



COMPLIANCE REVIEW REPORT

DEPARTMENT OF REAL ESTATE

Compliance Review Unit
State Personnel Board
March 2, 2021

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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 Department of Real Estate's (DRE) 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	Finding
Examinations	Examinations Complied with Civil Service Laws and Board Rules
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time
Equal Employment Opportunity	A Disability Advisory Committee Has Not Been Established
Personal Services Contracts	Unions Were Not Notified of Personal Services Contracts
Mandated Training	Ethics Training Was Not Provided for All Filers
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors
Compensation and Pay	Incorrect Application of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment
Compensation and Pay	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Incorrect Authorization of Bilingual Pay
Compensation and Pay	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Department Did Not Properly Monitor Time Worked for All Positive Paid Employees

Area	Finding
Leave	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Activity and Correction Certification Forms Were Not Completed for All Leave Records Reviewed
Leave	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Department Does Not Maintain a Current Written Nepotism Policy
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisals Were Not Provided to All Employees

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Technical
- Green = In Compliance

BACKGROUND

The California Department of Real Estate (DRE) is responsible for licensing and regulating real estate brokers, agents, and those individuals performing residential mortgage loan brokerage activities. The Department also authorizes the sale or lease of subdivision interests in California through the issuance of a public report pursuant to the Subdivided Lands Act, and oversees the Vacation Ownership and Time-Share Act. The DRE is headquartered in Sacramento and has district offices in Oakland, Fresno, Los Angeles, and San Diego.

DRE’s mission is to safeguard and promote the public interests in real estate matters through licensure, regulation, education and enforcement. Through our mission, the DRE is an effective consumer advocate by monitoring and regulating industry practices while promoting public awareness. The governance of the DRE is structured with core values that promote independence and balance between its two distinct mission responsibilities. These values preserve the integrity of operational obligations, ensure coordination and

cooperation between the operating programs, engage DRE stakeholders, and foster an environment that supports the professional development of its staff.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the DRE's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes¹. The primary objective of the review was to determine if the DRE'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 DRE's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the DRE provided, which included examination plans, examination bulletins, job analyses, and scoring results. The DRE did not conduct any permanent withhold actions during the compliance review period.

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

The DRE's appointments were also selected for review to ensure the DRE applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the DRE 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: hiring above minimum (HAM) requests, bilingual pay, monthly pay differentials, and alternate range movements. During the compliance review period, the DRE did not issue or authorize, red circle rate requests, arduous pay, or out-of-class assignments.

¹ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

The review of the DRE'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 (DAC).

The DRE's PSC's were also reviewed.² It was beyond the scope of the compliance review to make conclusions as to whether the DRE's justifications for the contracts were legally sufficient. The review was limited to whether the DRE's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The DRE's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors, managers, and CEAs were provided sexual harassment prevention training within statutory timelines.

Additionally, new supervisors 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 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 DRE's Leave Activity and Correction Certification forms to verify that the DRE created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected a small cross-section of the DRE'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 DRE's employees' employment and pay history, state service records, and leave accrual

²If 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.

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 DRE employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of DRE 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 DRE's policies and processes concerning nepotism, workers' compensation, and performance appraisals. The review was limited to whether the DRE's policies and processes adhered to procedural requirements.

On December 10, 2020, an exit conference was held with the DRE to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the DRE's written response on December 22, 2020, 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, October 31, 2018, through July 30, 2019, the DRE conducted one exam. The CRU reviewed the exam, which is listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) A, Assistant Commissioner, Enforcement	CEA	Statement of Qualifications (SOQ) ³	10/19/18	12

FINDING NO. 1 – Examinations Complied with Civil Service Laws and Board Rules

The CRU reviewed one CEA examination which the DRE administered in order to create an eligible list from which to make appointments. The DRE published and distributed examination bulletins containing the required information for all examinations. Applications received by the DRE 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 DRE 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

³ In a Statement of Qualifications examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

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).)

During the period under review, November 30, 2018, through August 29, 2019, the DRE made 65 appointments. The CRU reviewed 10 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
General Auditor II	Certification List	Permanent	Full Time	1
Real Estate Counsel III (Specialist)	Certification List	Permanent	Full Time	1
Special Investigator	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Limited Term	Full Time	1
Office Technician (General)	Training & Development	Permanent	Full Time	1
Associate Governmental Program Analyst	Permissive Reinstatement	Retired Annuitant	Intermittent	1
Accounting Officer (Specialist)	Transfer	Permanent	Full Time	2
Real Estate Counsel II	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	1

FINDING NO. 3⁴ – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Summary: The DRE failed to retain personnel records such as NOPA’s, duty statements, job announcements/bulletins, and applications. Of the 10 appointments reviewed, the DRE did not retain 2 NOPAs.

Criteria: As specified in section 26 of the Board’s Regulations, appointing powers are required to retain records related to affirmative action, equal employment opportunity, examinations, merit, selection, and appointments for a minimum period of five years from the date the record is created. These records are required to be readily accessible and retained in an orderly and systematic manner. (Cal. Code Regs., tit. 2, § 26.)

⁴ Finding #2, Probationary Evaluation Was Not Timely was removed due to clarifying information received from DRE in its departmental response.

Severity: Technical. Without documentation, the CRU could not verify if the appointments were properly conducted.

Cause: The DRE did not have a process in place to follow-up and track the receipt of NOPA forms.

Corrective Action: Within 90 days of the date of this report, the DRE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the record retention requirements of California Code of Regulations, title 2, section 26. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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).)

Pursuant to Government Code section 19795, subdivision (a), in a state agency with less than 500 employees, like DRE, the EEO Officer may be the Personnel Officer.

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).)

FINDING NO. 4 – A Disability Advisory Committee Has Not Been Established

- Summary:** The DRE does not have an active DAC.
- Criteria:** 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).)
- Severity:** Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency's ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.
- Cause:** DRE returned to department status effective July 1, 2018. Due to lack of resources, DRE has been unable to establish a DAC.
- Corrective Action:** Within 90 days of the date of this report, the DRE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure the establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues. Copies of relevant documentation demonstrating that the corrective action has been implemented, including the new DAC roster, agenda, and meeting minutes, must be included with the corrective action response.

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, October 31, 2018, through July 30, 2019, the DRE had two PSC’s that were in effect. The CRU reviewed both PSC’s, which are listed below:

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification?
AAA Attorney Services II, Inc.	Legal Process Services	03/2017 – 06/2019	\$150,000	Yes	No
Imani Lee, Inc.	Written Translation Services	07/2018 – 06/2020	\$40,000	Yes	No

FINDING NO. 5 – Unions Were Not Notified of Personal Services Contract

Summary: The DRE did not notify unions prior to entering into either of the two PSC’s.

Criteria: The contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted. (Gov. Code, § 19132, subd. (b)(1).)

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

Cause: DRE did not have a process in place to notify unions prior to entering into a Personal Services Contract.

Corrective Action: It is the contracting department's responsibility to identify and notify any unions whose members could potentially perform the type of work to be contracted prior to executing the PSC. The PSC's reviewed during this compliance review involved legal processes and transcription services, functions which various rank-and-file civil service classifications perform. Within 90 days of the date of this report, the DRE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

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 DRE's mandated training program that was in effect during the compliance review period, September 1, 2017 through March 31, 2019. The DRE's supervisory training was found to be in compliance, while the DRE's ethics training and sexual harassment prevention training were found to be out of compliance.

FINDING NO. 6 – Ethics Training Was Not Provided for All Filers

Summary: The DRE did not provide ethics training to 97 of 113 existing filers. In addition, the DRE did not provide ethics training to 8 of 12 new filers within 6 months of their appointment.

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: During the conversion of becoming a department and the transition of personnel records, DRE did not receive documentation that Ethics Training was provided. Further, DRE acknowledges that some Ethics Training was not provided to filers in a timely manner.

SPB Response: DRE was previously under the Department of Consumer Affairs (DCA). DCA indicated to CRU that all boards, commissions and bureaus under DCA are required to keep their own training records.

Corrective Action: Within 90 days of this report, the DRE must submit to the SPB a written correction action response which describes the process it has implemented to demonstrate conformity with Government Code section 11146.3. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

FINDING NO. 7 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The DRE did not provide sexual harassment prevention training to all four of its new supervisors within 6 months of appointment. In addition, the DRE did not provide sexual harassment prevention training to 18 of 44 existing supervisors every 2 years.

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: During the conversion of becoming a department and the transition of personnel records, DRE did not receive copies of the documentation for the Sexual Harassment Prevention Training. Further, DRE acknowledges that some training was not provided to some supervisors in a timely manner.

SPB Response: DRE was previously under the DCA, which indicated to CRU that all boards, commissions and bureaus under DCA are required to keep their own training records.

Corrective Action: Within 90 days of the date of this report, the DRE must submit to the SPB a written corrective action response which describes the process it has implemented to ensure that supervisors are provided sexual harassment prevention training in accordance with Government Code section 12950.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 rate⁵ 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, November 30, 2018, through August 29, 2019, the DRE made 65 appointments. The CRU reviewed nine of those appointments to determine if the DRE applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
General Auditor II	Certification List	Permanent	Full Time	\$4,496
Real Estate Counsel III (Specialist)	Certification List	Permanent	Full Time	\$9,210
Special Investigator	Certification List	Permanent	Full Time	\$4,965

⁵ “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).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Staff Services Manager I	Certification List	Limited Term	Full Time	\$6,539
Associate Governmental Program Analyst	Permissive Reinstatement	Retired Annuitant	Intermittent	\$6,772
Accounting Officer (Specialist)	Transfer	Permanent	Full Time	\$4,541
Accounting Officer (Specialist)	Transfer	Permanent	Full Time	\$5,439
Real Estate Counsel II	Transfer	Permanent	Full Time	\$13,062
Staff Services Analyst (General)	Transfer	Permanent	Full Time	\$4,560

FINDING NO. 8 – Incorrect Application of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment

Summary: The CRU found the following error in the DRE’s determination of employee compensation:

Classification	Description of Finding	Criteria
Real Estate Counsel II	The employee’s anniversary date was incorrectly determined upon list appointment, resulting in an overpayment.	Cal. Code Regs., tit. 2, §§ 599.676 and 599.673

Criteria: 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 DRE failed to comply with the requirements outlined in the state civil service pay plan. Incorrectly applying compensation laws and rules in accordance with CalHR’s policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay amounts.

Cause: The incorrect anniversary date was a human error. The employee’s anniversary date was keyed as April 2020 and should have been keyed as May 2020.

Corrective Action: Within 90 days of the date of this report, the DRE must submit to the SPB a written corrective action response which describes the process it has implemented to ensure that employees are compensated correctly. The DRE must establish an audit system to correct current compensation transactions as well as future transactions. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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, November 30, 2018, through August 29, 2019, the DRE employees made nine alternate range movements within a classification. The CRU reviewed five of those alternate range movements to determine if the DRE 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)
Personnel Specialist	C	D	Full Time	\$4,152
Real Estate Counsel I	B	C	Full Time	\$6,760
Special Investigator	B	C	Full Time	\$6,195
Special Investigator	B	C	Full Time	\$5,748
Staff Services Analyst (General)	B	C	Full Time	\$4,192

FINDING NO. 9 – Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU determined that the alternate range movements the DRE made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Hiring Above Minimum Requests

The CalHR may authorize payment at any step above the minimum limit to classes or positions to meet recruiting problems, or to obtain a person who has extraordinary qualifications. (Gov. Code § 19836.) For all employees new to state service, departments are delegated to approve HAMs for extraordinary qualifications. (Human Resources Manual Section 1707.) Appointing authorities may request HAMs for current state employees with extraordinary qualifications. (*Ibid.*) Delegated HAM authority does not apply to current state employees. (*Ibid.*)

Extraordinary qualifications may provide expertise in a particular area of a department's program. (*Ibid.*) This expertise should be well beyond the minimum qualifications of the class. (*Ibid.*) Unique talent, ability or skill as demonstrated by previous job experience may also constitute extraordinary qualifications. (*Ibid.*) The scope and depth of such experience should be more significant than its length. (*Ibid.*) The degree to which a candidate exceeds minimum qualifications should be a guiding factor, rather than a determining one. (*Ibid.*) The qualifications and hiring rates of state employees already in the same class should be carefully considered, since questions of salary equity may arise if new higher entry rates differ from previous ones. (*Ibid.*) Recruitment difficulty is a factor to the extent that a specific extraordinary skill should be difficult to recruit, even though some applicants are qualified in the general skills of the class. (*Ibid.*)

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.⁶ (Gov. Code § 19836 subd. (b).)

Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The

⁶ Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

salary received upon appointment to civil service shall be in accordance with the salary rules specified in the California Code of Regulations. *(Ibid.)* A salary determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. *(Ibid.)* Typically, the legislative employees are compensated at a higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. *(Ibid.)*

Appointing authorities may request/approve HAMs for former exempt employees appointed to a civil service class. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be competitive with the employee’s salary in the exempt appointment. *(Ibid.)* For example, An employee appointed to a civil service class which is preceded by an exempt appointment may be appointed at a salary rate comparable to the exempt appointment up to the maximum of the salary range for the civil service class. *(Ibid.)*

During the period under review, November 30, 2018, through August 29, 2019, the DRE authorized one HAM request. The CRU reviewed the one authorized HAM request to determine if the DRE correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates’ extraordinary qualifications, which is listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Real Estate Counsel II	Certification List	Permanent	\$7,609 - \$9,760	\$9,760

FINDING NO. 10 – Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found that the HAM request the DRE made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages 10 percent or more of the total time worked. According to the Pay Differential 14, the 10 percent time standard is calculated based on the time spent

conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position duty statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is granted to a certified bilingual employee in a designated bilingual position. The position, not the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, November 30, 2018, through August 29, 2019, the DRE issued bilingual pay to 11 employees. The CRU reviewed six of these bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Time Base	No. of Appts.
Office Assistant (Typing)	R04	Full Time	1
Program Technician II	R04	Full Time	1
Special Investigator	R07	Full Time	2
Supervising Special Investigator I (Non-Peace Officer)	S07	Full Time	2

FINDING NO. 11 – Incorrect Authorization of Bilingual Pay

Summary: The CRU found two errors in the DRE’s authorization of bilingual pay:

Classification	Description of Findings	Criteria
Program Technician II	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Government Code section 7296 and Pay Differential 14
Special Investigator	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Government Code section 7296 and Pay Differential 14

Criteria: For any state agency, a “qualified” bilingual employee, person, or interpreter is someone who CalHR has tested and certified, someone who was tested and certified by a state agency or other approved testing authority, and/or someone who has met the testing or certification standards for outside or contract interpreters as

proficient in both the English language and the non-English language to be used. (Gov. Code, § 7296, subd. (a)(3).) An individual must be in a position that has been certified by the department as a position which requires the use of bilingual skills on a continuing basis averaging 10 percent of the time spent either conversing, interpreting or transcribing in a second language and time spent on closely related activities performed directly in conjunction with specific bilingual transactions. (Pay Differential 14.)

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

Cause: The DRE was unable to locate the documents to substantiate the bilingual pay due to (1) the length of time the employee has been performing bilingual services and (2) due to a reallocation issue.

Corrective Action: Within 90 days of the date of this report, the DRE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 7296, and/or Pay Differential 14. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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, November 30, 2018, through August 29, 2019, the DRE issued pay differentials⁷ to seven employees. The CRU reviewed seven of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Legal Secretary	141	10%
Legal Secretary	141	10%
Legal Support Supervisor I	141	5%
Personnel Specialist	240	\$2,400
Senior Legal Typist	141	5%
Senior Legal Typist	141	5%
Senior Legal Typist	141	10%

FINDING NO. 12 – Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the pay differentials that the DRE 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.

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 in order to continue the employment status for an employee until the

⁷ For the purposes of CRU’s review, only monthly pay differentials were selected for review at this time.

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 of the working days of a month. When counting 189 days, every day worked, including partial days⁸ worked and paid absences,⁹ is counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is 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-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).)

Generally, permanent intermittent employees may work up to 1500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2000 hours in any calendar year.

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

⁸ For example, two hours or ten hours counts as one day.

⁹ For example, vacation, sick leave, compensating time off, etc.

Classification	Time Base	Time Frame	Time Worked
Seasonal Clerk	Intermittent	11/14/17 – 11/13/18	1,539 hours
Seasonal Clerk	Intermittent	11/12/17 – 11/11/18	1,479 hours
Seasonal Clerk	Intermittent	11/12/17 – 11/11/18	1,442 hours

FINDING NO. 13 – Department Did Not Properly Monitor Time Worked for All Positive Paid Employees

Summary: The DRE did not consistently monitor the actual number of hours worked in order to ensure that one positive paid employee did not exceed the 1,500-hour limitation in any 12-consecutive month period. Specifically, the following employee exceeded the 1,500 hour limitation:

Classification	Tenure	Time Frame	Time Worked	Time Worked Over Limit
Seasonal Clerk	Temporary	11/14/17 – 11/13/18	1,539 hours	39 hours

Criteria: A permanent intermittent employee may work up to 1,500 hours in any calendar year. The number of hours and schedule of work shall be determined based upon the operational needs of each department. (Applicable Bargaining Unit Agreements.)

Severity: Serious. The number of days or hours an individual may work in a permanent intermittent appointment is limited in the state civil service. To ensure permanent intermittent appointments are not made on a full-time basis, a maximum of 1500 hours has been placed on the number of hours which a permanent intermittent employee may work any calendar year.

Cause: Due to the transition to becoming its own department, DRE reports an oversight with the employee’s hours worked.

Corrective Action: Within 90 days of the date of this report, the DRE must submit to the SPB a written corrective action response which describes the

process it has implemented to ensure conformity with Government Code section 21224, and California Code of Regulations, title 2, section 599.665, and Bargaining Unit 4 agreement. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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, May 1, 2018, through April 30, 2019, the DRE placed 14 employees on ATO. The CRU reviewed 14 of these ATO appointments to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
CEA	07/01/18 – 07/30/18	15 days
General Auditor II	03/06/19	8 hours
Information Technology Specialist I	04/08/19	2 hours
Legal Secretary	08/27/18	3 hours
Office Technician (Typing)	04/08/19	.5 hours
Real Estate Counsel III (Specialist)	05/23/18 – 05/30/18	37 days
Senior Legal Typist	08/17/18	3 hours
Special Investigator	09/13/18	7 hours
Special Investigator	11/13/18 – 11/16/18	29.5 hours

Classification	Time Frame	Amount of Time on ATO
Special Investigator	12/11/18, 12/20/18	8 hours
Special Investigator	08/27/18	2.5 hours
Special Investigator	08/27/18	3 hours
Special Investigator	08/27/18	2 hours
Staff Services Analyst (General)	11/15/18 – 11/6/18	17 days

FINDING NO. 14 – Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The DRE 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, January 31, 2019, through April 30, 2019, the DRE reported 3 units comprised of 108 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
February 2019	530	16	16	0
March 2019	210	46	46	0
April 2019	210	46	46	0

FINDING NO. 15 – Leave Activity and Correction Certification Forms Were Not Completed for All Leave Records Reviewed

Summary: The DRE failed to provide completed Leave Activity and Correction Certification forms for one of three units reviewed during the February, March, and April 2019 pay period.

Criteria: Departments are responsible for maintaining accurate and timely leave accounting records for their employees. (Cal. Code Regs., tit. 2, § 599.665.) Departments shall identify and record all errors found using a Leave Activity and Correction form. (Human Resources Manual Section 2101.) Furthermore, departments shall certify that all leave records for the unit/pay period identified on the certification form have been reviewed and all leave errors identified have been corrected. (*Ibid.*)

Severity: Technical. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure accuracy and timeliness. For post-audit purposes, the completion of Leave Activity and Correction Certification forms demonstrates compliance with CalHR policies and guidelines.

Cause: DRE declined to provide a cause in their departmental response.

Corrective Action: Within 90 days of the date of this report, the DRE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that their monthly internal audit process is documented and that all leave input is keyed accurately and timely. The DRE must incorporate completion of Leave Activity and Correction Certification forms for all leave records even when errors are not identified or corrected.

Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 considered to be 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.¹⁰ (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 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 employees¹¹ shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

¹⁰ 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.

¹¹ As identified in Government Code sections 19858.3, subdivision (a), 19858.3 subdivision (b), or 19858.3 subdivision (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.

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, November 30, 2018, through July 30, 2019, the DRE had six employees with non-qualifying pay period transactions. The CRU reviewed 10 transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time base	Number Reviewed
Non-Qualifying Pay Period	Full Time	6
Qualifying Pay Period	Full Time	4

FINDING NO. 16 – Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU determined that the DRE 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.

Policy and Processes

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service. (*Ibid.*) Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*) Personal relationships for this purpose include association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

FINDING NO. 17 – Department Does Not Maintain a Current Written Nepotism Policy

Summary: The DRE does not maintain a current written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees.

Criteria: It is the policy of the State of California to recruit, hire and assign all employees on the basis of fitness and merit in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204). All department policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring, and assigning employees on the basis of merit. (*Ibid.*)

Severity: Very Serious. Nepotism is prohibited in the state workplace because it is antithetical to California’s merit based civil service system. Departments must take proactive steps to ensure that the recruitment, hiring, and assigning of all employees is done on the basis of merit and fitness in accordance with civil service statutes. Maintaining a current written nepotism policy, and its dissemination to all staff, is the cornerstone for achieving these outcomes.

Cause: DRE returned to department status effective July 1, 2018. Due to lack of resources. DRE is utilizing DCA’s policies, procedures, processes, forms etc. until they are able to create our own.

Corrective Action: Within 90 days of the date of this report, the DRE must submit to the SPB a written corrective action response which includes an updated nepotism policy which contains requirements outlined in Human Resources Manual section 1204, and documentation demonstrating that it has been distributed to all staff.

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, subs. (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 this case, the DRE did not employ volunteers during the compliance review period.

FINDING NO. 19 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the DRE 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 DRE 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 25 permanent DRE employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines. These are listed below:

Classification	Performance Appraisals Due	Performance Appraisals Provided
Associate Governmental Program Analyst	9/19/2018	None
Associate Governmental Program Analyst	6/22/2018	None
Associate Governmental Program Analyst	7/8/2018	None
Business Service Assistant (Specialist)	3/2/2018	None
General Auditor III	4/30/2018	None
General Auditor III	6/2/2018	None
General Auditor III	6/4/2018	None
Legal Secretary	7/6/2018	None
Office Assistant (General)	1/16/2018	None
Office Technician (Typing)	4/30/2018	None
Office Technician (General)	1/31/2018	None
Program Technician II	4/30/2018	None
Program Technician II	1/1/2018	None
Program Technician II	6/3/2018	None
Program Technician II	11/7/2018	None
Program Technician II	7/2/2018	None
Program Technician II	1/1/2018	None
Real Estate Counsel III (Specialist)	6/1/2018	None
Special Investigator	8/31/2018	None
Special Investigator	10/2/2018	None
Supervising Auditor I, Department of Real Estate	1/30/2018	None
Supervising Auditor I, Department of Real Estate	6/30/2018	None
Supervising Program Technician III	9/30/2018	None
Supervising Special Investigator I (Non-Peace Officer)	8/5/2018	None
Supervising Special Investigator II (Non-Peace Officer)	6/24/2018	None

FINDING NO. 20 – Performance Appraisals Were Not Provided to All Employees

Summary: The DRE did not provide annual performance appraisals to any of the 25 reviewed employees 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 of its employees are apprised of work performance issues and/or goals in a systematic manner.

Cause: DRE acknowledges that it does not have a performance appraisal policy in place. DRE returned to department status effective July 1, 2018 and due to lack of resources, has been unable to develop and implement a process to track annual performance appraisals.

Corrective Action: Within 90 days of the date of this report, the DRE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

DEPARTMENTAL RESPONSE

The DRE’s response is attached as Attachment 1.

SPB REPLY

Based upon the DRE's written response, the DRE 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.

DEPARTMENT OF REAL ESTATE

Human Resources Office
1651 Exposition Blvd
Sacramento, CA 95815
(916) 576-7882



SENT VIA E-MAIL

December 22, 2020

Suzanne Ambrose, Executive Officer
State Personnel Board
801 Capitol Mall, Suite 1200
Sacramento, CA 95814

RE: Department of Real Estate Compliance Review Report

Dear Ms. Ambrose,

The Department of Real Estate (DRE) submits this letter in response to the State Personnel Board's (SPB) Draft Compliance Review Report of DRE's personnel practices in the areas of examinations, appointments, equal employment, personal services contracts, mandated training, compensation and pay, leave, and policy and processes for the period of September 1, 2017 to August 29, 2019.

FINDING NO. 2 – Probationary Evaluation Was Not Timely

Cause: DRE did not provide one probationary report of performance in a timely manner due to the employee being unavailable. The employee was appointed effective December 6, 2018, and the first probation report was due April 5, 2019. However, the employee went on a leave of absence beginning March 5, 2019. The employee did not return to work and retired effective May 1, 2019. The employee was on a leave of absence at the time the first probationary report was due and DRE was unable to provide a probationary report.

Corrective Action: DRE had a process in place and we are currently implementing improvements to further ensure compliance. Human Resources (HR) sends supervisors notification of the probationary report due dates as well as reminders. To improve the process, HR will be establishing Outlook Appointments with alerts for supervisors, for each employee that is serving a probation.

FINDING NO. 3 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Cause: DRE acknowledges that we did not have a process in place to follow up and track the receipt of Notice of Personnel Action (NOPA) forms, after they were sent to employees for signature.

Corrective Action: DRE has implemented a process to ensure proper retention of NOPAs. The new process includes the Personnel Specialists maintaining a Pending NOPA Tickler. If a NOPA is not returned, a follow up email is sent to the employee. NOPAs are filed in the employee's Official Personnel File (OPF).

FINDING NO. 4 – A Disability Advisory Committee Has Not Been Established

Cause: DRE returned to department status effective July 1, 2018. Due to lack of resources, DRE has been unable to establish a Disability Advisory Committee (DAC).

Corrective Action: DRE will be recruiting for a position, whose primary responsibility will be as the Equal Employment Opportunity Officer. This position will be responsible for creating a DAC and serve as the department's DAC coordinator.

FINDING NO. 5 – Unions Were Not Notified of Personal Services Contract

Cause: DRE acknowledges that we did not have a process in place to notify unions prior to entering into a Personal Services Contract.

Corrective Action: DRE has established a process to comply with Government Code 19131. For any contract defined as personal services, DRE's Business Services Office (BSO) consults with HR to notify the unions.

FINDING NO. 6 – Ethics Training Was Not Provided for All Filers

Cause: DRE reported to DCA during most of the review period. Compliance of the law falls under DCA's audit/review. During the conversion of becoming a department and the transition of personnel records, we did not receive copies of the documentation for the Ethics Training. DRE made every effort possible to obtain copies of the records.

DRE acknowledges that although training was provided to new filers, for hires made between July 1, 2018 through March 31, 2019, it was not done timely.

Corrective Action: DRE has a process in place to track and follow up with employees and supervisors as needed, to ensure compliance.

FINDING NO. 7 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Cause: DRE reported to DCA during most of the review period. Compliance of the law falls under DCA's audit/review. During the conversion of becoming a department and the transition of personnel records, we did not receive copies of the documentation for the Sexual Harassment Prevention Training. DRE made every effort possible to obtain copies of the records.

DRE acknowledges that although training was provided to new filers, for hires made between July 1, 2018 through March 31, 2019, it was not done timely.

Corrective Action: DRE has a process in place to track and follow up with employees and supervisors as needed, to ensure compliance.

FINDING NO. 8 – Incorrect Application of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment

Cause: The incorrect anniversary date was a human error. The employee's anniversary date was keyed as 04/20 and should have been keyed as 05/20.

Corrective Action: To minimize errors, DRE has implemented a process that includes a second review of all Salary Determination Worksheets and Personnel Action Request (PAR) forms prior to processing.

FINDING NO. 11 – Incorrect Authorization of Bilingual Pay

Cause: The CRU found two errors in the DRE's authorization of bilingual pay.
Error 1 - The employee started receiving bilingual pay on January 9, 1984. We were unable to locate the documents to substantiate the bilingual pay.

Error 2 - In 2011, DRE transferred all employees in the Deputy Commissioner classification to the Special Investigators classification, performing the same duties. Although we received the California Department of Human Resources' (CalHR) approval for this change, we were unable to process a reallocation because we were not part of the Board item. We processed this change as a Transfer (A02) instead of a Reallocation (A20). A Justification-STD 897 was not completed for the employee in the Special Investigator classification. However, we have the documentation for the bilingual pay in the Deputy Commissioner classification.

Corrective Action:

Error 1 - DRE will complete a Justification-STD 897 form and will ask the employee to re-take the proficiency exam.

Error 2 - DRE will complete the proper paperwork to ensure we are in compliance with the Special Investigator classification.

FINDING NO. 13 – Department Did Not Properly Monitor Time Worked for All Positive Paid Employees

Cause: DRE reported to DCA for most of the review period. Due to the transition in becoming a department, it appears that there was an oversight with the employee's hours worked.

Corrective Action: DRE has implemented a process to track Positive Paid Employee hours. The process includes maintaining an Excel Timecard for each employee. In addition to the Excel Timecard, we are using SCO's Leave Accounting System (LAS) to track hours and cross-reference with the Excel Timecard.

FINDING NO. 17 – Department Does Not Maintain a Current Written Nepotism Policy

Cause: DRE returned to department status effective July 1, 2018. Due to lack of resources, DRE is utilizing DCA's policies, procedures, processes, forms, etc. until we are able to create our own. Although the Nepotism Policy does not list DRE by name, we continue to follow the policy.

Corrective Action: DRE is in the process of creating and implementing our own policy.

FINDING NO. 20 – Performance Appraisals Were Not Provided to All Employees

Cause: DRE acknowledges that we do not have a performance appraisal process in place. DRE returned to department status effective July 1, 2018, and due to lack of resources, has been unable to develop and implement a process to track annual performance appraisal.

Corrective Action: DRE acknowledges the importance of providing employees feedback and performance appraisals. We are in the process of developing a process to track due dates and follow up as needed. This process will involve providing a performance appraisal to employees each year during the month of his/her birthdate.

Sincerely,



Shelly Wilson
Assistant Commissioner, Administrative Services

cc: Marcus McCarther, Chief Deputy Commissioner
Elizabeth Garcia, Personnel Officer