



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA STATE TRANSPORTATION AGENCY**

Compliance Review Unit  
State Personnel Board  
March 7, 2022

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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 California State Transportation Agency (CalSTA) 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	Examination Complied with Civil Service Laws and Board Rules
Appointments	Serious	Probationary Evaluations Were Not Timely
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules
Personal Services Contracts	Serious	Unions Were Not Notified of Personal Services Contracts <sup>1</sup>
Mandated Training	In Compliance	Mandated Training Complied with Statutory Requirements
Compensation and Pay	Very Serious	Incorrect Application of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment
Compensation and Pay	In Compliance	Pay Differential Authorization Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Out of Class Pay Authorization Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

<sup>1</sup> Repeat finding. The March 6, 2019, CalSTA Compliance Review Report identified unions were not notified prior to entering into five of five PSC's reviewed.

Area	Severity	Finding
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
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Serious	Performance Appraisals Were Not Provided to All Employees <sup>2</sup>

**BACKGROUND**

The CalSTA develops and coordinates transportation policies and programs to achieve the state's mobility, safety, and environmental sustainability objectives. The CalSTA also provides necessary cabinet-level attention and focus to coordinate the policies and programs emanating from the following transportation-related entities: Department of Transportation, California Transportation Commission, High-Speed Rail Authority, Department of Motor Vehicles, New Motor Vehicle Board, California Highway Patrol, and Board of Pilot Commissioners. In addition to the aforementioned entities, the Office of Traffic Safety is an operational transportation-related entity that resides within the CalSTA Office of the Secretary.

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<sup>2</sup> Repeat finding. The March 6, 2019, CalSTA Compliance Review Report identified 17 of 17 employees reviewed as not receiving performance appraisals.

The California Department of Transportation (CalTrans) performs human resources operations for the CalSTA.

### **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the CalSTA's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>3</sup>. The primary objective of the review was to determine if the CalSTA'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 CalSTA'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 CalSTA provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CalSTA did not conduct any permanent withhold actions during the compliance review period.

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

The CalSTA's appointments were also selected for review to ensure the CalSTA applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CalSTA 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: monthly pay differentials and out-of-class assignments.

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

During the compliance review period, the CalSTA did not issue or authorize hiring above minimum requests, red circle rate requests, arduous pay, bilingual pay, or alternate range movements.

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

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

The CRU reviewed the CalSTA's monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely and ensure the department certified that all leave records have been reviewed and corrected if necessary. The CRU selected a small cross-section of the CalSTA's units in order to ensure they maintained accurate and timely leave accounting records. The CRU reviewed a selection of the CalSTA employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of CalSTA positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

During the compliance review period, the CalSTA did not have any employees with non-qualifying pay period transactions.

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<sup>4</sup>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.

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

The CalSTA did not request an exit conference to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the DOC's written response on February 15, 2022, which is attached to this final compliance review report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

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

During the period under review, October 1, 2020, through September 30, 2021, the CalSTA conducted one examination. The CRU reviewed the examination, which is listed below:



Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) A, Deputy Director, Program Operations Division	CEA	Statement of Qualifications (SOQ) <sup>5</sup>	11/10/20	7

<b>IN COMPLIANCE</b>	<b>FINDING NO. 1 EXAMINATION COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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The CRU reviewed the one open examination which the Caltrans, on behalf of the CalSTA administered in order to create an eligible list from which to make an appointment. The CalSTA published and distributed the examination bulletin containing the required information for the examination. Applications received by the CalSTA 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 examination that the CalSTA conducted during the compliance review period.

### **Appointments**

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

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<sup>5</sup> 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.

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, October 1, 2020, through September 30, 2021, the CalSTA made 12 appointments. The CRU reviewed seven of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	1
Administrative Assistant II	Certification List	Permanent	Full Time	1
Information Officer II	Certification List	Permanent	Full Time	1
Information Technology Specialist II	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	1
Staff Services Manager II (Managerial)	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	1

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 2 PROBATIONARY EVALUATIONS WERE NOT TIMELY</b>
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**Summary:** The CalSTA did not provide, in a timely manner, one probationary report of performance for one of the seven appointments reviewed by the CRU, as reflected in the table below.

Classification	Appointment Type	Number of Appointments	Total Number of Late Probation Reports
Associate Governmental Program Analyst	Transfer	1	1

**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. (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:** The CalSTA states that during the transition of a new supervisor, there was a miscommunication as to when a final probation report was due, which resulted in one employee not receiving their final report timely.

**Corrective Action:** Within 90 days of the date of this report, the CalSTA must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599.795. 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).)

IN COMPLIANCE	<b>FINDING NO. 3</b> <b>EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES</b>
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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 CalSTA'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 CalSTA. The CalSTA 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, 2020, through September 30, 2021, the CalSTA had two PSC’s that were in effect. The CRU reviewed the two, which are listed below:

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification?
Publicis Sapiant (Vertiba)	IT Services	1/11/21-10/31/21	\$125,031	Yes	No
Social Good Fund	JEDI Training	10/20/20-12/31/20	\$36,000	Yes	No

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 4 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS</b>
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**Summary:** The CalSTA did not notify unions prior to entering into the two PSC’s reviewed. This is the second consecutive time this has been a finding for CalSTA.

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

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

**Cause:** The CalSTA states that unions were not notified due to staff inadvertently missing this step during the processing of the PSCs.

**Corrective Action:** It is the contracting department’s responsibility to identify and notify any unions whose members could potentially perform the type of work to be contracted prior to executing the PSC. Within 90 days of the date of this report, the CalSTA must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response

### **Mandated Training**

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

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

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

The CRU reviewed the CalSTA’s mandated training program that was in effect during the compliance review period, October 1, 2020, through September 30, 2021.

<b>IN COMPLIANCE</b>	<b>FINDING NO. 5 MANDATED TRAINING COMPLIED WITH STATUTORY REQUIREMENTS</b>
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The CalSTA provided ethics training to its 8 new filers within six months of appointment and, for 41 existing filers, “at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter.” In addition, the CalSTA provided sexual harassment prevention training to its 2 new supervisors within six months of appointment, and sexual harassment prevention training to its 21 existing supervisors every two years. Finally, the CalSTA provided sexual harassment prevention training to all 6 new non-supervisors within 6 months of appointment and to all 24 existing non-supervisors every 2 years. Thus, the CalSTA 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 rate<sup>6</sup> 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, October 1, 2020, through September 30, 2021, the CalSTA made 12 appointments. The CRU reviewed four of those appointments to determine if the CalSTA applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	\$4,496

<sup>6</sup> “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)
Information Officer II	Certification List	Permanent	Full Time	\$6,404
Staff Services Manager II (Managerial)	Certification List	Permanent	Full Time	\$8,387
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	\$6,446

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 6 INCORRECT APPLICATIONS OF SALARY DETERMINATION LAWS, RULES, AND CALHR POLICIES AND GUIDELINES FOR APPOINTMENT</b>
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**Summary:** The CRU found the following error:

Classification	Description of Finding(s)	Criteria
Staff Services Manager II (Managerial)	Employee should not have received a five percent increase when appointed to their new classification, resulting in an overpayment.	Cal. Code Regs., tit. 2, §§ 599.674, subd. (a); 599.683, subd. (b)

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

**Severity:** Very Serious. The CalSTA failed to comply with the requirements outlined in the state civil service pay plan. Incorrectly applying compensation laws and rules in accordance with CalHR's policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay amounts.

**Cause:** The CalSTA recognizes that the salary determination for the Staff Services Manager II (Managerial) was calculated incorrectly but took immediate steps to correct once the error was found.

**Corrective Action:** Within 90 days of the date of this report, the CalSTA must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that employees are compensated correctly. The CalSTA must establish an audit



system to correct current compensation transactions as well as future transactions. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

### 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, October 1, 2020, through September 30, 2021, the CalSTA issued one pay differential<sup>7</sup>. The CRU reviewed the pay differential to ensure compliance with applicable CalHR policies and guidelines. This is listed below:

Classification	Pay Differential	Monthly Amount
Executive Assistant	52	1.5%

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<sup>7</sup> For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

IN COMPLIANCE	<b>FINDING NO. 7 PAY DIFFERENTIAL AUTHORIZATION COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the pay differential that the CalSTA authorized during the compliance review period. The pay differential was issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

Out-of-Class Assignments and Pay

For excluded<sup>8</sup> and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

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

During the period under review, October 1, 2020, through September 30, 2021, the CalSTA issued OOC pay to one employee. The CRU reviewed the OOC assignment to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. This is listed below:

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<sup>8</sup> “Excluded employee” means an employee as defined in Government Code section 3527, subdivision (b) (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to Government Code section 18801.1.

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Information Officer II	E48	CEA	August 2021

<b>IN COMPLIANCE</b>	<b>FINDING NO. 8</b>	<b>OUT OF CLASS PAY AUTHORIZATION COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the OOC pay assignment that the CalSTA authorized during the compliance review period. OOC pay was issued appropriately to an employee performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment.

## 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 days<sup>9</sup> worked and paid absences<sup>10</sup>, 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

<sup>9</sup> For example, two hours or ten hours count as one day.

<sup>10</sup> For example, vacation, sick leave, compensating time off, etc.

calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

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

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

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

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

Classification	Tenure	Time Frame	Time Worked
Associate Governmental Program Analyst	Retired Annuitant	7/1/20-6/30/21	497.5 Hours
Graduate Student Assistant	Temporary	11/16/20-09/30/21	407 Hours

<b>IN COMPLIANCE</b>	<b>FINDING NO. 9 POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The CalSTA provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

Administrative Time Off

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

During the period under review, July 1, 2020, through June 30, 2021, the CalSTA authorized eight ATO transactions. The CRU reviewed the eight ATO transactions to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
Accountant I (Specialist)	8/18/20	1.5 hours
Accountant I (Specialist)	6/10/21	2 hours
Accountant I (Specialist)	8/18/20	1.5 hours
Associate Governmental Program Analyst	4/21/21	1.5 hours
	4/22/21	2.5 hours
Associate Governmental Program Analyst	4/27/21	1.5 hours
Executive Secretary II	5/5/21	3 hours
	6/2/21	3 hours
Information Technology Specialist II	4/6/21	8 hours
Staff Services Analyst (General)	4/12/21 - 4/21/21	64 hours

<b>IN COMPLIANCE</b>	<b>FINDING NO. 10 ADMINISTRATIVE TIME OFF AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The CalSTA provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

Leave Auditing and Timekeeping

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

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

During the period under review, April 1, 2021, through June 30, 2021, the CalSTA reported three units comprised of 56 active employees during the April 2021 pay period and three units comprised of 54 active employees during the May 2021 and June 2021 pay period. 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 2021	005	16	15	1
May 2021	006	18	18	0
June 2021	008	20	19	1

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 11 DEPARTMENT HAS NOT IMPLEMENTED A MONTHLY INTERNAL AUDIT PROCESS TO VERIFY ALL LEAVE INPUT IS KEYED ACCURATELY AND TIMELY</b>
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**Summary:** The Caltrans, on behalf of the CalSTA, failed to implement a monthly internal audit process to verify all timesheets were keyed accurately and timely and to certify that all leave records have been reviewed and corrected if necessary. Specifically, ATO was not properly documented seven times in the Leave Accounting System.

**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.) Departments shall identify and record all errors found and shall certify that all leave records for the unit/pay period identified have been reviewed and all leave errors identified have been corrected. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*)

**Severity:** Serious. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure accuracy and timeliness. Failure to audit leave could put the department at risk of incurring additional costs from the initiation of collection efforts from overpayments, and the risk of liability related to recovering inappropriately credited leave hours and funds.

**Cause:** The CalSTA states that the untimely correction of the erroneous utilization of ATO was due to the lack of an automated process to identify ATO usage by employees within the Human Resources Information System.

**Corrective Action:** Within 90 days of the date of this report, the CalSTA 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.

## **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	<b>FINDING NO. 12 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the policy was disseminated to all staff and emphasized the CalSTA’s commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CalSTA’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 CalSTA did not employ volunteers during the compliance review period.



IN COMPLIANCE	<b>FINDING NO. 13 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the CalSTA 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 CalSTA 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 10 permanent CalSTA employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 14 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES</b>
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**Summary:** The CalSTA did not provide annual performance appraisals to 6 of 10 employees reviewed after the completion of the employee's probationary period. This is the second consecutive time this has been a finding for CalSTA.

**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 CalSTA states that annual performance appraisals were not provided to all employees due to staff turnover and the lack of a tracking and reminder system to inform supervisors and managers of requirements.

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

### **SPB REPLY**

Based upon the CalSTA written response, the CalSTA 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.