



COMPLIANCE REVIEW REPORT

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Compliance Review Unit
State Personnel Board
December 3, 2021

TABLE OF CONTENTS

| | |
|------------------------------------|----|
| INTRODUCTION | 1 |
| EXECUTIVE SUMMARY | 2 |
| BACKGROUND | 3 |
| SCOPE AND METHODOLOGY | 4 |
| FINDINGS AND RECOMMENDATIONS | 6 |
| EXAMINATIONS | 6 |
| APPOINTMENTS | 7 |
| EQUAL EMPLOYMENT OPPORTUNITY | 10 |
| PERSONAL SERVICES CONTRACTS | 11 |
| MANDATED TRAINING | 12 |
| COMPENSATION AND PAY | 14 |
| LEAVE | 20 |
| POLICY AND PROCESSES | 27 |
| DEPARTMENTAL RESPONSE | 30 |
| SPB REPLY | 30 |

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 Toxic Substances' Control (DTSC's) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

| Area | Severity | Finding |
|------------------------------|---------------|---|
| Examinations | In Compliance | Examinations Complied with Civil Service Laws and Board Rules |
| Appointments | Serious | Probationary Evaluations Were Not Provided for All Appointments Reviewed ¹ |
| 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 Contracts Complied with Procedural Requirements |
| Mandated Training | Very Serious | Sexual Harassment Prevention Training Was Not Provided for All Supervisors ² |
| Compensation and Pay | In Compliance | Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines |
| Compensation and Pay | In Compliance | Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |

¹ Repeat Finding. The November 2018, DTSC report identified 9 missing probationary reports of performance for 9 of the 38 appointments reviewed by the CRU.

² Repeat Finding. The November 2018, DTSC report identified 6 of 37 new supervisors who did not take the SHP training within six months of appointment, and 29 of 98 existing supervisors who did not take the sexual harassment prevention training once every two years.

| Area | Severity | Finding |
|----------------------|---------------|---|
| Compensation and Pay | In Compliance | Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines |
| Compensation and Pay | In Compliance | Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines |
| Leave | In Compliance | Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Leave | In Compliance | Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Leave | Serious | Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input is Keyed Accurately and Timely ³ |
| Leave | Very Serious | Incorrect Application of State Service and Leave Transaction |
| Policy | In Compliance | Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Policy | In Compliance | Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and |
| Policy | In Compliance | Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines |

BACKGROUND

As part of the California Environmental Protection Agency, the DTSC's mission is to protect California's people and environment from the harmful effects of toxic substances by restoring contaminated resources, enforcing hazardous waste laws, reducing hazardous waste generation, and encouraging the manufacture of chemically safer products.

³ Repeat Finding. The November 2018, DTSC report found that the DTSC had failed to implement a monthly internal audit process to verify that all leave input is keyed accurately and timely.

More than 1,000 departmental employees work to ensure the mission, values and goals of the department are met throughout the state. The DTSC is organized into ten main programs: Office of Legal Counsel, Office of Administrative Services, Financial Planning and Contracting Services, Office of Communications, Office of Environmental Equity, Site Mitigation and Restoration Program, Hazardous Waste Management Program, Environmental Chemistry Laboratory, Safer Products and Workplaces Program, and Office of Environmental Information Management.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the DTSC's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes⁴. The primary objective of the review was to determine if the DTSC'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 DTSC'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 DTSC provided, which included examination plans, examination bulletins, job analyses, and scoring results. The DTSC did not conduct any permanent withhold actions during the compliance review period.

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

⁴ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

The DTSC's appointments were also selected for review to ensure the DTSC applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the DTSC 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: bilingual pay, monthly pay differentials, and alternate range movements.

During the compliance review period, the DTSC did not issue or authorize hiring above minimum (HAM) requests, red circle rate requests, arduous pay, or out-of-class pay.

The review of the DTSC'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 DTSC's PSC's were also reviewed.⁵ It was beyond the scope of the compliance review to make conclusions as to whether the DTSC's justifications for the contracts were legally sufficient. The review was limited to whether the DTSC's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The DTSC'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 those in Career Executive Assignments (CEA) were provided sexual harassment prevention training within statutory timelines.

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

⁵ If 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.

Part of this review also examined a cross-section of the DTSC's employees' employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the CRU reviewed a selection of the DTSC's employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of DTSC's 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 DTSC's policies and processes concerning nepotism, workers' compensation, performance appraisals. The review was limited to whether the DTSC's policies and processes adhered to procedural requirements.

On September 9, 2021, an exit conference was held with the DTSC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the DTSC's written response on September 24, 2021, 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, March 1, 2020, through December 1, 2020, the DTSC conducted two examinations. The CRU reviewed those two examinations, which are listed below:

| Classification | Exam Type | Exam Components | Final File Date | No. of Apps |
|---|-----------|--|-----------------|-------------|
| Deputy Director, Office of Administrative Services, CEA B | CEA | Statement of Qualifications ⁶ | 4/20/2020 | 5 |
| Associate Industrial Hygienist | Open | Training and Experience ⁷ | Continuous | 3 |

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| IN COMPLIANCE | FINDING NO. 1 EXAMINATIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES |
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The CRU reviewed one CEA examination and one open examination which the DTSC administered in order to create eligible lists from which to make appointments. The DTSC published and distributed examination bulletins containing the required information for all examinations. Applications received by the DTSC 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 DTSC conducted during the compliance review period.

Appointments

⁷ The Training and Experience examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values.

⁸ 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.

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, March 1, 2020, through December 1, 2020, the DTSC made 134 appointments. The CRU reviewed 25 of those appointments, which are listed below:

| Classification | Appointment Type | Tenure | Time Base | No. of Appts. |
|---|--------------------|-----------|-----------|---------------|
| Accountant Trainee | Certification List | Permanent | Full Time | 1 |
| Accounting Administrator I (Supervisor) | Certification List | Permanent | Full Time | 1 |
| Assistant Chief Council | Certification List | Permanent | Full Time | 1 |
| Associate Governmental Program Analyst | Certification List | Permanent | Full Time | 1 |
| Attorney III | Certification List | Permanent | Full Time | 1 |
| Engineering Geologist | Certification List | Permanent | Full Time | 1 |
| Environmental Scientist | Certification List | Permanent | Full Time | 1 |
| Hazardous Substances Engineer | Certification List | Permanent | Full Time | 1 |
| Information Officer II | Certification List | Permanent | Full Time | 1 |
| Office Technician (Typing) | Certification List | Permanent | Full Time | 1 |
| Personnel Specialist | Certification List | Permanent | Full Time | 1 |
| Senior Accounting Officer (Specialist) | Certification List | Permanent | Full Time | 1 |
| Senior Environmental Scientist (Specialist) | Certification List | Permanent | Full Time | 1 |
| Staff Services Manager III | Certification List | Permanent | Full Time | 1 |
| Supervising Hazardous Substances Engineer I | Certification List | Permanent | Full Time | 1 |

| Classification | Appointment Type | Tenure | Time Base | No. of Appts. |
|-------------------------------------|------------------|-----------|-----------|---------------|
| Accounting Officer (Specialist) | Transfer | Permanent | Full Time | 1 |
| Associate Personnel Analyst | Transfer | Permanent | Full Time | 1 |
| Attorney III | Transfer | Permanent | Full Time | 1 |
| Engineering Geologist | Transfer | Permanent | Full Time | 1 |
| Hazardous Substances Engineer | Transfer | Permanent | Full Time | 1 |
| Information Technology Manager I | Transfer | Permanent | Full Time | 1 |
| Information Technology Specialist I | Transfer | Permanent | Full Time | 1 |
| Labor Relations Specialist | Transfer | Permanent | Full Time | 1 |
| Personnel Supervisor I | Transfer | Permanent | Full Time | 1 |
| Staff Services Manager I | Transfer | Permanent | Full Time | 1 |

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| SEVERITY: SERIOUS | FINDING NO. 2 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED |
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Summary: The DTSC did not provide 15 probationary reports of performance for 10 of the 25 appointments reviewed by the CRU, as reflected in the table below. This is the second consecutive time this has been a finding for the DTSC.

| Classification | Appointment Type | Number of Appointments | Total Number of Missing Probation Reports |
|---|--------------------|------------------------|---|
| Accountant Trainee | Certification List | 1 | 1 |
| Accounting Administrator I (Supervisor) | Certification List | 1 | 1 |
| Associate Governmental Program Analyst | Certification List | 1 | 3 |
| Attorney III | Certification List | 1 | 2 |
| Environmental Scientist | Certification List | 1 | 1 |
| Office Technician (Typing) | Certification List | 1 | 1 |
| Personnel Specialist | Certification List | 1 | 1 |
| Senior Environmental Scientist (Specialist) | Certification List | 1 | 1 |
| Staff Services Manager III | Certification List | 1 | 2 |
| Engineering Geologist | Transfer | 1 | 2 |

Criteria: The service of a probationary period is required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service resulting from a permanent separation; or after any other type of appointment situation not specifically excepted from the probationary period. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as the department rules may require. (Gov. Code, § 19172.) A report of the probationer's performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Cal. Code Regs., tit. 2, § 599.795.) A written appraisal of performance shall be made to the Department within 10 days after the end of each one-third portion of the probationary period. (*Ibid.*) The Board's record retention rules require that appointing powers retain all probationary reports for five years from the date the record is created. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: Managers were unavailable to complete probation reports timely because they retired, were on leave or not present. Furthermore, the Covid-19 pandemic caused additional barriers in completing probationary reports.

Corrective Action: Within 90 days of the date of this report, the DTSC 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 19172. 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).)

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).)

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| IN COMPLIANCE | FINDING NO. 3 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES |
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After reviewing the policies, procedures, and programs necessary for compliance with the EEO program’s role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the DTSC’s EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Director of the DTSC. The DTSC 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, March 1, 2020, through December 1, 2020, the DTSC had one PSC that was in effect. The CRU reviewed that PSC, which is listed below:

| Vendor | Services | Contract Date(s) | Contract Amount | Justification Identified? | Union Notification? |
|----------------|-----------------------------|-----------------------|-----------------|---------------------------|---------------------|
| SEE Strategies | Executive Coaching Services | 11/2/2020 – 6/30/2021 | \$9,450 | Yes | Yes |

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| IN COMPLIANCE | FINDING NO. 4 PERSONAL SERVICES CONTRACTS COMPLIED WITH PROCEDURAL REQUIREMENTS |
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The total dollar amount of all the PSC’s reviewed was \$9,450. It was beyond the scope of the review to make conclusions as to whether DTSC justifications for the contract were legally sufficient. For all PSC’s reviewed, the DTSC provided specific and detailed factual information in the written justifications as to how each of the contracts met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, DTSC complied with proper notification to all organizations that represent state employees who perform the type or work contracted. Accordingly, the DTSC’s PSC’s 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 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 DTSC’s mandated training program that was in effect during the compliance review period, January 1, 2019, through December 1, 2020. The DTSC’s ethics training was found to be in compliance, while the DTSC’s sexual harassment prevention training was found to be out of compliance.

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| SEVERITY: VERY SERIOUS | FINDING NO. 5 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS |
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Summary: Although the DTSC did provide sexual harassment prevention training to all 135 existing supervisors, the DTSC did not provide sexual harassment prevention training to 17 of 25 new supervisors within 6 months of their appointment. This is the second consecutive time this has been a finding for the DTSC.

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: Many of the required trainings for new supervisors were delayed during the pandemic outbreak because many existing processes needed to be adjusted. Additionally, DTSC's new supervisors also attend the mandatory 80 hours of supervisory training which includes the mandated Sexual Harassment Prevention Training.

SPB Response: All new supervisors must be provided sexual harassment prevention training within six months of appointment. While some of the DTSC's new supervisors attended their mandatory supervisory training within the first six months of appointment (of which sexual harassment prevention training is a component); 17 new supervisors did not receive the training within statutory timelines.

Corrective Action: Within 90 days of the date of this report, the DTSC must submit to the SPB a written corrective action response which addresses the corrections the department will implement 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 rate⁸ upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

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

During the period under review, March 1, 2020, through December 1, 2020, the DTSC made 134 appointments. The CRU reviewed 25 of those appointments to determine if the DTSC applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

| Classification | Appointment Type | Tenure | Time Base | Salary (Monthly Rate) |
|---|--------------------|-----------|-----------|-----------------------|
| Accountant Trainee | Certification List | Permanent | Full Time | \$3,793 |
| Accounting Administrator I (Supervisor) | Certification List | Permanent | Full Time | \$6,616 |
| Assistant Chief Council | Certification List | Permanent | Full Time | \$14,053 |
| Associate Accounting Analyst | Certification List | Permanent | Full Time | \$5,406 |
| Associate Governmental Program Analyst | Certification List | Permanent | Full Time | \$5,577 |
| Attorney III | Certification List | Permanent | Full Time | \$8,443 |
| Engineering Geologist | Certification List | Permanent | Full Time | \$8,329 |
| Environmental Scientist | Certification List | Permanent | Full Time | \$3,851 |
| Hazardous Substances Engineer | Certification List | Permanent | Full Time | \$5,540 |
| Information Officer II | Certification List | Permanent | Full Time | \$6,768 |
| Office Technician (Typing) | Certification List | Permanent | Full Time | \$3,144 |
| Personnel Specialist | Certification List | Permanent | Full Time | \$3,241 |
| Senior Environmental Scientist (Specialist) | Certification List | Permanent | Full Time | \$6,816 |
| Staff Services Manager III | Certification List | Permanent | Full Time | \$9,280 |
| Supervising Hazardous Substances Engineer I | Certification List | Permanent | Full Time | \$9,450 |
| Accounting Officer (Specialist) | Transfer | Permanent | Full Time | \$4,496 |

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

| Classification | Appointment Type | Tenure | Time Base | Salary (Monthly Rate) |
|-------------------------------------|------------------|-----------|-----------|-----------------------|
| Associate Personnel Analyst | Transfer | Permanent | Full Time | \$5,406 |
| Attorney III | Transfer | Permanent | Full Time | \$9,936 |
| Engineering Geologist | Transfer | Permanent | Full Time | \$6,857 |
| Hazardous Substances Engineer | Transfer | Permanent | Full Time | \$9,143 |
| Information Technology Manager I | Transfer | Permanent | Full Time | \$10,230 |
| Information Technology Specialist I | Transfer | Permanent | Full Time | \$8,999 |
| Labor Relations Specialist | Transfer | Permanent | Full Time | \$7,089 |
| Personnel Supervisor I | Transfer | Permanent | Full Time | \$5,797 |
| Staff Services Manager I | Transfer | Permanent | Full Time | \$7,608 |

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| IN COMPLIANCE | FINDING NO. 6 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 DTSC 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.

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, March 1, 2020, through December 1, 2020, the DTSC employees made 19 alternate range movements within a classification. The CRU reviewed 11 of those alternate range movements to determine if the DTSC 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) |
|-------------------------------------|-------------|---------------|-----------|-----------------------|
| Engineering Geologist | C | D | Full Time | \$9,964 |
| Engineering Geologist | A | B | Full Time | \$6,344 |
| Environmental Scientist | B | C | Full Time | \$5,923 |
| Environmental Scientist | A | B | Full Time | \$4,680 |
| Hazardous Substances Engineer | A | B | Full Time | \$6,344 |
| Information Technology Associate | A | B | Full Time | \$5,120 |
| Information Technology Specialist I | A | B | Full Time | \$6,439 |
| Investigator | A | B | Full Time | \$5,427 |
| Legal Secretary | A | B | Full Time | \$3,920 |
| Personnel Specialist | B | C | Full Time | \$3,896 |
| Staff Services Analyst (General) | B | C | Full Time | \$4,576 |

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| IN COMPLIANCE | FINDING NO. 7 ALTERNATIVE RANGE MOVEMENTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
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The CRU determined that the alternate range movements the DTSC 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, March 1, 2020, through December 1, 2020, the DTSC issued bilingual pay to 19 employees. The CRU reviewed 11 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. |
|--|-----------------|-----------|---------------|
| Associate Governmental Program Analyst | R01 | Full Time | 1 |
| Environmental Program Manager I (Supervisory) | S10 | Full Time | 1 |
| Environmental Scientist | R10 | Full Time | 1 |
| Hazardous Substances Engineer | R09 | Full Time | 1 |
| Office Technician (Typing) | R04 | Full Time | 1 |
| Public Participation Specialist, Department of Health Services | R01 | Full Time | 1 |
| Senior Environmental Scientist (Specialist) | R10 | Full Time | 1 |
| Staff Services Analyst (General) | R01 | Full Time | 1 |
| Staff Services Manager I | S01 | Full Time | 1 |
| Supervising Criminal Investigator II | S07 | Full Time | 1 |
| Supervising Hazardous Substances Engineer I | S09 | Full Time | 1 |

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| IN COMPLIANCE | FINDING No. 8 BILINGUAL PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES |
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The CRU found that the bilingual pay authorized to employees during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Pay Differentials

A pay differential is special additional pay recognizing unusual competencies, circumstances, or working conditions applying to some or all incumbents in select classes. A pay differential may be appropriate in those instances when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary

responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or, recruitment and retention. (Classification and Pay Manual Section 230.)

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

During the period under review, March 1, 2020, through December 1, 2020, the DTSC issued pay differentials⁹ to 126 employees. The CRU reviewed 16 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

| Classification | Pay Differential | Monthly Amount |
|---|------------------|----------------|
| Associate Governmental Program Analyst | 441 | \$250 |
| Engineering Geologist | 433 | 2% |
| Hazardous Substances Engineer | 433 | 4% |
| Information Technology Specialist I | 13 | 5% |
| Investigator | 244 | \$125 |
| Investigator | 245 | 5% |
| Research Scientist III (Chemical Sciences) | 434 | 3% |
| Research Scientist Manager (Chemical Services) | 434 | 3% |
| Research Scientist Supervisor I (Chemical Sciences) | 434 | 3% |
| Senior Engineering Geologist | 433 | 4% |
| Senior Hazardous Substances Engineer | 433 | 4% |
| Senior Toxicologist | 434 | 3% |
| Staff Toxicologist (Specialist) | 434 | 3% |
| Supervising Criminal Investigator I | 244 | \$125 |
| Supervising Hazardous Substances Engineer I | 433 | 4% |
| Supervising Hazardous Substances Engineer II | 433 | 3% |

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| IN COMPLIANCE | FINDING NO. 9 PAY DIFFERENTIAL AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES |
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⁹ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

The CRU found no deficiencies in the pay differentials that the DTSC 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 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 days¹⁰ worked and paid absences¹¹, are 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).)

¹⁰ For example, two hours or ten hours count as one day.

¹¹ For example, vacation, sick leave, compensating time off, etc.

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 DTSC had 13 positive paid employees whose hours were tracked. The CRU reviewed nine of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

| Classification | Tenure | Time Frame | Time Worked |
|--|-------------------|------------------------|---------------|
| Associate Governmental Program Analyst | Retired Annuitant | 7/1/2019 – 6/30/2020 | 541 hours |
| Hazardous Substances Engineer | Retired Annuitant | 7/1/2019 – 6/30/2020 | 940 hours |
| Investigator | Retired Annuitant | 7/1/2019 – 6/30/2020 | 761 hours |
| Staff Toxicologist (Specialist) | Retired Annuitant | 7/1/2019 – 6/30/2020 | 856.25 hours |
| Seasonal Clerk | Temporary | 12/1/2019 – 11/30/2020 | 1,320.5 hours |
| Student Assistant | Temporary | 10/1/2019 – 9/30/2020 | 695 hours |
| Scientific Aid | Temporary | 12/1/2019 – 11/30/2020 | 1,403 hours |
| Graduate Student Assistant | Temporary | 8/1/2019 – 7/30/2020 | 848.5 hours |
| Student Assistant | Temporary | 12/1/2019 – 11/30/2020 | 1,031.5 hours |

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| IN COMPLIANCE | FINDING NO. 10 | POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
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The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The DTSC provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

Administrative Time Off

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

During the period under review, October 1, 2019, through September 30, 2020, the DTSC placed 132 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 |
|---|-------------------------|-----------------------|
| Associate Governmental Program Analyst | 7/9/2020 | 1 day |
| CEA | 3/2/2020 – 3/19/2020 | 18 days |
| Environmental Scientist | 10/30/2019 – 10/30/2019 | 4 days |
| Environmental Scientist | 3/10/2020 – 3/31/2020 | 22 days |
| Environmental Scientist | 7/10/2020 – 7/22/2020 | 4 hours |
| Environmental Scientist | 2/26/2020 – 6/3/2020 | 2 hours |
| Executive Assistant | 9/25/2020 | 4.5 hours |
| Office Technician (Typing) | 3/16/2020 – 3/17/2020 | 2 days |
| Public Participation Specialist | 2/19/2020 – 2/19/2020 | 1 day |
| Senior Environmental Scientist (Specialist) | 10/11/2019 – 10/11/2019 | 1 day |
| Senior Environmental Scientist (Specialist) | 8/19/2020 – 9/30/2020 | 43 days |
| Senior Hazardous Substances Engineer | 9/1/2020 – 9/9/2020 | 9 days |
| Staff Services Analyst (General) | 8/17/2020 – 8/19/2020 | 6 hours |
| Staff Services Manager II (Supervisory) | 6/1/2020 – 6/2/2020 | 2 days |

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| IN COMPLIANCE | FINDING NO. 11 | ADMINISTRATIVE TIME OFF AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
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The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The DTSC 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, July 1, 2020, through September 30, 2020, the DTSC reported 92 units comprised of 946 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 |
|------------------------|---------------|---------------------|-------------------------------|------------------------------|
| July 2020 | 210 | 7 | 7 | 0 |
| July 2020 | 260 | 17 | 17 | 0 |
| July 2020 | 410 | 25 | 25 | 0 |
| August 2020 | 260 | 17 | 17 | 0 |
| August 2020 | 545 | 8 | 8 | 0 |
| August 2020 | 920 | 3 | 3 | 0 |
| August 2020 | 970 | 22 | 22 | 0 |
| September 2020 | 521 | 13 | 13 | 0 |
| September 20 | 531 | 21 | 21 | 0 |
| September 20 | 554 | 17 | 17 | 0 |

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| SEVERITY: SERIOUS | FINDING NO. 12 | DEPARTMENT HAS NOT IMPLEMENTED A MONTHLY INTERNAL AUDIT PROCESS TO VERIFY ALL LEAVE INPUT IS KEYED ACCURATELY AND TIMELY |
|------------------------------|---------------------------|---|

Summary: The DTSC failed to implement a monthly internal audit process to verify all timesheets were keyed accurately and timely. This is the second consecutive time this has been a finding for the DTSC.

Criteria: Each appointing power shall 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 an audit process to verify all leave input is keyed accurately and timely. (Human Resources Manual Section 2101.) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*)

Severity: Serious. In order for Department leave accounting reports to reflect accurate data, the review of the leave accounting records and corrections, if necessary, are to be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. This means corrections are to be made prior to the next monthly leave activity report being produced.

Cause: There was a vacancy rate of 80% in the human resources office during the time of the audit; therefore, existing staff focused their efforts on the essential operational tasks which resulted in delayed audits of keyed leave inputs.

Corrective Action: Within 90 days of the date of this report, the DTSC 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 was 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.

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.¹² (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 employees¹³ shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

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

During the period under review, March 1, 2020, through December 1, 2020, the DTSC had five employees with non-qualifying pay period transactions. The CRU reviewed those five transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

¹² 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.

¹³ As identified in Government Code sections 19858.3, subdivisions (a), (b), or (c), or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subdivision (c), or California Code of Regulations, title 2, section 599.752, subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

| Type of Transaction | Time base | Number Reviewed |
|---------------------------|-----------|-----------------|
| Qualifying Pay Period | Full Time | 4 |
| Non-Qualifying Pay Period | Full Time | 1 |

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| SEVERITY: VERY SERIOUS | FINDING NO. 13 | INCORRECT APPLICATION OF STATE SERVICE AND LEAVE TRANSACTION |
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Summary: The CRU found two errors in the DTSC's state service transactions:

| Type of Transaction | Time base | State Service Incorrectly Posted | Leave Accruals Incorrectly Posted |
|-----------------------|-----------|----------------------------------|-----------------------------------|
| Qualifying Pay Period | Full Time | 1 | 1 |

Criteria: In the application of Government Code section 19837, an employee shall be considered to have a month of state service if the employee either: (1) has had 11 or more working days of service in a monthly pay period; or (2) would have had 11 or more working days of service in a monthly pay period but was laid off or on a leave of absence for the purpose of lessening the impact of an impending layoff. (Cal. Code Regs., tit.2, § 599.608.) Absences from state service resulting from permanent separation for more than 11 consecutive working days which fall into two consecutive pay periods shall disqualify one of the pay periods. (*Ibid.*)

Hourly or daily rate employees working in a state agency 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.) When an employee has a break in service or changes to full-time, any combination of time worked which does not equal one qualifying month of full-time service shall not be accumulated or counted. (*Ibid.*)

Severity: Very Serious. For audit purposes, accurate and timely attendance reporting is required of all departments. If the length of an informal leave results in a non-qualifying pay period, a state service transaction must be processed. Inappropriately authorizing state service credits and leave accruals to employees who did not earn them results in a monetary loss for the department.

Cause: The pandemic caused the creation of new leave programs (e.g., Supplemental Paid Sick Leave) which was applied during this review period. The application of these new leave benefits was typically done retroactively.

Corrective Action: Within 90 days of the date of this report, the DTSC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure state service transactions are keyed accurately. 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.*)

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| IN COMPLIANCE | FINDING NO. 14 | 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 DTSC's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the DTSC'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.*)

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| IN COMPLIANCE | FINDING NO. 15 | 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 DTSC 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 DTSC 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 34 permanent DTSC 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 |
|--|---------------------------------|
| Accounting Administrator II | 11/1/2019 |
| Assistant Chief Council | 12/10/2019 |
| Assistant Industrial Hygienist | 2/29/2019 |
| Associate Accounting Analyst | 9/1/2019 |
| Associate Personnel Analyst | 6/3/2019 |
| Attorney III | 9/30/2019 |
| Engineering Geologist | 5/9/2019 |
| Environmental Program Manager I (Specialist) | 2/12/2019 |
| Environmental Scientist | 4/3/2019 |
| Executive Assistant | 11/23/2019 |
| Graphic Designer III | 11/25/2019 |
| Hazardous Substances Engineer | 12/6/2019 |
| Information Officer I (Specialist) | 12/24/2019 |
| Information Officer II | 8/14/2019 |
| Information Technology Associate | 9/21/2019 |
| Investigator | 6/1/2019 |
| Management Services Technician | 2/26/2019 |
| Office Assistant (Typing) | 8/31/2019 |
| Personnel Specialist | 6/24/2019 |
| Public Participation Specialist | 10/11/2019 |
| Research Data Specialist I | 9/23/2019 |
| Research Scientist II (Chemical Sciences) | 5/1/2019 |
| Senior Accounting Officer (Specialist) | 1/16/2019 |
| Senior Environmental Planner | 12/31/2019 |
| Senior Environmental Scientist (Specialist) | 1/13/2019 |
| Senior Industrial Hygienist | 10/13/2019 |
| Staff Services Manager I | 11/17/2019 |
| Staff Toxicologist (Specialist) | 12/8/2019 |
| Supervising Criminal Investigator I | 5/7/2019 |
| Supervising Engineering Geologist | 12/14/2019 |
| Supervising Hazardous Substances Engineer II | 8/23/2019 |

| Classification | Date Performance Appraisals Due |
|----------------------------------|---------------------------------|
| Supervising Industrial Hygienist | 7/31/2019 |
| Television Specialist | 1/5/2019 |
| Training Officer I | 4/23/2019 |

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| IN COMPLIANCE | FINDING NO. 16 | PERFORMANCE APPRAISAL POLICY AND PROCESSES COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES |
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The CRU found no deficiencies in the performance appraisals selected for review. Accordingly, the DTSC's performance appraisal policy and processes satisfied civil service laws, Board rules, policies and guidelines.

DEPARTMENTAL RESPONSE

The DTSC's response is attached as Attachment 1.

SPB REPLY

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



Jared Blumenfeld
Secretary for
Environmental Protection



Department of Toxic Substances Control

Meredith Williams, Ph.D., Director
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806



Gavin Newsom
Governor

September 24, 2021

Suzanne M. Ambrose, Executive Director
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Dear Ms. Ambrose

Response to Compliance Review Report

The Department of Toxic Substances Control (DTSC) submits this letter in response to the State Personnel Board's (SPB) compliance review of the DTSC personnel practices for the period March 1, 2020 to December 1, 2020. The DTSC appreciates SPB's review and the opportunity to respond to its findings. Please reference the enclosed Attachment A for detailed responses.

The DTSC agrees with the SPB findings noted on Attachment A. While we do not dispute the data, we do, however feel there are extenuating circumstances which have been provided. We appreciate the review of the SPB, and receiving the chance to find opportunities to improve our program and services. The DTSC has taken or will take immediate steps to develop and submit a Corrective Action Plan within 60 days of the release of the report to address the deficiencies identified.

Thank you for the opportunity to respond to your draft report. If you have any questions, or require additional information, please do not hesitate to contact me at (916) 322-0276, or by email at gina.forman@dtsc.ca.gov.

Sincerely,

Gina Forman
Chief of Human Resources

Enclosure

cc: Aaron Robertson, Administration Division Deputy Director, DTSC
Francesca Negri, Chief Deputy Director, DTSC

Finding 1: Examination – Examinations Complied with Civil Service Laws and Board Rules

Cause: None, in Compliance.

Department's Response: No adverse findings were identified in the Report.

Finding 2: Appointments - Probationary Evaluations Were Not Provided for All Appointments Reviewed

Cause: Various, typically, unavailable managers (e.g., retired, on leave, or not present) and complications brought on by the Covid pandemic.

Department's Response: The DTSC has gone through tremendous turnover during the period that was audited. The Department also has an extremely higher than most departments percentage of retirement aged managers. Coupling the turnover time with the pandemic complications delayed several Probationary reports

Finding 3: Equal Employment Opportunity – EEO Program Complied with all Civil Service Laws and Board Rules.

Cause: None, in Compliance.

Department's Response: No adverse findings were identified in the Report.

Finding 4: Personal Services Contracts Personal Services Contracts Complied with Procedural Requirements

Cause: None, in Compliance.

Department's Response: No adverse findings were identified in the Report.

Finding 5: Mandated Training - Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Cause: Many of these that were delayed were during the pandemic outbreak, which adjusted many processes. Additionally, these new supervisors are also receiving the 80-hour supervisor's training, which includes the mandated Sexual Harassment Prevention training.

Department's Response: In addition to responding to the pandemic prompted changes, DTSC hired new leadership for this team, and has revamped the processes, including utilizing the Learning management tracking system to produce and use to identify training needs timely.

Finding 6: Compensation and Pay – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines.

Cause: None, in Compliance.

Department's Response: No adverse findings were identified in the Report.

Finding 7: Compensation and Pay – Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines.

Cause: None, in compliance.

Department's Response: No adverse findings were identified in the Report.

Finding 8: Compensation and Pay – Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines.

Cause: None, in Compliance.

Department's Response: No adverse findings were identified in the Report.

Finding 9: Compensation and Pay – Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines.

Cause: None, in compliance.

Department's Response: No adverse findings were identified in the Report.

Finding 10: Leave – Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines.

Cause: None, in compliance.

Department's Response: No adverse findings were identified in the Report.

Finding 11: Leave – Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines.

Cause: None, in compliance.

Department's Response: No adverse findings were identified in the Report.

Finding 12: Leave - Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input is Keyed Accurately and Timely

Cause: There was an HR Vacancy rate of 80% during the time of the audit, therefore existing staff focused efforts on the required operational tasks, resulting in delayed audits.

Department's Response: Staffing has recently been increased in the Transactions team. We have hired more senior staff to address the operational needs as well as provided resources to perform more timely audits of the Payroll entries. The department implemented an automated timekeeping system which does flag inconsistencies and potential errors, as well as prevent what is considered a "hard error". The fact that these errors are flagged early, assists in stopping potential errors before they are made. This assisted us in supporting the delayed audit until resources were available.

Finding 13: Leave – Incorrect Application of State Service and Leave Transaction

Cause: The Pandemic brought about the creation of new leave programs (e.g., SPSL) which were applied during this time.

Department's Response: The application of these new leave benefits were typically done retroactively, or adjustments were made to accommodate the use of these benefits, which was the case for this finding.

Finding 14: Policy – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Cause: None, in Compliance.

Department's Response: No adverse findings were identified in the Report.

Finding 15: Policy – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Cause: None, in Compliance.

Department's Response: No adverse findings were identified in the Report.

Finding 16: Policy – Performance Appraisal Policy and Processes Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Cause: None, in Compliance.

Department's Response: No adverse findings were identified in the Report.