources Office will conduct training for supervisors and managers on how to complete performance appraisals and will reiterate the importance of timely completion. Going forward, our Director will be copied on reminder notifications. These efforts should result in greater, if not full, compliance.

OTA is committed to complying with all related statutory and regulatory requirements and will continue to enhance our internal procedures to ensure compliance.

Should you have any questions regarding this matter or would like to discuss further, please contact me via email at jeanna.wimberly@ota.ca.gov or by phone at (916) 206-3720.

Sincerely,



Jeanna Wimberly
Deputy Director, Administration

cc: Linda Newson, HR Manager