



COMPLIANCE REVIEW REPORT

COMMISSION ON STATE MANDATES

Compliance Review Unit
State Personnel Board
May 7, 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 Commission on State Mandates' (CSM) personnel practices in the areas of 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
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	In Compliance	Personal Services Contract Complied with Procedural Requirements
Mandated Training	In Compliance	Mandated Training Complied with Statutory Requirements
Compensation and Pay	In Compliance	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies
Leave	Technical	Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records ¹ Reviewed
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

¹ Repeat finding. October 31, 2018, the CSM's compliance review report identified missing Leave Activity and Correction forms for one unit during three pay periods.

Area	Severity	Finding
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 ²

BACKGROUND

The CSM is a quasi-judicial body whose statutory responsibilities are to hear and decide:

- Test claims of local agencies and school districts that allege the existence of reimbursable state-mandated programs; and, if a test claim is approved, adopt parameters and guidelines for claiming reimbursement and prepare a statewide cost estimate.
- Claims alleging that the State Controller's Office has incorrectly reduced payments to local agencies and school districts.
- Requests for mandate redeterminations that allege the state's liability for a mandate has been modified based on a subsequent change in law.
- Requests to review the claiming instructions issued by the State Controller.
- Requests to determine whether a mandated program, for which appropriations have been made by the Legislature in any three consecutive years, should be included in the State Mandates Apportionment System.
- And, claims regarding the existence of significant financial distress for applicant counties seeking to reduce their General Assistance Aid payments..

The Commission is composed of seven members: The State Controller, State Treasurer, Director of the Department of Finance, Director of the Office of Planning and Research, a public member with experience in public finance, and two local elected officials.

² Repeat finding. October 31, 2018, the CSM's compliance review report identified one missing performance appraisal from the 11 employees reviewed.

The CSM's vision is to render timely and sound quasi-judicial decisions, in compliance with Article XIII B, section 6 of the California Constitution, resolving disputes regarding reimbursement for state-mandated local programs, and relieving unnecessary congestion of the courts.

The CSM's mission is to fairly and impartially hear and determine matters filed by state and local governments; resolve complex legal questions in a deliberative and timely manner; and produce clear, well-reasoned, and lawful decisions.

The Department of General Services (DGS) performs human resources operations for the CSM.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CSM's appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes³. The primary objective of the review was to determine if the CSM'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.

The CSM did not conduct any examinations or permanent withhold actions during the compliance review period.

A cross-section of the CSM'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 CSM 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 CSM did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the CSM did not make any additional appointments during the compliance review period.

The CSM's appointments were also selected for review to ensure the CSM applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CSM provided, which included employees'

³ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

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: hire above minimum (HAM) requests.

During the compliance review period, the CSM did not issue or authorize red circle rate requests, arduous pay, bilingual pay, monthly pay differentials, alternate range movements or out-of-class assignments.

The review of the CSM'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 CSM's PSC's were also reviewed.⁴ It was beyond the scope of the compliance review to make conclusions as to whether the CSM's justifications for the contracts were legally sufficient. The review was limited to whether the CSM's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The CSM'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.

The CRU reviewed the CSM's Leave Activity and Correction Certification forms to verify that the CSM 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 CSM unit in order to ensure it maintained accurate and timely leave accounting records.

During the compliance review period, the CSM did not have any employees with non-qualifying pay period transactions. The CSM also did not authorize Administrative Time Off (ATO). Additionally, the CSM did not track any temporary intermittent employees by actual time worked during the compliance review period.

⁴If 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.

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

The CSM declined to have an exit conference. The CRU received and carefully reviewed the CSM’s written response on April 27, 2021, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

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).)

During the period under review, September 1, 2019, through August 31, 2020, the CSM made four appointments. The CRU reviewed all four of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Governmental Program Analyst	Certification List	Permanent	Part Time	1
Attorney	Certification List	Permanent	Full Time	1
Attorney III	Certification List	Permanent	Full Time	1
Attorney IV	Transfer	Permanent	Full Time	1

IN COMPLIANCE	FINDING NO. 1 APPOINTMENTS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES
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The DGS administers CSM’s appointments. On behalf of the CSM, the DGS 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 three list appointments reviewed, the DGS ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including State Restriction of Appointments, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CRU reviewed one CSM appointment made via transfer. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Regs., tit. 2, § 425.) The CSM verified the eligibility of the candidate to their appointed class.

The CRU found no deficiencies in the appointments that the CSM initiated during the compliance review period. Accordingly, the CRU found that the CSM’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).)

Pursuant to Government Code section 19795, subdivision (a), in a state agency with less than 500 employees, like CSM, 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).)

IN COMPLIANCE	FINDING NO. 2 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 CSM’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 Executive Director of the CSM. The CSM 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, October 1, 2019, through September 30, 20120, the CSM had one PSC that was in effect. The CRU reviewed the PSC, which is listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Kathryn Swank, Certified Shorthand Reporting	Legal Transcription Services	7/1/2020-6/30/2021	\$9,999.00	Yes	Yes

IN COMPLIANCE	FINDING NO. 3 PERSONAL SERVICES CONTRACT COMPLIED WITH PROCEDURAL REQUIREMENTS
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It was beyond the scope of the review to make conclusions as to whether CSM’s justification for the contract was legally sufficient. The CSM provided specific and detailed factual information in the written justification as to how the contract met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, the CSM complied with proper notification to the organization that represents state employees who perform the type of work contracted. Accordingly, the CSM’s PSC complied with civil service laws and board rules.

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.)

Additionally, new supervisors must be provided sexual harassment prevention training within sixmonths 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 CSM’s mandated training program that was in effect during the compliance review period, October 1, 2019, through March 31, 2020.

IN COMPLIANCE	FINDING NO. 4	MANDATED TRAINING COMPLIED WITH STATUTORY REQUIREMENTS
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The CSM provided ethics training to its two new filers within six months of appointment and, for nine existing filers, “at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter.” In addition, the CSM provided sexual harassment prevention training to its three existing supervisors every two years. The CSM did not hire any new supervisors or managers during the compliance review period. Thus, the CSM complied with mandated training requirements within statutory timelines.

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.

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).

During the period under review, September 1, 2019, through August 31, 2020, the CSM made four appointments. The CRU reviewed those appointments to determine if the CSM applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Associate Governmental Program Analyst	Certification List	Permanent	Part Time	\$3,223
Attorney	Certification List	Permanent	Full Time	\$7,818
Attorney III	Certification List	Permanent	Full Time	\$10,802
Attorney IV	Transfer	Permanent	Full Time	\$13,421

IN COMPLIANCE	FINDING NO. 5 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 CSM appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy 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 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, September 1, 2019, through August 31, 2020, the CSM authorized one HAM request. The CRU reviewed the authorized HAM request to determine if the CSM correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates' extraordinary qualifications, which are listed below:

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.

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Attorney III	Certification List	New to State	\$9,463-\$12,140	\$10,802

IN COMPLIANCE	FINDING NO. 6 HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found that the HAM request that the CSM made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Leave

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, 2020, through June 30, 2020, the CSM reported one unit comprised of 12 active employees during the April 2020 pay period, and the same unit comprised of 14 active employees during the May and June 2020 pay periods. 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
April 2020	1	12	12	0
May 2020	1	14	14	0
June 2020	1	14	14	0

SEVERITY: TECHNICAL	FINDING NO. 7 LEAVE ACTIVITY AND CORRECTION CERTIFICATION FORMS WERE NOT COMPLETED FOR ALL LEAVE RECORDS REVIEWED
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Summary: The DGS administers the CSM's leave accounting services. On behalf of the CSM, the DGS provided documentation demonstrating that they currently administer an effective monthly internal audit process to verify that all leave input into their leave accounting system was keyed accurately and timely. After reviewing leave records over three pay periods, it was determined that the DGS correctly keyed all leave types accrued/earned or used, and corrected any identified errors in the leave accounting system in a timely manner.

However, the DGS failed to provide completed Leave Activity and Correction Certification forms for the unit reviewed on behalf of the CSM during the April, May, and June 2020 pay periods. This is the second consecutive time this has been a finding for the CSM.

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: The CSM states that the DGS administers their leave accounting services and DGS failed to provide completed Leave Activity and Correction Certification forms for the unit reviewed on behalf of the CSM. The CSM states that they have no way of knowing if DGS completed their Leave Activity and Correction Certification forms or not.

SPB Reply: Ultimately, the CSM, as the hiring authority, is responsible for compliance of all human resources functions. SPB encourages the CSM to have discussions with its contractor, DGS, about the importance of maintaining compliance with existing laws and policy and/or explore seeking a different contractor to perform its human resources functions.

Corrective Action: Within 90 days of the date of this report, the DGS 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. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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.*)

IN COMPLIANCE	FINDING NO. 8 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 CSM's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CSM'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 this case, the CSM did not employ volunteers during the compliance review period.

IN COMPLIANCE	FINDING NO. 9 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 CSM 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 CSM 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 six permanent CSM 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	Date Performance Appraisals Due
Associate Governmental Program Analyst	12/1/2019
Attorney III	7/26/2019
CEA B, Chief Counsel	1/1/2019
Information Technology Specialist I	12/1/2019
Office Technician	12/1/2019
Staff Services Manager II, Managerial	12/30/2019

SEVERITY: SERIOUS	FINDING NO. 10 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES
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Summary: The CSM did not provide annual performance appraisals to three of the six employees reviewed after the completion of the employee's probationary period. This is the second consecutive time this has been a finding for the CSM.

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: The CSM states that they did not perform performance evaluations on three of the six employees reviewed due to oversight.

Corrective Action: Within 90 days of the date of this report, the CSM 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 CSM's response is attached as Attachment 1.

SPB REPLY

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



Sent via e-mail to Alton.Ford@spb.ca.gov

April 27, 2021

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

RE: Response to Compliance Review Report

Dear Ms. Ambrose:

The Commission on State Mandates (Commission) hereby submits the following response to the State Personnel Board's (SPB's) April 13, 2021 Draft Compliance Review Report. The Commission appreciates SPB's review and the opportunity to respond to its findings. Please reference the enclosed attachment for detailed responses.

Please contact Heidi Palchik at (916) 323-3562 if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Heather Halsey'.

Heather Halsey
Executive Director

Commission on State Mandates
Draft Compliance Review Report Response

Please find the following response of the Commission on State Mandates (Commission) to the State Personnel Board (SPB) Draft Compliance Review Report, issued April 13, 2021.

FINDING No. 1 – Appointments Complied with Civil Service Laws and Board Rules.

Cause: None

Response: No adverse findings were reported during the Compliance Review.

FINDING No. 2 – Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules.

Cause: None

Response: No adverse findings were reported during the Compliance Review.

FINDING No. 3 – Personal Services Contract Complied with Procedural Requirements.

Cause: None

Response: No adverse findings were reported during the Compliance Review.

FINDING NO. 4 – Mandated Training Complied with Statutory Requirements.

Cause: None

Response: No adverse findings were reported during the Compliance Review.

FINDING NO. 5 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines.

Cause: None

Response: No adverse findings were reported during the Compliance Review.

FINDING NO. 6 – Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines.

Cause: None

Response: No adverse findings were reported during the Compliance Review.

FINDING NO. 7 – Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed.

Cause: The Department of General Services (DGS) administers the Commission's leave accounting services and apparently failed to provide completed *Leave Activity and Correction Certification* forms for the units reviewed on behalf of the Commission during the April 2020, May 2020, and June 2020 pay periods, according to SPB's audit. The DGS specialist assigned to the Commission (which has seen turn-over 18 times in the past eleven years) usually emails the SCO Leave Activity Balance (LAB) report 45 days after the monthly timesheets are submitted. Upon receipt and review of the LAB, if errors in leave accounting are discovered, Commission staff notifies its specialist who corrects them. However, Commission staff would have no way of even being aware of whether DGS completed the *Leave Activity and Correction Certification* forms, unless it were to do field audits of DGS's work itself. It is unclear if the Commission has

the authority to go into DGS's offices and audit its staff work and the Commission certainly does not have the staffing or resources to do so.

Response: The Commission urges SPB to address this repeat finding with DGS. It is hoped that the flagging of this issue for the second consecutive time in a Compliance Review will itself lead DGS to regularly provide completed *Leave Activity and Correction Certification* forms on behalf of client agencies. And, in this respect, Commission staff would note that page 14 of the Compliance Report states "For post-audit purposes, the completion of Leave Activity and Correction Certification forms demonstrates compliance with CalHR policies and guidelines."

FINDING NO. 8 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines.

Cause: None

Response: No adverse findings were reported during the Compliance Review.

FINDING NO. 9 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines.

Cause: None

Response: No adverse findings were reported during the Compliance Review.

FINDING NO. 10– Performance Appraisals Were Not Provided to All Employees.

Cause: The Commission did not perform performance evaluations on three of its 14 employees within the twelve-month period after the employee's probationary period.

Response: The Commission acknowledges this oversight and will subsequently schedule the completion of the performance evaluations for those employees.