



Investigations of Improper Activities by State Agencies and Employees

Failure to Recoup Excess Salary Advances, Incompatible Activities, Improper Hiring Decisions, Improper Leave Reporting, Dishonesty, and Misuse of State Resources

May 2021

INVESTIGATIVE REPORT I2021-1





CALIFORNIA STATE AUDITOR

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May 25, 2021
Investigative Report I2021-1

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As authorized by the California Whistleblower Protection Act, my office presents this report summarizing some of the investigations of alleged improper governmental activities that my office completed from January 2020 through December 2020. This report details nine substantiated allegations involving several state agencies, and it identifies more than \$1.6 million of inappropriate expenditures and millions more that the State will wastefully spend if it fails to take appropriate corrective action.

Among the improper governmental activities our investigations revealed were the failure to recoup excess salary advances made to employees, improper hiring and contracting practices, activities incompatible with state employment, misuse of state time and other state resources, and improper leave reporting.

In one example, the California Department of Transportation (Caltrans) wasted as much as \$1.5 million by failing to provide notice to employees of its intent to collect overpayments as a result of salary advances made to them. The balance that Caltrans forfeited might have grown significantly if our investigation had not prompted it to take action.

In another case, an employee of the Department of State Hospitals (DSH) misrepresented her prior work experience, leading DSH to believe that the employee met the minimum qualifications for another position. Yet another case involves two employees at California State University, Los Angeles, who spent an estimated 2,800 hours—valued at more than \$103,000—during three years teaching classes at local community colleges during their regular university work schedules.

State agencies must report to my office any corrective or disciplinary action taken in response to recommendations we have made. Their first reports are due within 60 days after we notify the agency or authority of the improper activity, and they continue to report monthly thereafter until they have completed corrective action.

Respectfully submitted,

A handwritten signature in black ink that reads "Elaine M. Howle". The signature is written in a cursive, flowing style.

ELAINE M. HOWLE, CPA
California State Auditor

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Summary

Results in Brief

Under the authority of the California Whistleblower Protection Act, the California State Auditor conducted investigative work from January 1, 2020, through December 31, 2020, on 1,608 allegations of improper governmental activity. These investigations substantiated numerous improper activities, including the failure to recoup excess salary advances that employees received; activities that are incompatible with state employment; improper hiring activities; the misuse of state time, university time, and state resources; and improper leave reporting. Within this report, we provide information on a selection of these cases.

California Department of Transportation

The California Department of Transportation (Caltrans) wasted as much as \$1.5 million by failing to provide notice to employees of its intent to collect overpayments that they received as a result of salary advances it made directly to them. If Caltrans had appropriately notified recipients of the overpayments it made, it might have been able to recover the money due. However, because it often failed to provide notice within three years of the overpayments, it forfeited the opportunity to pursue collection efforts. Caltrans' forfeiture balance might have risen from \$1.5 million to nearly \$3 million if our investigation had not prompted it to take action. Inefficiency and incompetency in Caltrans' division of human resources contributed significantly to its failure to notify recipients and collect on the outstanding salary advances.

California Department of Tax and Fee Administration

An administrator at the California Department of Tax and Fee Administration (CDTFA) violated state law and the agency's policy on incompatible activities when the administrator advertised his current and past state experience on the website of his private tax preparation and consultation business and when the administrator prepared private tax returns for clients who had CDTFA seller's permits. Both of these activities are prohibited. In addition, the administrator was dishonest with CDTFA investigators when interviewed about his improper activities.

Investigative Highlights . . .

State employees and agencies engaged in various improper governmental activities, including the following:

- » *Caltrans forfeited the opportunity to pursue collection efforts on as much as \$1.5 million of overpayments that resulted from salary advances.*
- » *An administrator at CDTFA improperly advertised his current and past state experience for his private tax preparation and consultation business, and improperly prepared tax returns for clients with CDTFA seller's permits.*
- » *A DSH employee misrepresented prior work experience in their employment application and the hiring manager gave the employee an unfair advantage.*
- » *Two Cal State LA employees spent an estimated 2,800 hours over a three-year period teaching classes at local community colleges while being paid to do their work at the university.*
- » *Several employees from General Services misused state time and misrepresented actual time worked.*

Department of State Hospitals

An employee was dishonest on an application for an associate analyst position when the employee misrepresented prior work experience, which led the Department of State Hospitals (DSH) to mistakenly believe that the employee met the minimum qualifications for the position. In addition, the hiring manager's actions during the hiring process provided this employee with an unfair advantage, which violates civil service hiring rules.

California State University, Los Angeles

From 2017 through 2020, two California State University, Los Angeles (Cal State LA) employees who work in scientific laboratories spent an estimated 2,800 hours—valued at more than \$103,000—teaching classes at local community colleges while they were also being paid to do their Cal State LA work. These employees failed to follow the terms of their collective bargaining agreement: they did not ensure that their secondary employment did not conflict with their university duties and responsibilities, they did not seek permission to adjust their university work schedules, and they did not work sufficient hours as outlined in their union agreement. In addition, the employees chose to disregard their regular work schedules, asserting that they believed that the nature of their work should have qualified them for salaried positions, not hourly job classifications.

Department of General Services

Three investigations at the Department of General Services (General Services) revealed that employees had engaged in the misuse of state time. One of these investigations concluded that two electricians misused 60 percent and 44 percent, respectively, of their work time in the three-month period during which they were under observation by investigators. Their misuse of state time cost the State nearly \$5,000. A second investigation revealed that another General Services employee misused state time in 2018 by leaving work early, failing to notify the employee's supervisor, and failing to account for missed time by not charging it to the employee's balance of accrued leave. The value of the employee's missed work time was \$2,100. A third investigation found that three custodians and two custodian supervisors failed to use state time and resources appropriately. The three custodians did not start cleaning their assigned work areas for up to 90 minutes after they should have because of inadequate supervision by two custodian supervisors, one of whom also spent about two hours daily watching personal videos on a work computer.

California Department of Food and Agriculture

An executive at a district agricultural association, which the California Department of Food and Agriculture (Food and Agriculture) oversees, allowed a relative who was not a state employee to live for several months in state-owned housing and to park on-site for free.

In addition, the executive stayed overnight in this housing and allowed several others to do the same without documenting this use or requiring anyone to pay the applicable daily rates. Finally, the executive failed to establish and reinforce policies regarding the use of the state-owned housing and did not work with Food and Agriculture to adjust rental rates as required to ensure that the State could collect fair payment for the use of the resource.

California Department of Social Services

As early as 2015, managers at the California Department of Social Services (Social Services) became aware that a deficiency in the electronic time-reporting system that salaried employees used forced some employees to underreport the leave they took. However, Social Services has yet to take corrective action to fix this deficiency. Although Social Services management decided on a workaround to the problem in 2015, it never effectively communicated the solution to employees or their supervisors and it never followed up to ensure that the system accounted for all appropriate leave.

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Introduction

Under the Whistleblower Act, anyone who in good faith reports an improper governmental activity is a whistleblower and is protected from retaliation.¹ An *improper governmental activity* is any action by a state agency or by a state employee performing official duties that does the following:

- Breaks a state or federal law.
- Is economically wasteful.
- Involves gross misconduct, incompetence, or inefficiency.
- Does not comply with the *State Administrative Manual*, the *State Contracting Manual*, an executive order of the Governor, or a California Rule of Court.

Whistleblowers are critical to ensuring government accountability and public safety. The State Auditor protects whistleblowers' identities to the maximum extent allowed by law. Retaliation against state employees who file reports is unlawful and may result in monetary penalties and imprisonment.

Ways That Whistleblowers Can Report Improper Governmental Activities

Individuals can report suspected improper governmental activities through the toll-free Whistleblower Hotline (hotline) at (800) 952-5665, by fax at (916) 322-2603, by U.S. mail, or through our website at www.auditor.ca.gov/contactus/complaint.

We received 1,340 calls and inquiries from January 1, 2020, through December 31, 2020. Of these, 820 came through our website, 367 through the mail, 111 through the hotline, 32 through fax, four through internal sources, and six through individuals who visited our office. In addition, our office received hundreds of allegations that fell outside of our jurisdiction; when possible, we referred those complainants to the appropriate federal, local, or state agencies.

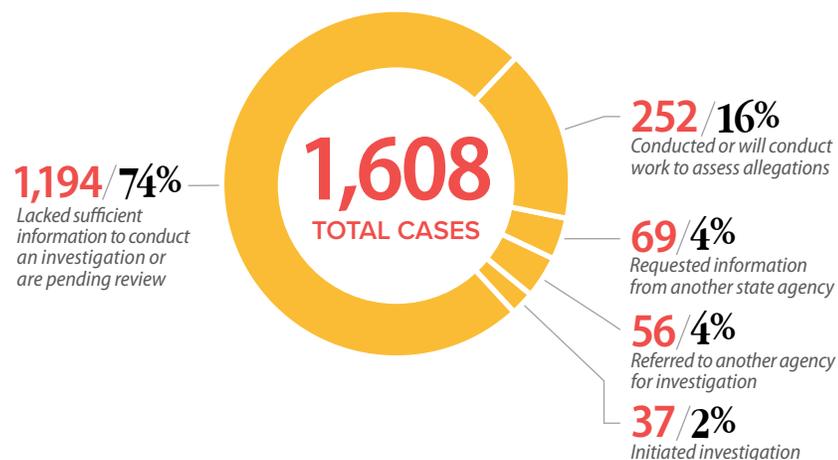
¹ The Whistleblower Act can be found in its entirety in Government Code sections 8547 through 8548.5. It is available online at <http://leginfo.legislature.ca.gov>.

Investigation of Whistleblower Allegations

The Whistleblower Act authorizes our office, as the recipient of whistleblower allegations, to investigate and, when appropriate, report on substantiated improper governmental activity by state agencies and state employees. We may conduct investigations independently, or we may request assistance from or elect to have other state agencies perform confidential investigations under our supervision. Over more than 25 years, our investigative work has identified and made recommendations to remediate a total of \$581 million in state spending resulting from improper governmental activities such as inefficiency, theft of state property, conflicts of interest, and personal use of state resources.

During the one-year period covered by this report, we conducted investigative work on 1,608 cases that we opened either in previous periods or in the current period. As Figure 1 shows, 1,194 of the 1,608 cases lacked sufficient information for investigation or are pending preliminary review. For another 252 cases, we conducted work or will conduct additional work—such as analyzing available evidence and contacting witnesses—to assess the allegations. We notified the respective agencies for an additional 56 cases so they could investigate the matters further, and we independently initiated investigations for another 37 cases. Some of these cases may still be ongoing. Further, we requested that state agencies gather information for 69 cases to assist us in assessing the validity of the allegations.

Figure 1
Status of 1,608 Cases, January 2020 Through December 2020



Source: State Auditor.

For information about the corrective actions taken in response to our investigations program, please refer to the Appendix, starting on page 65.

Chapter 1

FAILURE TO RECOUP EXCESS SALARY ADVANCES

As the Introduction explains, state law requires the State Auditor to investigate allegations of improper governmental activities that whistleblowers report. Although some substantiated allegations may not involve significant individual losses to the State, the State Auditor's finding and reporting of numerous similar improprieties can identify weaknesses in the State's system of internal controls and can serve as a deterrent to state employees who might otherwise attempt to engage in such improprieties.

This chapter provides an example of an investigation in which we substantiated that a state agency failed to recoup excess salary advances that it paid to its employees over a period of several years.

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CALIFORNIA DEPARTMENT OF TRANSPORTATION

It Failed to Recoup Excess Salary Advances It Paid to Its Employees

CASE I2019-2039

Results in Brief

The California Department of Transportation (Caltrans) wasted as much as \$1.5 million by failing to provide notice to employees of its intent to collect overpayments that they received as a result of pay that it issued directly to them in advance of their scheduled official pay date (salary advances). The State Controller's Office (SCO) usually issues employees' pay on predetermined paydays. However, when an employee separates from an agency or fails to receive a timely paycheck, the state agency may need to issue that employee's pay to comply with state law and collective bargaining agreements (union agreements) requiring that state agencies issue wages within a set period of time. This process sometimes results in employees' receiving overpayments.

Had Caltrans appropriately notified employees of the overpayments it made, it might have been able to recover the money it was due. However, because it often failed to provide notice within three years of the overpayments, it forfeited the opportunity to pursue collection efforts. Further, our investigation prompted Caltrans to take action preventing its forfeiture balance from potentially rising from \$1.5 million to \$2.9 million. Inefficiency and incompetency in Caltrans' division of human resources (HR division) contributed significantly to the amount of overpayments Caltrans made and to its failure to notify employees and collect on the outstanding salary advances. This resulted in some employees essentially being paid twice. Its total outstanding salary advance balance was more than \$5 million as of June 30, 2020, the end of the most recent fiscal year.

Background

State laws, policies, and union agreements govern the time frame within which state agencies must pay their employees for wages earned. For example, when a state employee resigns, the agency must pay that employee's wages, including compensable leave credits, no later than 72 hours from the date of separation. Further, certain union agreements require that when an employee does not receive a paycheck on payday, the agency must issue a salary advance to the employee within three workdays to avoid a penalty for untimely wages.

About the Agency

Caltrans employs more than 20,000 individuals, most of whom work in 12 districts throughout the State, to manage California's transportation network.

Relevant Criteria

Government Code section 8547.2 sets forth what constitutes an improper governmental activity, which includes activities by a state agency that are economically wasteful or involve inefficiency or incompetency. The *Merriam-Webster Dictionary* defines inefficiency as "not producing the intended or desired effect" and incompetency as "inadequate to or unsuitable for a particular purpose."

Government Code section 19838 requires state agencies to recoup employee overpayments and prescribes the methods for recovery. When an agency determines that it has made an overpayment, it must notify the employee, and it must initiate administrative action to recover the overpayment within three years from the date of overpayment.

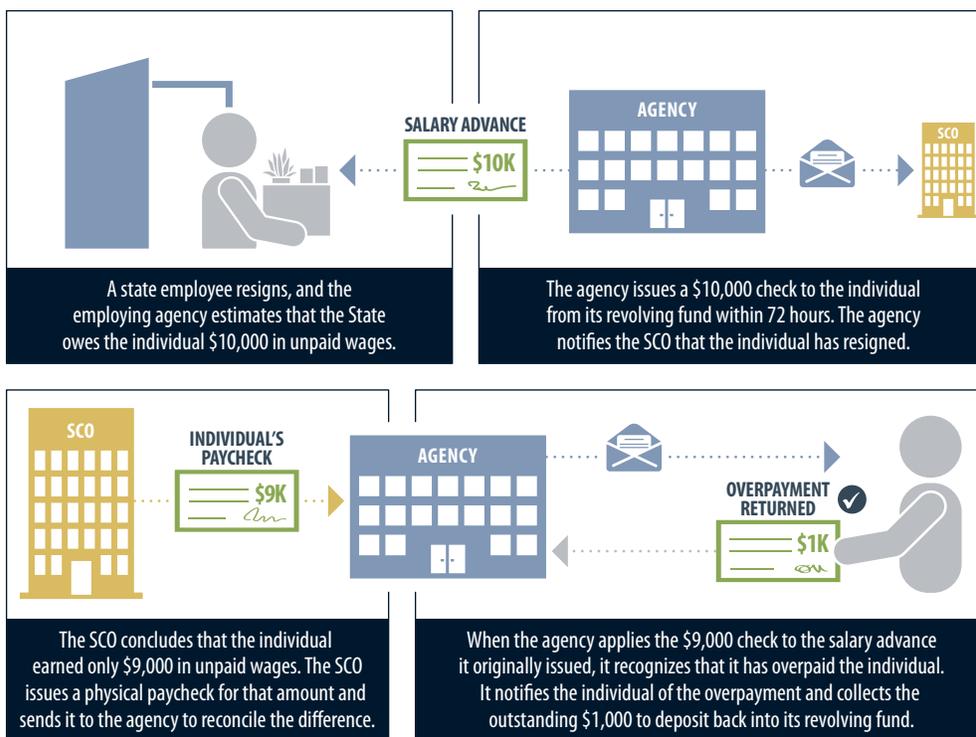
Government Code section 13402 assigns agency heads responsibility for establishing, maintaining, and effectively overseeing a system of internal controls within their state agencies. Further, *State Administrative Manual* section 20060 requires all levels of management at state agencies to be involved in assessing and strengthening the systems of internal control to minimize fraud, errors, abuse, and waste of government funds.

Typically, the SCO produces payments for the expenses a state agency incurs, including its payroll. However, when immediate payments—like salary advances—are necessary, the SCO is usually unable to issue those payments quickly enough to meet the short deadlines. For this reason, each state agency may establish its own office revolving fund (revolving fund) that it can use to issue immediate payment. In such cases, the SCO issues the official payment to replenish the agency's revolving fund.

As one of the largest state agencies, Caltrans must often issue salary advances to comply with state laws and union agreements. Like other state agencies, sometimes Caltrans overestimates an employee's salary and advances and pays more than what it actually owes. This results in an overpayment that it must collect. Caltrans' first opportunity to reconcile the salary advance is when the SCO issues the official pay for the employee. If Caltrans fails to intercept the SCO payment, the employee will have received two payments: one from Caltrans' revolving fund and one from the SCO. When Caltrans fails to intercept the official payment from the SCO, it results in an even larger overpayment. Figure 2 provides an example of how an agency should appropriately recover an overpayment resulting from a salary advance.

Figure 2

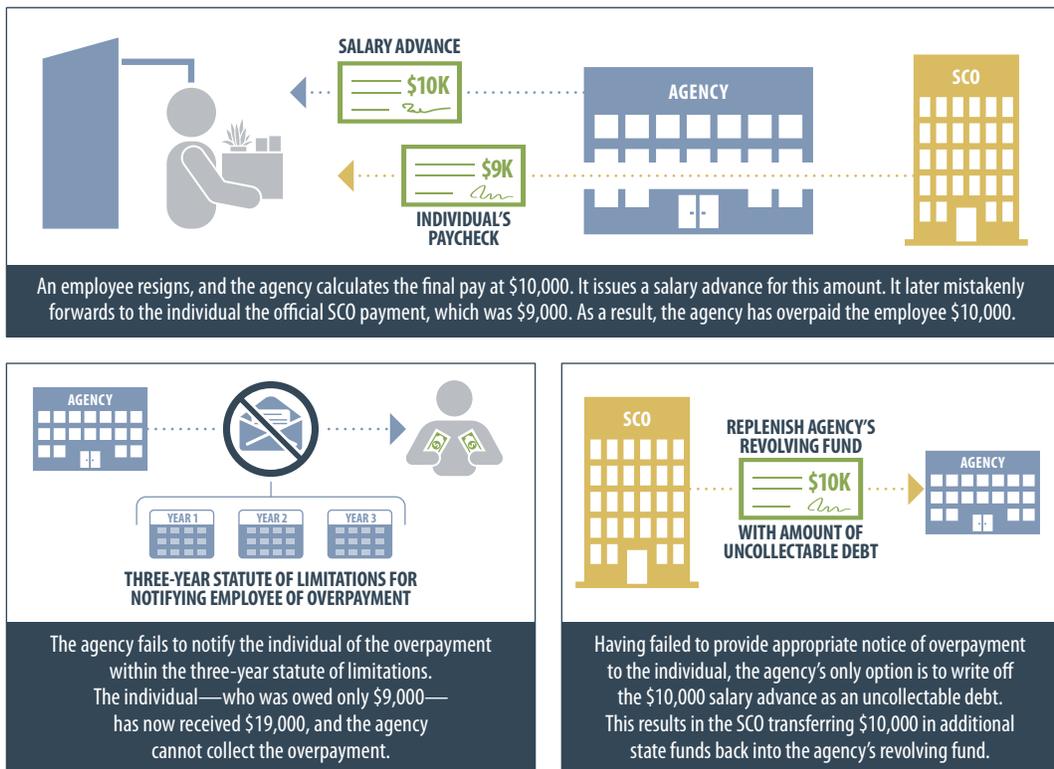
Example of How an Agency Could Appropriately Recover Its \$1,000 Overpayment to a Separated Employee



Under state law, a state agency must initiate action to collect an overpayment within three years from the date of the overpayment. This involves notifying the employee of the overpayment and requesting repayment. If the state agency fails to provide notice of its intent to collect the overpayment within the allotted time, it forfeits the ability to recoup those funds. When an agency is unable to recoup an overpayment, it can clear the outstanding amount from its revolving fund by requesting permission from the Department of Finance to write off the salary advance. Once the Department of Finance approves the agency's request, the agency submits a request to the SCO to replenish its revolving fund with additional state funds. Figure 3 provides an example of how an agency might forfeit its ability to collect an overpayment resulting from a salary advance.

After receiving an allegation that Caltrans was failing to collect salary advance overpayments in a timely manner and that the amount outstanding had grown significantly in recent years, we launched an investigation.

Figure 3
Example of How an Agency Could Forfeit the Right to Collect an Overpayment

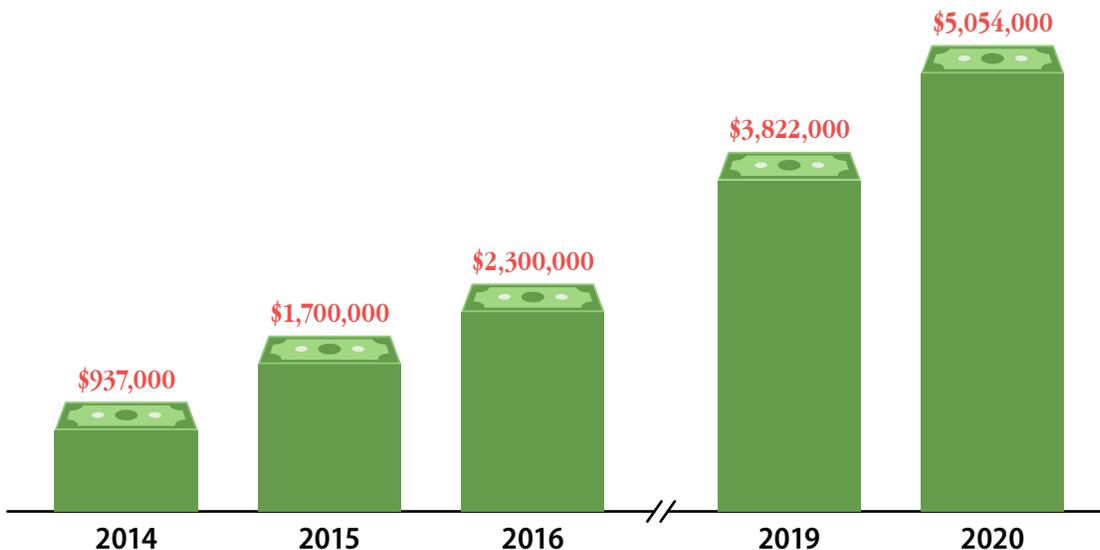


Source: Analysis of salary advance process.

Caltrans Has Forfeited the Opportunity to Collect as Much as \$1.5 Million in Salary Advances

Our investigation revealed that Caltrans has lost the opportunity to collect as much as \$1.5 million in salary advances that it issued to its employees because it did not initiate timely efforts to collect these overpayments. Caltrans became aware of its problematic salary advance process as early as 2016. However, it often failed, even after 2016, to take any action to notify employees that they had been overpaid or to initiate any collection efforts within the three-year period that law establishes. As a result, its outstanding balance of salary advances grew from less than \$1 million in 2014 to more than \$5 million in 2020, as Figure 4 illustrates.

Figure 4
Caltrans' Outstanding Salary Advances From 2014 Through 2020



Source: Caltrans' salary advance records and other internal documents.

At the onset of our investigation, we identified that not only had Caltrans lost the opportunity to collect on many outstanding salary advance overpayments, but that it soon would lose the same opportunity for a large number of additional overpayments that were nearing the three-year statute of limitations. To help minimize the number of uncollectable advances, we sent a letter to Caltrans in July 2020 urging it to take action within two weeks on 261 advances that were nearing the statute of limitations. Caltrans expeditiously sent out notifications of overpayments to 130 of the 261 salary advance recipients that we had identified. Its records indicated that it had already sent notifications to the other half

of the recipients, with the exception of one deceased individual. Moreover, our letter prompted Caltrans to send out notices for additional outstanding salary advances. Our analysis suggests that had Caltrans failed to take action in response to our letter, the amount of its uncollectable advances would have likely grown from \$1.5 million to as much as \$2.9 million.

To assess the effectiveness of Caltrans' collection efforts, we asked it to provide us with reports identifying if and when it had issued a notice of overpayment on each of its outstanding salary advances. However, Caltrans' accounting records do not centrally track these data. Therefore, we selected statistical samples to determine the percentage of outstanding salary advance recipients that Caltrans did not notify within the three-year statute of limitations. We identified 2,034 salary advances with a total outstanding balance of \$1.9 million that Caltrans issued before July 17, 2017.² We concluded that Caltrans likely failed to provide notice of (and therefore can no longer collect) as much as \$1.5 million, or 78 percent, of these overpayments.³ To remove these advances from its list of outstanding salary advances, Caltrans will need to write off the salary advances, which will result in the SCO replenishing Caltrans' office revolving fund with additional state funds.

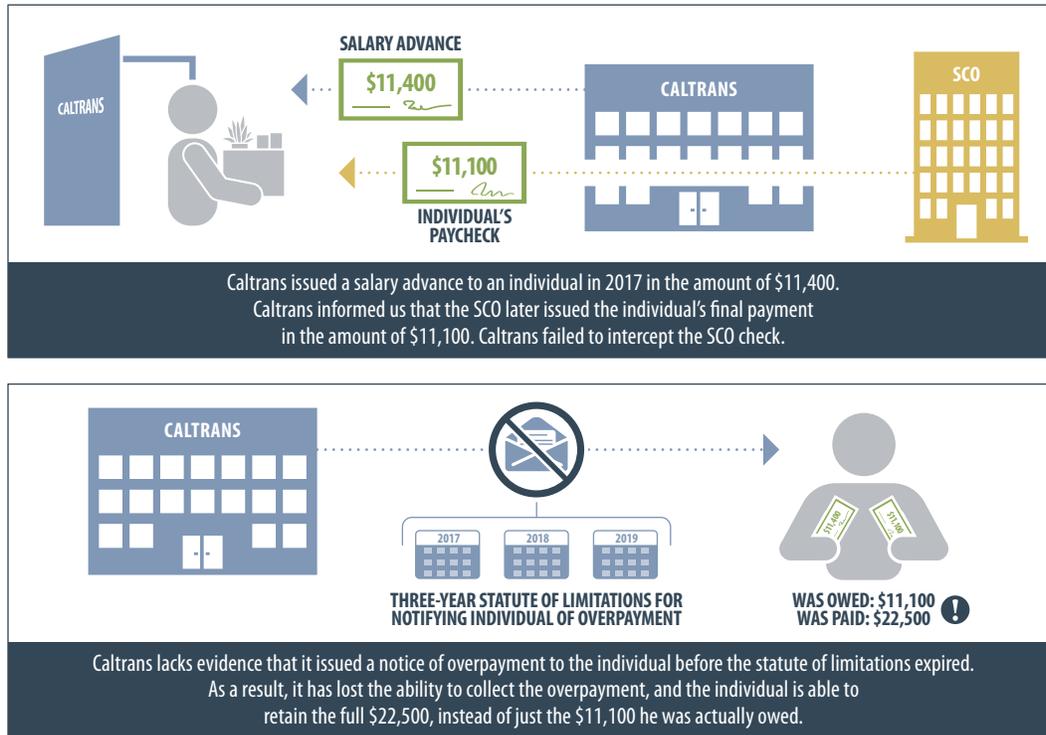
Under state law, Caltrans' failure to make any attempt to collect overpayments from the recipients before those amounts became uncollectable may have resulted in a prohibited gift of public funds. The recipients of these overpayments will likely be allowed to retain them. Figure 5 illustrates how one individual was allowed to retain an overpayment in excess of \$11,000 because the individual received payments from both Caltrans and the SCO. In the sample of 170 cases we reviewed, we found 42 similar instances resulting in overpayments totaling more than \$246,000. When Caltrans took no action to recover the overpayments and allowed them to become uncollectable to the benefit of the recipients, the overpayments may have become impermissible gifts of public funds under state law.

We concluded that Caltrans likely failed to provide notice of (and therefore can no longer collect) as much as \$1.5 million, or 78 percent, of these overpayments.

² For the purpose of our review, we deemed all salary advances Caltrans issued on or before July 17, 2017, to be beyond the statute of limitations because this date was three years before the date on which we notified Caltrans of the issue. Hereafter, we refer to this date as mid-July 2017.

³ We performed this statistical analysis using a 95 percent confidence level. Of the outstanding salary advances that originated before mid-July 2017, we are 95 percent confident that Caltrans did not provide notice to the recipients of between \$1,125,135 and \$1,493,271 in salary advances.

Figure 5
Example of Duplicate Payment One Individual Retained



Source: Caltrans salary advance records.

Further, Caltrans would have likely failed to provide timely overpayment notification for as many as 43 percent of the salary advances it issued from mid-July 2017 through July 2020 if not for our investigation. Based on our statistical sampling of the 1,982 salary advances with outstanding balances that Caltrans issued after mid-July 2017, it likely would have forfeited the opportunity to collect up to an additional \$1.4 million if we had not made it aware of our concerns.⁴

Inefficiency, Incompetency, and the Lack of Internal Controls Contributed Significantly to Caltrans' Failure to Collect Salary Advances

Although Caltrans has attempted to address its failure to collect outstanding salary advances for several years, its efforts have been unsuccessful because of its HR division's inefficiency and lack

⁴ We performed this statistical analysis using a 95 percent confidence level. Of the outstanding salary advances that originated after mid-July 2017, we are 95 percent confident that Caltrans would not have notified the recipients of between \$650,549 and \$1,357,498 if it were not for this investigation.

of internal controls. We observed failures at three key points of Caltrans' salary advance collection process that have significantly hindered its ability to efficiently collect overpayments, as follows:

- Failure to consistently cancel an employee's participation in direct deposit.
- Failure to promptly file a form authorizing the accounting division to intercept the official SCO paycheck to reconcile the outstanding salary advance.
- Failure to notify recipients of overpayments in a timely manner.

Improving Caltrans' processes to ensure that these three steps happen consistently and in a timely manner would protect its ability to pursue collection efforts on its outstanding salary advances, as well as reduce the number of overpayments it must pursue.

Caltrans' failure to cancel employees' direct deposit participation before the SCO issues the official payment results in its having to collect higher amounts. Specifically, when Caltrans does not cancel an employee's direct deposit, it is unable to intercept the SCO's official payment to resolve the salary advance, sometimes resulting in the employee receiving nearly double the amount the State should have paid. Although Caltrans regularly cancels separating employees' direct deposit participation when it issues them salary advances, it does not do so with current employees who require advances for other reasons. Instead, Caltrans waits until an employee receives an official payment from SCO to send a notification of overpayment, and it cancels the employee's participation in direct deposit only if the employee fails to respond to that notification within 15 days. This practice increases the total amount of money for which Caltrans must pursue collection and unnecessarily delays its collection of overpayments.

Caltrans' lack of an adequate tracking mechanism for salary advances has also contributed significantly to its failure to notify employees of overpayments in a timely manner. The responsibility for tracking all of its outstanding salary advances falls on about 90 personnel specialists it employs at headquarters. According to an executive in the HR division, Caltrans does not have a central mechanism for tracking all the salary advances it has issued; instead, each personnel specialist tracks the salary advances for separate groups of employees assigned to them. To determine the status of a particular salary advance, Caltrans' management must contact the assigned personnel specialist who keeps a log for the employee in question.

Caltrans' lack of an adequate tracking mechanism for salary advances has also contributed significantly to its failure to notify employees of overpayments in a timely manner.

This practice—using 90 separate logs—is highly inefficient and does not provide management with timely and accurate information on the status of outstanding salary advances. Moreover, the HR division’s management also informed us that the personnel specialist classification is considered an entry-level position and is prone to frequent turnover, which likely has exacerbated Caltrans’ inefficiency and ineffectiveness in collecting overpayments. The executive noted that although Caltrans has attempted to implement improvements in the salary advance collection process since our July 2020 letter, progress has been difficult during the COVID-19 pandemic because an estimated 200 of the nearly 300 employees in the HR division were still without state-issued laptops to complete their work as of March 2021.

Compared to Five Other Large Agencies, Caltrans Has the Highest Number of Outstanding Salary Advances

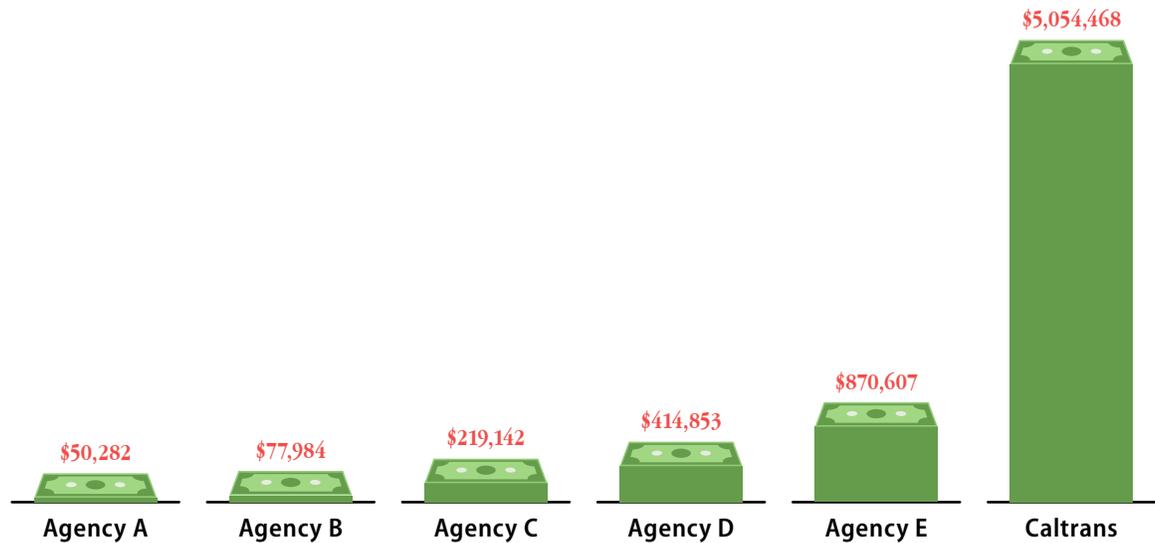
We contacted five other large state agencies and concluded that the amount of Caltrans’ outstanding salary advances exceeded the amount at all five other agencies combined. The five agencies—which have a combined total of about 40,000 employees—had about \$1.6 million in outstanding salary advances as of June 30, 2020. In contrast, Caltrans, which has about 21,000 employees, had \$5 million outstanding. Figure 6 breaks down each agency’s total.

Although Caltrans faces unique challenges because of its large size, decentralized staff, and centralized HR processes, some of the other five agencies employ practices that could improve its collection process. For example, three of the five agencies we reviewed (Agencies A, B, and D) require every employee receiving a salary advance to be removed from participation in direct deposit. We acknowledge that cancelling an employee’s direct deposit participation would be inconvenient for the employee and Caltrans; however, incorporating this practice would significantly increase Caltrans’ ability to recover overpayments, resulting in an overall increase in savings and efficiency.

Further, when processing salary advances, Agency E issues a notice to each employee that serves as the first notice of overpayment. Agency E uses a form that the employee must sign before it releases the salary advance, protecting the agency’s ability to pursue collections. If Caltrans were to adopt a similar process, it could nearly eliminate its failure to notify employees of overpayments in a timely manner. In fact, Caltrans’ accounting division already successfully employs a similar process for all of its travel advances.

If Caltrans were to adopt a process of issuing a notice to each employee when it processes the salary advance, it could nearly eliminate its failure to notify employees of overpayments in a timely manner.

Figure 6
Comparison of Five Agencies' and Caltrans' Outstanding Salary Advance Balances as of June 30, 2020



Source: Reports of outstanding salary advances at five agencies and Caltrans.

Finally, Agency B has created a separate, central tracking mechanism and assigned staff to monitor the salary advance collection process. As we discuss above, relying solely on personnel specialists to separately track salary advance collections creates significant inefficiencies. Agency B has created a unit in its HR division that employs several quality assurance analysts who, among other duties, maintain a central repository and provide dedicated monitoring of all the salary advances that the division issues. Caltrans could implement a similar process, assigning specific staff to centrally track its outstanding salary advances, monitor and intercept SCO payments related to advances, and process notifications of overpayments to employees as needed.

Recommendations

To remedy the effects of the improper governmental activities this investigation identified and to prevent those activities from recurring, Caltrans should take the following actions by August 2021:

- Address inefficiencies in its salary advance process by considering implementation of the key strategies outlined in this report, including requiring every employee who receives a salary advance to be removed from participation in direct deposit; when processing salary advances, issuing a notice to

each employee that serves as its first notice of overpayment; and creating a separate, central tracking mechanism and assigning staff to monitor the salary advance collection process.

- Confer with the Department of Finance to determine whether it should write off all salary advances for which the statute of limitations has passed and it has forfeited its opportunity to collect outstanding funds. Writing off these salary advances will allow Caltrans to focus its efforts on the advances it is still able to pursue.
- Ensure that its staff have access to the equipment necessary to perform the ongoing work of tracking salary advances in a timely manner.

Agency Response

Caltrans acknowledged that it needs to make continuous improvements to its salary advance collection process. In response to our first recommendation, Caltrans asserted that it considered the strategies we presented in this report and has begun improving its processes, including, but not limited to, providing electronic collection notices when appropriate and creating a centralized repository for tracking salary advances. Moreover, Caltrans is exploring a permanent database solution for tracking salary advances. Caltrans stated that it remains dedicated to exploring the key strategies outlined in this report. It noted that since we notified Caltrans of this issue, it has continued its positive momentum and doubled its collection efforts in fiscal year 2020–21, clearing a total of 2,214 salary advances from July 2020 through March 2021. In response to the second recommendation, Caltrans indicated that it would confer with the Department of Finance to determine whether Caltrans should write off all salary advances for which the statute of limitations has expired. Lastly, Caltrans reported that in April 2021, it provided cell phones and laptops to all personnel specialists involved in the collection of salary advance overpayments.

Chapter 2

INCOMPATIBLE ACTIVITIES

State law prohibits employees from engaging in any activities that are inconsistent, incompatible, or in conflict with their state employment. State law defines the activities deemed to fall into these categories to include employees using the prestige or influence of their employing agency for their private gain or advantage. It also includes their performing acts in a capacity other than as a state employee, knowing that these acts may later be subject—either directly or indirectly—to their employing agency’s control, inspection, review, audit, or enforcement. State law also requires each employing agency to determine the activities that are prohibited for the state employees under its jurisdiction.

This chapter highlights an investigation in which we substantiated that a state employee engaged in activities that were incompatible with his employment at a state agency.

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CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

While Operating a Private Tax Preparation Business, an Administrator Engaged in Activities That Were Incompatible With His State Duties

CASE I2019-0989

Results in Brief

In response to a complaint that our office and the California Department of Tax and Fee Administration (CDTFA) received concurrently, CDTFA investigated and reported its findings to us. CDTFA determined that an administrator's approach to operating his private tax preparation and consultation business violated state law and the agency's Incompatible Activities Statement. Specifically, the administrator advertised his current and past state experience on his private business's website, and the administrator prepared private tax returns for clients who had CDTFA seller's permits, both of which are prohibited activities. When CDTFA investigators interviewed him about these activities, the administrator was dishonest.

Background

In general, state employees may hold secondary employment as long as that secondary employment is not clearly inconsistent, incompatible, or in conflict with, their state duties. State law requires each state agency to determine and communicate to its employees those activities that are incompatible with their duties. CDTFA's Incompatible Activities Statement prohibits all employees in certain divisions and branches from engaging in any outside tax consulting, tax return preparation, or related activity. The administrator who was the subject of this investigation is an employee in one of these divisions and consequently could not legally engage in such activities for people or entities that hold or are required to hold a seller's permit. CDTFA provides seller's permits to individuals and entities who intend to sell personal property that would ordinarily be subject to sales tax in California, such as retail and wholesale business owners who sell furniture, giftware, toys, and clothing.

About the Agency

CDTFA manages California's sales and use, fuel, tobacco, alcohol, and cannabis taxes, as well as a variety of other taxes and fees that fund specific state programs. State law created CDTFA in July 2017 and transferred to it many of the duties, powers, and responsibilities that the State Board of Equalization previously held.

Relevant Criteria

Government Code section 19990 prohibits state employees from engaging in any activity that is inconsistent, incompatible, or in conflict with their duties. Activities deemed to fall in these categories include using the prestige or influence of the appointing authority for the employee's private gain or advantage and performing acts in a capacity other than as a state employee knowing that those acts may later be directly or indirectly subject to control, inspection, review, audit, or enforcement by the employee. It also requires each appointing power to determine what activities are prohibited for the state employees under its jurisdiction.

CDTFA's Incompatible Activities Statement implements state law and generally prohibits employees assigned to certain divisions and branches from engaging in any outside tax consulting, income tax or fee return preparation work, or similar work for specified categories of entities or people that are subject to the laws administered by the CDTFA.

Government Code section 19752 specifies dishonesty and other failures of good behavior that cause discredit to an appointing authority as causes for discipline of state employees.

The Administrator Advertised His Role as a State Employee and Supervisor on His Private Business's Website

In response to the complaint it received, CDTFA identified the website for the administrator's private business, which included references to the administrator's state employment and current supervisory role. The investigators later learned the administrator had displayed this information on his website for at least four years. The administrator's inclusion of the references violated state law and CDTFA's policy on incompatible activities. Because the administrator publicly displayed that he worked for a state tax administration agency, the administrator's clients may have believed that they would receive preferential treatment from the agency if they used his services. During the course of this investigation, CDTFA issued the administrator a corrective action memorandum that instructed him to remove from his business website any references to his state employment, and the administrator complied.

Although the State Board of Equalization Had Previously Investigated the Administrator, He Continued to Prepare Tax Returns for Private Clients Who Held Active Seller's Permits

When the State Board of Equalization (BOE) investigated the administrator for similar allegations of incompatible activities in 2011, investigators identified that 14 of the administrator's clients had seller's permits. At that time, the administrator apparently expressed a full understanding of the agency's directive regarding incompatible activities and of those clients with whom he could not conduct business, including seller's permit holders.

Nonetheless, following the BOE's 2011 investigation, the administrator failed to implement better practices for his private business. In response to the 2019 allegation, investigators reviewed his client list for tax years 2016 through 2019 and discovered that 18 of those clients held active seller's permits at the time the administrator prepared their tax returns. Investigators also discovered that he had prepared tax returns for an additional 37 clients who had previously held seller's permits. Although CDTFA's Incompatible Activities Statement does not prohibit the administrator from preparing tax returns for former seller's permit holders, the administrator did not screen prospective clients; thus, he risked additional violations of CDTFA's Incompatible Activities Statement.

Investigators interviewed four of the administrator's clients, each of whom had held an active seller's permit during the years in which the administrator prepared their tax returns. None of the four clients recalled the administrator asking them whether they

Following the BOE's 2011 investigation, the administrator failed to implement better practices for his private business.

held a seller's permit before doing business with them. When investigators interviewed the administrator, he acknowledged that he still had not implemented a formal process for screening clients to identify possible incompatible activities. The administrator also stated that when meeting with returning clients, he asked them only if they had any changes to report. The administrator's failure to screen for and detect clients with seller's permits—despite operating a private business for many years and having been already investigated for similar allegations—revealed his lack of effort to correct this problem. It also demonstrated that the BOE's efforts to correct his actions failed and that appropriate discipline was necessary to prevent him from engaging in the same or similar incompatible activities in the future.

The Administrator Prepared a CDTFA Colleague's Tax Returns for Several Years, Despite Knowing That the Colleague Held a Seller's Permit

Investigators also identified that the administrator's clients included a CDTFA colleague who had held a seller's permit for several years. Investigators interviewed the colleague, who stated that the administrator had prepared her tax returns for at least the last seven years. She stated that she believed that the administrator was aware of her seller's permit because he completed a Schedule C form on her federal tax returns, which taxpayers use to report profits or losses from their businesses. According to the colleague, the administrator never expressed concern about preparing the tax returns despite knowing that she held a seller's permit.

When investigators interviewed the administrator, he attempted to justify his actions by claiming that he prepared his colleague's tax returns as a favor, but he acknowledged that he charged the colleague for his services and did not have an explanation for why he did not refer her to another tax preparer. However, even if he had prepared his colleague's tax returns without compensation, his decision to do so would have violated CDTFA's Incompatible Activities Statement.

Investigators also found the administrator's clients included four of his current subordinate employees and relatives of two of these subordinates. The administrator's subordinate employees stated that he had prepared their tax returns for between three and 14 years. The administrator's preparation of his subordinate employees' tax returns had the potential to put him at unnecessary risk of engaging in further incompatible activities because doing so provided him with access to their financial and personal information.

The administrator's clients included four of his current subordinate employees and relatives of two of these subordinates.

The Administrator Provided Evasive and Dishonest Responses to Investigators' Questions

State law requires state employees to be honest with their state employer. In addition, state law requires state employees to assist the State Auditor during an investigation. As part of this duty to assist, employees must participate fully and honestly when interviewed in connection with an investigation. However, the administrator's changing answers to investigators' queries provided numerous examples of his efforts to deceive them.

For example, the administrator's original answers to investigators indicated that he did not have any clients with seller's permit businesses for whom he prepared tax returns. However, the investigators found the administrator's assertion to be dishonest because of the number of Schedule C forms the administrator prepared for clients and the questions that those Schedule C forms should have raised for him. In fact, three of the four clients whom investigators interviewed also suggested that, based on the information they provided to the administrator to prepare their tax returns and conversations they had with him, the administrator either knew or should have known that they were seller's permit business owners and therefore seller's permit holders. One client even told investigators that he provided the administrator with his sales and use tax returns to assist with his tax preparation, which the administrator should have immediately recognized as an indication that the client owned a seller's permit business.

The administrator later contradicted himself, telling investigators that he knew that four or five of his clients had seller's permits. The administrator then changed his answer again, claiming to know that two or three additional clients might have had seller's permits. However, investigators ultimately found that the administrator actually had 18 clients with seller's permits, making it apparent that the administrator was being neither truthful nor forthcoming.

The administrator was also dishonest with investigators when they asked him about his business relationship with his colleague who held a seller's permit. He first told investigators that he prepared his colleague's tax returns in 2019 alone and then informed the colleague that he could not prepare her future returns if she held a current seller's permit. The administrator later claimed to recall that he prepared the colleague's tax returns for two years before he told her that the colleague would have to either close her seller's permit or find a different tax preparer in the future. However, the colleague's tax returns show that the administrator prepared them for each of the six years she held a seller's permit. The administrator eventually acknowledged that he knew about his colleague's business for all the years he prepared the tax returns.

Investigators ultimately found that the administrator actually had 18 clients with seller's permits, making it apparent that the administrator was being neither truthful nor forthcoming.

Further, contrary to the administrator's statement, the colleague gave no indication to investigators that he attempted to sever his business relationship in any of the years he prepared the colleague's tax returns. In fact, the colleague told investigators in a follow-up interview that the administrator sent her a text message to remind her to file taxes before the tax deadline. Investigators later determined that the administrator sent the colleague the text message the day before his interview with them, indicating that the administrator never attempted to sever his business relationship with his colleague and that the administrator had again been dishonest.

Recommendations

To remedy the effects of the improper governmental activities this investigation identified and to prevent those activities from recurring, CDTFA should do the following:

- Take appropriate disciplinary action against the administrator for the improper governmental activities described in this report.
- Ensure that the administrator signs an Outside Employment Declaration form annually, as the agency's Incompatible Activities Statement requires.
- Send a reminder to all of its employees identifying prohibited activities.

Agency Response

CDTFA reported that in March 2021, it served the administrator with disciplinary action to dismiss him for the improper governmental activities described in this report. However, the administrator retired before the effective date of his dismissal. CDTFA stated that it does not intend to add the disciplinary action to the administrator's official personnel file because he retired before its effective date. However, by not including the disciplinary action in his personnel file, CDTFA prevents other state agencies from knowing about the administrator's improper governmental activities if he applies for another state employment position. Thus, CDTFA should reconsider placing documentation in his personnel file to indicate that he resigned while under investigation.

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Chapter 3

IMPROPER HIRING DECISIONS AND DISHONESTY

This chapter involves a substantiated allegation regarding an improper hiring decision. The California Constitution and various state laws, also known as *civil service rules*, establish that the State must appoint and promote employees based strictly on merit, meaning their ability to perform the required work. Civil service rules also establish a competitive process for appointments and promotions, and they require state agencies to seek approval and direction from the California Department of Human Resources (CalHR) in many instances. The example in this chapter illustrates how an employee and a hiring manager within a state agency disregarded these civil service rules.

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DEPARTMENT OF STATE HOSPITALS

An Employee Was Dishonest About Her Qualifications and the Employee's Hiring Manager Gave Her an Unfair Advantage

CASE I2019-1405

Investigative Results

We received an allegation that an employee of the Department of State Hospitals (DSH) did not meet the minimum qualifications for the associate governmental program analyst (associate analyst) position to which DSH promoted her in 2019. We asked DSH to investigate, and it determined that the employee was dishonest on her application, leading the agency to mistakenly believe that the employee met the minimum qualifications for the position. DSH also determined that the hiring manager's actions during the hiring process provided the employee with an unfair advantage, which is prohibited in civil service hiring.

The Employee Dishonestly Inflated Her Experience on Her Application for the Associate Analyst Position

The employee submitted three applications for state employment in 2018 and 2019 that contained inconsistent information. In September 2018 and May 2019, the employee submitted one application each to DSH (Application 1) and to another state agency (Application 2) for executive assistant (assistant) positions. In May 2019, the employee also submitted an application for an associate analyst position with DSH (Application 3). In general, assistant positions in state service require experience in performing secretarial duties and graduation from high school. Associate analyst positions require graduation from college and analytical experience in specific areas such as program evaluation and planning; policy or personnel analysis; or budgeting. If an applicant for an associate analyst position does not meet the education requirement, he or she can satisfy that requirement with additional years of analytical experience. Figure 7 presents the two ways in which an applicant can meet these minimum qualifications.

About the Agency

DSH manages five state hospitals and employs more than 10,000 people throughout California. The hospitals are fully licensed by the California Department of Public Health and provide mental health services to the patients they admit.

Relevant Criteria

The California Constitution, article VII, section 1, requires all civil service promotions to be based on merit and involve a competitive process.

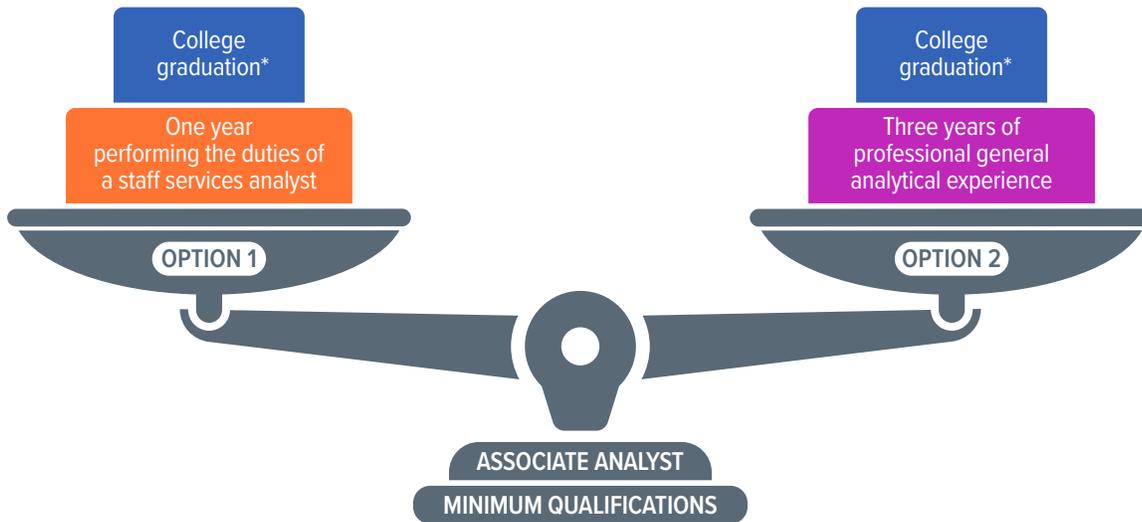
California Code of Regulations, title 2, section 243, says that for a civil service appointment to be valid, it must be made by the hiring authority and accepted by the employee in good faith. This section presumes that a civil service appointment is made in good faith when, among other things, the hiring authority acts in a manner that does not violate the rights and privileges of others affected by the appointment, including other eligible candidates. Similarly, the appointment is accepted in good faith when an applicant answers all questions relating to experience truthfully and honestly and when the applicant makes sincere and reasonable efforts to provide accurate factual information.

California Code of Regulations, title 2, section 243.1, provides that any employee who violates the provisions set forth in section 243 regarding accepting a good faith appointment is subject to disciplinary action.

California Code of Regulations, title 2, section 250, requires a person selected for an appointment to satisfy the minimum qualifications of the classification to which he or she is appointed.

Government Code section 19572 identifies dishonesty and fraud in securing an appointment as causes for discipline of state employees.

Figure 7
The Minimum Qualifications for an Associate Analyst Position



Source: CalHR class specifications for an associate analyst.

* Additional qualifying experience may be substituted for the education requirement on a year-for-year basis.

When the employee submitted the applications for employment with the two state agencies, the employee signed each application under penalty of perjury, confirming that the information within it was true and complete to the best of her knowledge. Nevertheless, the three employment applications and their accompanying resumes and statements of qualification contain facts—like dates of employment—that contradict each other. Table 1 shows the way in which the employee altered her work experience for each application. Most notably, the employee reported not only increasing levels of analytical experience, but the employee also extended the length of time for which she worked for a previous employer.

When investigators questioned the employee about these differences, the employee responded that she tailored the information to the duties of the position for which she was applying. Best practices confirm that an applicant can reasonably highlight the most relevant past work experience on an application. However, when asked about the different dates of her previous employment, the employee told the DSH investigator that she had made a mistake on Application 3. The employee asserted that the dates on Application 1 were accurate.

Table 1
The Employee's Dates of Employment and Duties According to Her Three Applications

	APPLICATION 1	APPLICATION 2	APPLICATION 3
Date submitted	September 2018	May 2019	May 2019
Dates of employment	<i>May 2014 to June 2016 (2 years, 1 month)</i>	<i>May 2012 to June 2016 (4 years, 1 month)</i>	<i>October 2011 to June 2016 (4 years, 8 months)</i>
Duties performed	Administrative duties, such as scheduling appointments, drafting correspondences, answering calls, and routing mail.	Administrative duties listed for previous application, as well as processing accounts receivable and accounts payable.	Analytical duties, such as developing, overseeing, and maintaining the employer's budget.

Source: Employee's state employment applications.

Although the employee claimed that the nearly five years of employment that she reported on Application 3 was a mistake, the evidence suggests otherwise. Because the employee had not graduated from college, the employee needed a total of seven years of professional general analytical experience to satisfy both the education and experience requirements: three years as required and another four years as a substitute for a college degree. The inflated dates for the employee's previous employment, combined with the two years of work experience she had with other employers, were the very least that the employee needed to meet the minimum qualifications for the associate analyst position. It is unlikely that the employee's mistaken dates coincidentally added up to the exact number of years she needed to qualify for the position when her actual experience performing analytical duties was far less. DSH used the information the employee included in Application 3 to verify that the employee met the minimum qualifications for the analyst position and to promote her into it.

The Hiring Manager Gave the Employee an Unfair Advantage in the Hiring Process

The investigation also determined that the hiring manager for the associate analyst position gave the employee an unfair advantage during the hiring process by treating her differently than the other candidates, which is strictly prohibited in civil service hiring. Specifically, the hiring manager encouraged the employee to obtain and review an internal document that was directly related to the duties of the position for which the employee was interviewing. The hiring manager did not inform any of the other candidates about this internal document. The hiring manager told the DSH investigator that he did not believe that this document gave the employee an unfair advantage; however, one of the questions he asked of all the candidates during their interviews related directly to that internal

document. Further, three witnesses told the DSH investigator that they overheard the hiring manager assist the employee with her application package, although he claimed that he did not help her. The hiring manager's assistance in helping the employee prepare for the interview gave her an unfair advantage over the other candidates, which precluded a competitive, merit-based hiring process for the position.

At the conclusion of the investigation, DSH informed us that it intended to take disciplinary action against both the employee and the hiring manager. DSH also reported that it currently does not have a policy or process in place to verify dates of employment for applicants but that typically a hiring manager or supervisor conducts reference checks. However, a reference check does not always include verification of dates of employment.

Recommendations

To remedy the effects of the improper governmental activities this investigation identified and to prevent those activities from recurring, DSH should do the following:

- Take appropriate disciplinary action against the employee for her dishonesty in submitting an application that contained false information about her dates of employment and experience.
- Take appropriate disciplinary action against the hiring manager for failing to ensure that the hiring process for the associate analyst position was based on merit and involved a fair, competitive process.
- Strengthen its hiring process to ensure that successful candidates meet the established minimum qualifications for civil service positions.

Agency Response

DSH reported that it served the employee and the hiring manager with appropriate disciplinary actions in March 2021. It stated that the employee and the hiring manager have up to 30 days to appeal their disciplinary actions. In addition, DSH reported that it will strengthen its current process by requiring the verification of relevant work history and experience during reference checks and—to ensure that the additional verification occurs—by updating the recruitment memo that managers are expected to complete during the hiring process. Finally, DSH reported that it will provide training on the revised process for supervisors in the affected division by June 30, 2021.

Chapter 4

MISUSE OF STATE RESOURCES

This chapter provides examples of five investigations in which we substantiated allegations involving the misuse of state resources. State law prohibits state employees from using state resources—including land, buildings, housing, equipment, supplies, vehicles, and state-compensated time—for personal purposes. The substantiated investigations that we highlight here focus on state employees who misused state-compensated time and state-owned housing. In some of these instances, the employees were untruthful regarding their improper behavior, which is an additional cause for discipline.

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CALIFORNIA STATE UNIVERSITY, LOS ANGELES

Two Employees Worked Thousands of Hours at Second Jobs During Their University-Compensated Time

CASE I2019-1172

Results in Brief

From 2017 through 2020, two hourly California State University, Los Angeles (Cal State LA) employees who work in scientific laboratories spent up to 16 hours each week—for an estimated collective total of 2,825 hours—teaching classes at local community colleges while they were also being paid to perform their Cal State LA work. The employees failed to follow the terms of their union agreement or their job classifications:

- They did not ensure that their secondary employment did not conflict with their university duties and responsibilities.
- They did not seek permission to adjust their university work schedules.
- Because of their secondary employment, they did not work sufficient hours as outlined in their union agreement.

When interviewed by a Cal State LA investigator, the employees stated that they were aware that their current job classification did not allow them to independently adjust their work schedules but that they believed that the nature of their work should have qualified them for a different job classification. Consequently, they actively chose to disregard their regular work schedules.

Background

The California State University (CSU) and the employees' union agreement set expectations for their work hours and secondary employment. As nonexempt—also known as hourly—employees, the two employees who were the focus of this investigation are subject to minimum wage and overtime provisions and earn overtime for any excess hours they work. Employers must maintain records of the daily and total weekly hours worked by employees in this classification.

About the Agency

Cal State LA was founded in 1947 and is part of the CSU system, the nation's largest public university. Cal State LA offers many courses in various academic departments that require laboratory work. Highly skilled employees who maintain sophisticated equipment and materials staff the laboratories. Such staff members also assist faculty and students in conducting experiments and completing assignments.

Relevant Criteria

Government Code section 8314 prohibits state employees, including CSU employees, from using public resources, including state-compensated time, for personal or other purposes that exceed minimal and incidental use.

Education Code section 89535 provides that any permanent employee may be dismissed, demoted, or suspended for dishonesty or failure to perform the normal and reasonable duties of the position.

The Fair Labor Standards Act (FLSA), codified in title 29 of the United States Code, section 201 et seq., establishes overtime pay, recordkeeping, and other labor standards affecting workers. The wage and overtime pay provisions of the FLSA apply to most, but not all, state employees. Covered employees are referred to as nonexempt, or hourly, employees, while those who are not covered are referred to as exempt, or salaried, employees.

The applicable union agreement for these employees states that hourly employees must work a minimum of 40 hours in a seven-day period or 80 hours in a 14-day period. The union agreement allows management to establish employees' work schedule. Employees may work an alternate work schedule only if they seek and obtain management approval. Employees may request a change in their work schedule by submitting a written request 21 days before the requested effective date. The union agreement also allows employees to obtain secondary employment, providing that it does not conflict with the employees' university duties.

After we received a complaint alleging that the two employees were working at other jobs during their Cal State LA work hours, we initiated an investigation and requested Cal State LA's assistance to conduct it.

Two Employees Spent Up to 16 Hours Each Week Teaching at Local Community Colleges During Their Designated Cal State LA Work Hours

From 2017 to 2020, the established work schedule at Cal State LA for the two employees was Monday through Friday from 8 a.m. to 5 p.m. Based on the results of the investigation, we estimate that over this period, Employee 1 worked a total of 1,575 hours at a community college during his scheduled work hours at Cal State LA. The time he worked at his second job cost the university an estimated \$61,550. Similarly, we estimate that over this same period, Employee 2 worked a total of 1,186 hours at a different community college during his scheduled work hours at Cal State LA, at an estimated cost to the university of \$42,294.

The time Employee 1 worked at his second job cost the university an estimated \$61,550, while the time Employee 2 worked at his second job cost the university \$42,294.

Employee 1 maintains highly specialized laboratory equipment and assists users of laboratory equipment in conducting experiments at Cal State LA. He also teaches classes, which include laboratory courses, at a community college. When questioned by a Cal State LA investigator, Employee 1 stated that he chose to operate as a salaried employee who could independently adjust his university work schedule. He further asserted that he believed that—like salaried employees—he should be required to work whatever hours were necessary to complete his duties rather than be present on the university campus from 8 a.m. to 5 p.m. When the investigator questioned Employee 1 about his community college class schedule, Employee 1 claimed that he did not work all of the hours included in the investigator's estimation because he often had the student assistants assigned to help him with the community college's lab courses.

Employee 2 is responsible for maintaining equipment and preparing materials that staff and students use to conduct laboratory experiments at Cal State LA, and he teaches classes at a different community college. When the investigator asked Employee 2 about the number of hours he worked at the community college, Employee 2 also claimed to have worked fewer hours than the investigator estimated based on his community college class schedule. Employee 2 asserted that he did not always observe his community college office hours, was not always on the community college campus for his summer classes, and often had a student assistant teach during his community college laboratory courses. In addition, Employee 2 told the investigator that he independently adjusts his university work hours to complete his Cal State LA duties.

Both employees claimed that they worked enough hours in the evenings and on weekends to compensate for the time they spent teaching at the community colleges during their regularly scheduled Cal State LA work hours. A supervisor who oversaw both employees from 2017 to 2019 stated that they occasionally—but not frequently—worked in the evenings and on weekends. The supervisor to whom the employees currently report told the Cal State LA investigator that both work a minimum of their required 40 hours each week and that their Cal State LA duties require them to work evenings and weekends; however, he did not provide evidence to corroborate either assertion. Although the current supervisor claimed that the employees worked outside of their scheduled university hours, he stated that he did not have a system in place to track the daily or weekly hours they worked.

Cal State LA reviewed the work email accounts of both employees, which showed that they worked occasionally in the evenings and on weekends but not enough to make up for the hours they spent working at the community colleges. Employee 2 chose to provide the Cal State LA investigator with additional emails to support his claim that he worked in the evenings and on weekends. The emails Employee 2 submitted included emails that were work-related; however, most either were not directly related to his position or were personal in nature, did not require urgent responses, or were simple acknowledgements of other emails received. These emails did not sufficiently support Employee 2's claim that he worked enough hours outside of his set university schedule to make up for the hours he spent at the community college job.

Finally, to the extent that both employees admitted that they did not teach classes, provide office hours, or supervise laboratory courses at the community colleges at which they taught, those community colleges may have paid them for hours they did not work.

Both employees worked occasionally in the evenings and on weekends but not enough to make up for the hours they spent working at the community colleges.

The Two Employees Were Dishonest When Reporting the Hours They Worked on Their University Timesheets

On certain days when they were absent from the university during their scheduled shifts and worked instead at the community colleges, both employees submitted university timesheets documenting that they had worked for eight hours at Cal State LA. However, these timesheets did not reflect the hours the employees actually worked at the university.

Cal State LA timesheets require employees to record hours only for time they take off for leave. On his timesheets from 2017 to 2020, Employee 1 used his leave to account for only 40 hours of the estimated 1,615 hours that he worked at the community college. On his timesheets, Employee 2 used leave to account for 24 hours of the estimated 1,210 hours he worked at the community college. By submitting timesheets without claiming leave on the days when they taught at the community colleges, both employees indicated that they worked their required 40 hours each week when they actually worked far fewer hours.

The employees chose to act as salaried employees even though they are classified as hourly employees. When speaking with the investigator, both employees demonstrated knowledge that their job classifications made them hourly employees. However, they both believed that they should have been classified as salaried employees and that they therefore had to work only enough hours to get their jobs done, rather than adhering to a set schedule of work hours. The two employees and their respective union representatives told the investigator that they disagreed with the hourly job classifications and that they had been trying for years to have the jobs reclassified as salaried. Regardless of whether they agree with Cal State LA's classification of their positions, the jobs they accepted classify them as hourly employees, and they must follow the rules for hourly employees as established by the university and their union agreement. These rules require them to work for the university during their scheduled 40-hour work weeks and state that they will receive pay for only the actual hours they work.

Recommendations

To remedy the effects of the improper governmental activities this investigation identified and to prevent those activities from recurring, Cal State LA should do the following:

- Take appropriate disciplinary action against each employee for misusing state time to work at a second job.

- Provide the two employees with a written expectation of their work schedule, work hours, and work duties. It should ensure that the employees adhere to these expectations and that they understand that any secondary employment must not conflict with their Cal State LA duties. In addition, it should ensure that the employees know the process for requesting to change their work schedule.
- Provide training to the supervisor of these employees about how to manage staff and ensure that staff work their required number of hours during their scheduled shifts.
- Determine whether other employees are working in similar classifications and ensure that these employees are following their required schedules.

Agency Response

Cal State LA reported that it intends to take corrective and disciplinary actions to address the activities included in this report. In addition, it stated that it will provide training to the supervisor of the two employees to ensure that the employees work the requisite number of hours during their scheduled shifts.

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DEPARTMENT OF GENERAL SERVICES

Two Electricians Misused State Time for Personal Purposes

CASE I2018-1047

Results in Brief

In response to an allegation that two electricians who work in the facilities management division (facilities division) of the Department of General Services (General Services) engaged in time and attendance abuse, we requested General Services' assistance to investigate the complaint. General Services identified discrepancies in the two electricians' work records and decided to conduct surveillance for a three-month period. During this period, the investigators observed the two electricians engaging in personal activities on state time. General Services concluded that Employee A misused 60 percent of his work time and Employee B misused 44 percent of his work time during these three months. Their misuse of state time cost the State nearly \$5,000.

Background

The facilities division's Sacramento region employs maintenance professionals who respond to preventative maintenance calls and participate in long-term repair projects throughout the region. Employees clock in and out of work at the region's central shop, but they otherwise spend the majority of their workdays performing maintenance work at other buildings. The responsibilities of Employees A and B consist of completing requests for electrical repair that are assigned through a maintenance and management system. Their supervisor assigns them work, and their duties include replacing lighting in offices and troubleshooting electrical problems.

Employee A Misused 89 Hours During 18 Workdays

Over a period of 18 workdays, investigators observed Employee A spending 89 work hours, or 60 percent of his work time, on personal activities. During this time, investigators saw Employee A frequently walking around a public park, dining at local restaurants, and visiting private residences

About the Agency

General Services serves as business manager for the State of California. Its facilities division provides building administrative, maintenance, trades, engineering, and custodial services to 61 state-owned buildings and more than 200 other buildings statewide.

Relevant Criteria

Government Code section 19990 prohibits state employees from engaging in activities that are clearly inconsistent or incompatible with their state employment, including using state time for private gain or advantage or failing to devote their full time, attention, and efforts to state employment during work hours.

Government Code section 8314 prohibits state employees from using state resources, including state-compensated time, for personal purposes that exceed minimal and incidental use.

Government Code section 19572 specifies as causes for discipline of state employees the inexcusable absence without leave, misuse of state property, dishonesty, inexcusable neglect of duty, or other failure of good behavior that cause discredit to an appointing authority.

California Code of Regulations, title 2, section 599.665, requires state agencies to keep complete and accurate time and attendance records for all of their employees.

Government Code section 19838 directs the State, when it identifies overpayments to employees, to act to recoup those funds in a prescribed manner: it must notify the employee of the overpayment, allow the employee time to respond, and commence recoupment actions within three years from the date of the overpayment.

for hours. On one occasion, Employee A visited a local museum. On each of the observed workdays, Employee A should have been present at various state buildings completing his assigned projects, work that could not be performed remotely.

General Services compared the surveillance results against Employee A's reported activities in the Project Accounting and Leave (PAL) system that serves as the facilities division's official time reporting and project management system. Although Employee A reported on PAL that he responded to his assigned projects, investigators' direct observations revealed that Employee A was not present at the worksites where he claimed to have been on these dates. In fact, on four occasions, Employee A did not report to his worksite at all, yet he stated on his timesheet that he worked full days.

Employee A's statements to General Services contradicted the investigators' observations. In particular, Employee A asserted when interviewed that he charges leave when he is not at work on a workday. However, PAL records indicate that Employee A did not charge leave for the dates and times he was observed engaging in personal activities or for the four days when he did not report for work at all. On two of these four days, Employee A arrived at work near the end of his workday and was only at work long enough to clock in and out. Based on Employee A's actions and the evidence collected, we concluded that Employee A was dishonest with General Services during his interview.

When Employee A was under surveillance, his misuse of state time for personal purposes cost the State an estimated \$3,000. However, this estimate likely represents only a fraction of the state time Employee A may have misused over the past several years. Employee A's official personnel records show a history of his engaging in similar behavior for more than 10 years. His behavior resulted in disciplinary actions on several occasions, including a reduction in pay and a 30-day suspension from state service. In addition, while General Services was conducting a preliminary review of this complaint, it analyzed Employee A's work records for March through July 2019 and identified discrepancies between the amount of time Employee A had reported on his work projects and the hours reported on his timesheets. If Employee A's pattern of behavior over just the past three years was consistent with General Services' recent observations, Employee A may have cost the State as much as \$31,700 in unearned wages it paid him during that time.

Employee A may have cost the State as much as \$31,700 in unearned wages it paid him during the past three years.

Employee B Misused 60 Hours During 17 Workdays

Over a period of 17 workdays, investigators observed Employee B spending 60 work hours, or 44 percent of his work time, on personal activities, including attending to his private business. Employee B

operates a private business that provides electrical services to commercial and residential properties. Investigators observed Employee B at the private business location; shopping at Home Depot and Target; and visiting various locations, including a local zoo, a community college, and several private businesses and residences where vehicles displaying his private business name were present. During this period, Employee B should have been at various state buildings completing his assigned projects. Similar to Employee A, Employee B submitted official PAL records that claim he responded to his assigned projects; however, investigators' direct observations show that Employee B was not at work but was engaged in his personal activities.

Employee B's statements to General Services contradicted the investigators' observations. Specifically, when investigators interviewed him, Employee B asserted that he does not attend to his private business on state time and that he charges leave when he is not at work on any workday. However, PAL records show that Employee B did not charge leave on the dates and times investigators observed him engaging in personal, nonstate activities during his work hours. Based on the PAL records and Employee B's statements, we concluded that Employee B was dishonest with General Services during his interview.

During this limited time period when Employee B was under surveillance, his misuse of state time for personal purposes cost the State nearly \$2,000. However, similar to Employee A, this estimate likely represents only a fraction of the state time Employee B may have misused over the past several years. While conducting its preliminary assessment on this case, General Services found discrepancies in Employee B's work records for March through July 2019. While Employee B did not have the same documented history of time and attendance abuse as Employee A, the whistleblower complaint that initiated this investigation alleged that Employee B had been engaging in this pattern of behavior for a few years. If Employee B's pattern of behavior over the past three years was consistent with General Services' recent observations, Employee B may have cost the State as much as \$21,500 in unearned wages it paid him during that time.

Employee B may have cost the State as much as \$21,500 in unearned wages it paid him during the past three years.

General Services' Inadequate Project-Tracking Procedures Allowed the Two Electricians to Misuse State Time

A lack of project-tracking procedures makes supervision of the General Services maintenance teams difficult. As we previously discussed, Employees A and B reported that they were present at their assigned work locations when the investigators' observations show that they arrived at work to clock in, left work for several

hours to engage in personal activities, and returned to work to clock out. Because employees are not expected to check in and out of the buildings to which they are assigned or to turn in any confirmation that they completed the requested work, maintenance staff supervisors may have difficulty trying to ensure that the subordinates are doing the work they claim to be doing.

When interviewed, Employee A and B's supervisor mentioned that building tenants have complained to him about projects that Employee A should have completed but did not. The supervisor stated that when he confronted Employee A with these complaints, Employee A always had reasons for not completing his projects on time, such as claiming that he needed to perform additional work not described in an original maintenance request or not knowing where he was supposed to perform the work. Employee A's ability to justify his poor performance and then falsify his timesheet shows how effortlessly he was able to abuse state time.

Similarly, Employee B took advantage of his job's lax project oversight to attend to personal matters during his workdays. The supervisor told General Services that although he was aware that Employee B owned a private business, he did not believe that Employee B attended to his private business on state time. However, the evidence in this investigation shows that Employee B was able to falsify his timesheet when attending to his private business.

Employees A and B took advantage of the facilities division's lax project-tracking system, which allowed them to misuse state-compensated time for their own purposes; thus, appropriate project-tracking procedures and tools would help prevent potential time and attendance abuse in the future.

Recommendations

To remedy the effects of the improper governmental activities this investigation substantiated, and to prevent those activities from recurring, General Services should do the following:

- Take appropriate disciplinary actions against Employees A and B for their misuse of state time and for their dishonesty when interviewed by General Services' representatives.
- Recover overpayments made to Employees A and B or adjust their leave balances to account for their missed work time.
- Implement procedures that provide more accountability for work performed by facilities division maintenance employees.

Agency Response

General Services served Employees A and B with termination notices for their misuse of state time and dishonesty. Employees A and B resigned before their terminations took effect. General Services stated that it placed a letter in each employee's official personnel file identifying that the resignation occurred under unfavorable circumstances. It also stated that it initiated an accounts receivable to collect \$3,495 from Employee A and that it adjusted Employee B's leave balance by 60 hours.

General Services also reported that it implemented oversight procedures that provide more accountability for maintenance employees. Specifically, it stated that it now requires maintenance employees to clock in and out near their respective supervisor's office location. In addition, General Services stated that facilities division supervisors will validate that each work order has a reasonable amount of time charged for each task, review each work order daily, and approve each work order for recording in the PAL system. Further, General Services stated that supervisors now meet with their employees at the beginning of their shifts to ensure the employees are at work and have appropriate work assignments and resources and that they also now perform impromptu worksite inspections each day to check the progress of work they assign to their employees. Finally, General Services stated that supervisors review daily vehicle mileage logs to ensure their employees log reasonable mileage based on the locations noted in the logs.

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DEPARTMENT OF GENERAL SERVICES

An Employee Misused State Time When He Regularly Left Work Early

CASE I2019-0068

Investigative Results

In November 2019, we asked General Services to investigate an allegation that an employee misused state time by regularly leaving work before the scheduled end of his shift. The investigation determined that the employee misused state time in 2018 by leaving work early, failing to notify his supervisor, and failing to account for his missed time by charging it to his balance of accrued leave. General Services recouped from the employee's leave balance 104 hours, valued at \$2,100, for missed work time in 2018, but the employee's pattern of leaving work before the end of his shift may have begun in 2017 and may have continued into early 2019.

The employee in question regularly left before the end of his eight-hour shifts and did not charge his leave balance to account for the times that he left early. During the period under review, the employee was supposed to work from either 4 p.m. to 12 a.m. or from 2:30 p.m. to 10:30 p.m. The employee's supervisor provided minimal supervision for the later hours of these nighttime shifts. A witness who worked during similarly scheduled hours reported that the employee regularly left before the end his shift.

When General Services interviewed the employee, he stated that, before January 2019, he left work one hour early up to two times a week and did not inform his supervisor of these absences. He also confirmed that he did not use leave hours when he left early and that his supervisor had told him that he did not have to use leave if he had completed his work. However, the nature of the employee's work requires him to be on-site, and his supervisor told investigators that employees are expected to work until the end of their shifts. The supervisor, who worked during the day shift, also said that he trusted the night-shift employees and that he had no direct way to know whether they left early unless they called him. Because the employee failed to inform his supervisor when he left and did not use accrued leave, he received pay for time that he did not work, thereby misusing state time for personal purposes.

Although General Services' investigation focused on the employee's misused time in 2018 and determined that he had misused 104 hours, the statement of the same witness who observed the employee's early departures in 2018 confirmed that he had been leaving early since January 2017. The witness also reported that he noticed a change in the employee's arrival and departure times in January 2019. This change coincided with the employee reporting that his work hours changed from 4 p.m. to 12 a.m. to 2:30 p.m. to 10:30 p.m. around January 2019. Thus, although General Services

About the Agency

General Services serves as business manager for the State. Its office of fleet and asset management within the interagency support division oversees the state vehicle fleet and the leases of vehicles to state agencies.

Relevant Criteria

Government Code section 8314 prohibits state employees from using public resources, including state-compensated time, for personal purposes that exceed minimal and incidental use.

Government Code section 19990 requires state employees to devote their full time, attention, and efforts to state employment during work hours.

California Code of Regulations, title 2, section 599.665, requires each appointing power to keep complete and accurate time and attendance records for all employees over whom it has jurisdiction.

recovered the time for which the employee admitted to having not worked in 2018, sufficient evidence exists to establish that his misuse began in 2017 and continued into January 2019.

After General Services estimated the amount of state time that the employee misused in 2018, the employee agreed to have 104 hours reduced from his leave balance. General Services completed the recovery of those hours in November 2020. In June 2020, General Services also issued to the employee a corrective memo that he signed and that will remain in his official personnel file for at least 12 months. General Services further indicated that it now posts employees' schedules and supervisory contact information in a common area so that potential witnesses of alleged state-time misuse or other attendance issues can report such observations.

Recommendation

To remedy the effects of the improper governmental activities this investigation identified and to prevent those activities from recurring, the employee's supervisor should make intermittent contact at the beginning or end of shifts to ensure that his subordinate employees adhere to General Services' expectations.

Agency Response

General Services reported that it agrees with the recommendation. It stated that division management will implement procedures that require the employee's current supervisor to make intermittent contact with the employee during late evening shifts to ensure that he adheres to attendance expectations.

DEPARTMENT OF GENERAL SERVICES

Several Custodial Employees Failed to Devote Their Full Work Time to Their Duties

CASE I2019-0649

Investigative Results

We received an allegation that five members of a custodial staff—two supervisors and three custodians—at General Services failed to use state time and resources appropriately. We asked General Services to investigate these allegations on our behalf, and it confirmed that Custodian Supervisor A spent about two hours daily watching personal videos on his work computer. The investigation further confirmed that because Custodian Supervisors A and B provided inadequate supervision, three of their subordinate custodians regularly failed to devote their full workdays to cleaning their assigned work areas. The investigation determined that Custodian Supervisor A and the three custodians all received pay for work they did not actually perform.

General Services reviewed more than one month of Custodian Supervisor A's Internet usage data and determined that he visited websites such as YouTube, Amazon, Facebook, and Instagram for several hours throughout his work shift on a daily basis. When asked, Custodian Supervisor A admitted that he watched videos at work. Although Custodian Supervisor A did not quantify the amount of work time he spent watching videos, he estimated that he spent a total of three to four hours each day on his work computer. For comparison purposes, General Services asked another supervisor who has similar duties how much time his job requires him to spend on his computer each day, and he estimated a maximum of one to two hours. Based on the difference in the computer usage by the two supervisors, General Services estimated that Custodian Supervisor A spent about two hours each day watching personal videos on his work computer rather than attending to his supervisory duties. Consequently, in addition to misusing his work computer, Custodian Supervisor A did not work the entire shift for which he was paid.

While Custodian Supervisors A and B were not attending to their supervisory duties, three of the custodians in their charge did not start cleaning their assigned work areas on time. During the investigation, witnesses explained that the custodians have a daily meeting at the beginning of their shift and that they are supposed to start cleaning in their assigned work areas shortly thereafter. However, these witnesses reported that the three custodians sat around after this meeting and did not begin cleaning their work areas for hours. General Services obtained data for the electronic badges that three custodians had to use to access the specific areas that they were assigned to clean. Our review of the badge data revealed that the three custodians consistently gained access to their assigned cleaning areas 60 to 90 minutes after they were supposed to start cleaning. Like Custodian Supervisor A, these custodians failed to work the entire shifts for which they were paid.

About the Agency

General Services serves as business manager for the State. Its facilities management division provides administrative, maintenance, trades, engineering, and custodial services to 61 state-owned buildings and more than 200 other buildings statewide.

Relevant Criteria

Government Code section 8314 prohibits state employees from using public resources, including state-compensated time, for personal purposes that exceed minimal and incidental use.

Government Code section 19572 specifies that inexcusable neglect of duty and misuse of state property are causes for discipline of state employees.

Government Code section 19990 requires state employees to devote their full time, attention, and efforts to state employment during work hours.

By neglecting to properly oversee the custodians, the custodian supervisors failed to ensure that their subordinates devoted their full work time to their duties. One of the three custodians who did not begin cleaning in a timely manner reports to Custodian Supervisor A, while the other two report to Custodian Supervisor B. Witnesses reported that the two custodian supervisors' lack of supervision contributed to the three custodians' misuse of state time. In fact, a witness explained that the two supervisors did not consistently check their subordinates' work areas to ensure that their subordinates were attending to their duties.

Recommendations

To remedy the effects of the improper governmental activities this investigation identified and to prevent those activities from recurring, General Services should do the following:

- Take appropriate corrective or disciplinary action against Custodian Supervisor A for misusing his work computer to view personal videos for up to two hours each day and for allowing his subordinate to not devote her full time and attention to her work duties.
- Take appropriate corrective action against Custodian Supervisor B for allowing two of his subordinates to not devote their full time and attention to their work duties.
- Take appropriate corrective or disciplinary action against the three custodians for failing to devote their full time and attention to their work duties during work hours.
- Require the two custodian supervisors to implement specific procedures to ensure that their subordinate custodians devote their full time and attention to their work duties.

Agency Response

In March 2021, General Services reported that it agreed with the findings of this report and stated that based on the evidence gathered, it plans to issue corrective action memorandums to the three custodians and the two custodian supervisors. General Services stated that the memorandums will provide these employees with clear notice that they are being monitored and that General Services has zero tolerance against chronically starting work late. In addition, General Services informed us that custodian supervisors will conduct floor inspections by "walking" the buildings and noting in their daily floor review logs that staff

work has been completed. General Services stated that building management will review the daily floor logs and adjust their shifts to provide more oversight to custodians. Finally, General Services stated that division management will follow up and meet with building staff to remind them of expectations and inform them that progressive disciplinary actions will be taken if such improper behavior persists.

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CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE AND A DISTRICT AGRICULTURAL ASSOCIATION

An Executive Misused State-Owned Housing Resources

CASE I2019-0663

Results in Brief

An executive at a district agricultural association (DAA) in an urban part of California allowed a relative, who was not a state employee, to live for several months in state-owned housing that is intended for workers who staff fairs and expositions, as well as to park on-site for free. The executive also stayed overnight at the state-owned housing and allowed several others to do the same, some of whom stayed intermittently while others stayed more regularly. The executive did so without keeping records of this use and without requiring the employees to pay the applicable daily rental rates. Furthermore, the executive neither established nor enforced policies regarding the use of the state-owned housing. Finally, the executive did not work with the California Department of Food and Agriculture (Food and Agriculture) to adjust rental rates as required and to ensure that the State was able to collect fair payment for the use of the resource.

Background

Located throughout the State, DAAs are organizations within Food and Agriculture that operate fairs and expositions that highlight the industries and products of California. Because DAAs operate events that may require employees to be on-site past their normal work hours, many have on-site housing accommodations that the employees can use during and after such events. The DAA discussed in this report has on-site housing that it uses in a dormitory-style manner.

Because DAAs are state entities, they must comply with state laws and regulations related to the use of state resources. This includes complying with all rules associated with lodging and maintenance. For employees who periodically stay in state-owned housing, agencies must collect a per-person rental rate. Agencies must also conduct a periodic assessment to adjust the rental rates based on housing age and other factors, such as fair market value. CalHR's State-Owned Housing Policy specifies that agencies must complete annual housing surveys that provide rental information for the properties under their control, such as improvements to properties, relevant rental rate increases, and the

About the Agency

Food and Agriculture promotes and protects a safe, healthy food supply and enhances local and global agricultural trade through efficient management, innovation, and science. It also oversees the various district agricultural associations throughout the State as part of its fiscal and policy oversight.

Relevant Criteria

The California Constitution, Article XVI, section 6, prohibits giving any gift of public money or anything of value to any individual for private purposes.

Government Code section 8314 prohibits any state employee from using or permitting others to use public resources, including state buildings and facilities, for personal purposes.

Government Code section 19822 establishes that compliance with all rules associated with lodging furnished by the State as an employer to its employees is the responsibility of each director of each state agency that possesses lodging.

California Code of Regulations, title 2, section 599.643, requires employees to pay either a monthly or daily rate for lodging when they stay in a state dormitory for less than a complete pay period.

California Code of Regulations, title 2, section 599.646, mandates that state agencies providing housing accommodations for employees must charge rental rates in accordance with state law and adjust those rates as required.

number of bedrooms. In addition to these annual surveys, this policy also requires agencies with state-owned housing to annually validate fair market value, which is defined as the average of two appraisals of comparable rented properties in the market area.

State lodging for DAAs is intended for fair-related business and events only and not for anyone's private purposes. Thus, an employee who allows someone who is not a state employee to use state-owned housing for personal purposes is misusing state resources and violating state law.

After we received an allegation that an executive at a DAA allowed a relative to stay in state-owned housing, we initiated an investigation and requested assistance from Food and Agriculture to conduct it.

An Executive Allowed Individuals to Stay Overnight in State-Owned Housing Without Paying Rent

The executive admitted that she allowed a relative, who was not an employee at the DAA, to stay overnight in the DAA's state-owned housing and park a car on the property without paying any rent periodically in 2018 and on a regular basis for several months in 2019. The executive told investigators that she allowed the relative to stay overnight because the relative worked near the DAA but lived further away and had a long commute. The executive admitted that the relative had a badge to park a car and a key to get into one of the rooms on DAA grounds. By allowing the relative to regularly stay and park for free on state-owned property, the executive made a gift of public funds, which occurs when an employee improperly gives away a public resource for private purposes. In this case, the executive allowed the relative to use the state-owned housing, a public resource that has value, for the relative's private benefit.

Furthermore, during the investigation, the executive admitted that she stayed overnight at the state-owned housing and that she also allowed several employees, including some contractors, to stay overnight on occasion without paying daily rental rates. The executive said that she and her predecessor used the availability of this state-owned housing as a recruiting and retention tool because employees often had long commutes between the DAA's urban location and their homes. Although allowing employees to stay overnight after fair events may be an appropriate use of this state-owned resource, employees who do so must pay a daily rental rate unless their job *requires* them to stay on-site as a part of their duties. Food and Agriculture reviewed the duty statements and the contracts for the relevant employees and contractors, including

Employees who stay overnight after fair events must pay a daily rental rate unless their job requires them to stay on-site as a part of their duties.

the executive, and did not locate any language that required them to stay. Thus, when the executive and these employees stayed overnight, they should have paid the appropriate daily rate.

Food and Agriculture and the Executive Failed to Complete Requirements Related to State-Owned Housing

Food and Agriculture and the executive failed to complete other requirements related to state-owned housing, including establishing a housing policy, submitting required information to CalHR, and keeping complete records of employees who stayed overnight. During the investigation, the executive acknowledged that the DAA does not have a housing policy, which typically outlines when employees can stay overnight and provides other specific information about the appropriate use of the state-owned housing. By allowing individuals to stay on state-owned property without a housing policy, the executive exposed the State to unnecessary liability. Moreover, neither the executive nor Food and Agriculture submitted annual housing surveys to CalHR with detailed information on the housing under the DAA's supervision, including any rental rate increases, and they failed to assess the fair market value of the housing. Food and Agriculture acknowledged during the investigation that it should have completed these requirements.

Additionally, the executive did not keep records that documented which employees stayed overnight and the number of days they stayed. Instead, during the investigation, the executive and the relevant employees and contractors provided Food and Agriculture with an estimate of when they stayed overnight based on their recollections. Some stayed periodically, while others stayed overnight more regularly during a period of at least two years. Unfortunately, given the lack of specific records and any fair market assessments, we could not determine how much these employees should have paid in daily rental charges for their overnight stays. Nonetheless, the executive's failure to keep accurate and complete records and to collect the appropriate daily rates from these employees led to a loss of revenue for the State.

The executive did not keep records that documented which employees stayed overnight and the number of days they stayed.

Recommendations

To remedy the effects of the improper governmental activities this investigation identified and to prevent those activities from recurring, Food and Agriculture should take the following actions:

- Work with the DAA's board of directors to take appropriate disciplinary action against the executive for allowing a relative to stay in state-owned housing and for failing to establish processes at the DAA to ensure that employees' use of state-owned housing is consistent with applicable state laws, regulations, and policies.
- Require the DAA to establish a housing policy that outlines expectations for employees who stay overnight and includes a section on adequate recordkeeping to ensure that it charges applicable employees each time they stay overnight.
- Require the DAA to submit annual housing surveys to CalHR and to validate fair market value to determine the daily rate employees must pay each time they stay overnight and to subsequently charge employees that appropriate daily rate.
- Review other DAAs that provide state-owned housing to ensure that they have housing policies and that they charge employees appropriate daily rates for any overnight stays.

Agency Response

In April 2021, Food and Agriculture stated that compliance with the CalHR State-Owned Housing Policy generally rests with the specific DAA's board of directors and its executive officer. Nevertheless, Food and Agriculture stated that it agreed with our recommendations and that, as an oversight agency, it will work with the appropriate entities to implement the recommendations.

Chapter 5

IMPROPER LEAVE REPORTING

State regulations require state agencies to keep complete and accurate time and attendance records for their employees. Most state employees submit timesheets each month that show their time, attendance, and any leave they have taken. Their supervisors and managers are required to review and approve these timesheets to ensure that they are accurate.

This chapter provides a substantiated example of improper leave reporting resulting from a state agency's inaction. Four of this agency's employees submitted inaccurate timesheets for up to several years even though the agency's administrative management was aware that these employees were underreporting the leave they had taken.

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CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

Its Inaction Caused Some Employees to Underreport Leave for Several Years

CASE I2019-0645

Investigative Results

For several years, managers at the California Department of Social Services (Social Services) were aware that a deficiency in the electronic time-reporting system (electronic system) used by salaried employees forced some of those employees to underreport some of the leave they took. Nonetheless, Social Services failed to take corrective action to fix the deficiency. Although Social Services' management decided on a workaround to the problem in a 2015 meeting, it did not effectively communicate the solution to employees or their supervisors, and it failed to follow up to ensure that the system was accounting for all appropriate leave. As a result of its inaction, four research specialists who often worked nine-hour days regularly underreported the number of hours of leave they took for years.

Background

When salaried employees are absent from a full day of work, they typically use accumulated leave—such as vacation or annual leave—to account for their missed work hours. Salaried state employees must account for time off in whole-workday increments, and for a typical employee, a whole workday is eight hours. To track employees' leave use, Social Services uses computerized time-reporting systems into which employees report their leave used. Their supervisors or other designated personnel certify in some manner that the employees' entries are approved and correct.

Social Services allows some salaried employees to work nonstandard work schedules. Table 2 illustrates one type of nonstandard work schedule, often called a *9/8/80 schedule*. It shows that over the course of two work weeks, an employee works eight nine-hour days and one eight-hour day. If an employee working this schedule is absent from work on a scheduled nine-hour workday, he or she should account for that whole-workday increment with nine hours of leave.

About the Agency

Social Services serves, aids, and protects needy and vulnerable children and adults. Its goals include strengthening and preserving families, encouraging individual responsibility, and fostering independence. To fulfill its mission, Social Services employs more than 4,200 employees throughout California.

Relevant Criteria

California Code of Regulations, title 2, section 599.665, requires state agencies to keep complete and accurate time and attendance records for all of their employees.

CalHR Policy 1501 titled *Non-Standard Work Schedule Policy for Work Week Group E/SE* requires salaried employees in this group who have a nonstandard work schedule to account for full-day absences by charging accumulated leave in whole-workday increments. A whole workday consists of the number of hours the employee is scheduled to work on the day of the absence.

Government Code section 19838 provides that when the State determines that it has made an overpayment to an employee, it must notify the employee of the overpayment and allow the employee to respond before commencing recoupment actions. It also requires the State to initiate such actions within three years from the date of overpayment.

Table 2
Example of a Nonstandard 9/8/80 Schedule

	TOTAL HOURS OF WORK PER DAY							TOTAL PER WEEK
	SUN	MON	TUE	WED	THU	FRI	SAT	
Week 1	—	9	9	9	9	8	—	44
Week 2	—	9	9	9	9	0	—	36
							<i>Total</i>	80

Source: CalHR Policy 1501.

State law requires each state agency to maintain complete and accurate time and attendance records for each of its employees. To comply with this mandate, Social Services requires its employees to submit—and their supervisors to approve—monthly timesheets that record their attendance and absences. Salaried employees and their supervisors must sign these monthly timesheets in its electronic system to certify their accuracy. Like all state agencies, Social Services' staff rely on approved timesheets to post each employee's absences and leave use into the State's leave accounting system that adjusts an employee's leave balances accordingly.

We received the allegation that four salaried employees at Social Services on 9/8/80 schedules failed to use the appropriate number of leave hours when they were absent. In response, we initiated an investigation and requested the assistance of Social Services to conduct it.

Managers Approved Timesheets for Four Employees Despite Knowing That the Time They Reported Was Inaccurate

Although state law requires state agencies to keep complete and accurate timesheets, managers at Social Services routinely approved the timesheets for four salaried employees who underreported leave usage. Further, they failed to notify the employees of the underreporting. Beginning in late 2014, Social Services allowed its managers to authorize salaried employees to work a nonstandard 9/8/80 schedule. However, these salaried employees reported only eight hours of leave when absent for a whole workday. The managers supervising the four salaried employees either failed to notice that these employees did not report nine hours of leave or were not given instructions for approving the employees' nonstandard scheduled time.

When Social Services reduces employees' leave balances for fewer hours than they used, the employees receive pay for time that they did not work. The leave hours not properly deducted from the employees'

leave balances remain available for the employees to use for additional paid time off from work or for subsequent conversion to cash payments when leaving state service. Moreover, employees' rates of compensation tend to increase over time as their careers advance in state service; therefore, when employees are paid for accumulated leave either later in their career or upon departing state service, they generally receive pay at a higher rate than they were being paid at the time they accrued the leave.

Social Services' managers are responsible for keeping track of the attendance and leave use of its employees; however, the department lacked any process to require a manager to review and ensure the accuracy of the leave use that a salaried employee entered into the electronic system. The managers who supervised the four salaried employees acknowledged that they consistently approved time-off requests of eight hours and either failed to notice that the employees underreported leave by one hour when they were absent for an entire workday or were not given instructions about how to approve the leave for employees working nonstandard schedules.

Social Services' Electronic System Lacks the Functionality to Allow Some Salaried Employees to Submit Accurate Timesheets

Salaried employees enter their monthly leave use in an electronic system, and their supervisors certify their accuracy. However, Social Services' electronic system for salaried employees does not allow them to report whole-workday increments of more than eight hours. In 2015 Social Services' labor relations management and human resources management (administrative management) discussed options to work around the electronic system's functionality limitations, and a labor relations representative instructed a manager that salaried employees should report their ninth hour of leave on another line in the system. However, administrative management did not effectively communicate these instructions about the new process to the salaried employees or their managers.

Instead, the message that most of these salaried employees received was that they should track their ninth hour of leave on whole days off on an informal log that was independent of the electronic system. Figure 8 represents an informal log that one of the salaried employees kept outside of the electronic system. This log demonstrates how the employees endeavored to comply with the instructions they received and to accurately account for their leave on days when they were absent from work. Although this informal log shows that this employee understood that she needed to account for this extra hour of leave, it is not tied in any way to the electronic system and did not factor into her actual leave balances.

Although an informal log shows that the employee understood that she needed to account for the extra hour of leave, the log is not tied in any way to the electronic system and did not factor into her actual leave balances.

Figure 8**Example of an Employee's Informal Log for Days When She Claimed Leave**

Date	Extra Hours Must Claim on Holidays/Vacation/Sick	Holiday Credit	Excess Time Earned	Explanation
1/1/2018		8		Don't owe an hour—get 8 hours of [Holiday Credit] since this falls on my day off
1/2/2018	1			Sick leave (self)—owe 1 hour
1/3/2018	1			Sick leave (self)—owe 1 hour
1/4/2018	1			Vacation—owe 1 hour
1/5/2018	1			Vacation—owe 1 hour
1/8/2018	0			Don't owe an hour—this is my short day
1/9/2018				Sick leave (self)—owe 1 hour
1/10/2018				Sick leave (self)—owe 1 hour
1/11/2018				Sick leave (self)—owe 1 hour
1/12/2018				Sick leave (self)—owe 1 hour
1/15/2018		8		Don't owe an hour—get 8 hours of [Holiday Credit] since this falls on my day off
1/31/2018			-7	Deficit time (January)

Source: Social Services.

Social Services' administrative management was aware of the electronic system's limitations when they decided on the work-around solution in 2015; however, they failed to take steps to change the time-reporting system for salaried employees to allow for whole-workday increments of more than eight hours. Moreover, administrative management did not ensure that employees and managers implemented the initial work-around solution in the way they intended. From at least 2014, this management failure allowed salaried employees who worked a 9/8/80 schedule to inaccurately report eight hours of leave when they were absent on nine-hour workdays in violation of state law. As of May 2020, Social Services had still not created a solution to allow salaried employees who work a 9/8/80 schedule to accurately report their leave time.

Recommendations

To remedy the effects of the improper governmental activities this investigation identified and to prevent those activities from recurring, Social Services should take the following actions:

- Adapt the electronic system so that salaried employees can accurately charge the correct number of hours of leave used when reporting nonstandard whole-workday increments.
- Determine the extent of underreported leave during the past three years by conducting a survey of all salaried employees who work nonstandard schedules and reduce leave balances accordingly or recover any overpayments as state law requires.
- Create policies that address accurate time reporting for salaried employees working nonstandard schedules and provide training to staff regarding these policies.

Agency Response

Social Services reported in April 2021 that it purchased a new timekeeping system that will allow salaried employees to report alternate work schedules. Social Services stated that it is currently piloting the system and will roll it out no later than the fall of 2021. In addition, Social Services stated that it is conducting an audit of salaried employees to determine whether any are working a nonstandard work schedule. Finally, Social Services stated that it is developing policies to instruct all employees, including salaried employees, on how to accurately report time in the new system.

Respectfully submitted,



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California State Auditor

May 25, 2021

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Appendix

CORRECTIVE ACTIONS TAKEN IN RESPONSE TO INVESTIGATIONS

Under the Whistleblower Act, the State Auditor may issue public reports when investigations substantiate improper governmental activities. When issuing public reports, the State Auditor must keep confidential the identities of the whistleblowers, any employees involved, and any individuals providing information in confidence to further the investigations.

The State Auditor may also issue nonpublic reports to the head of the agencies involved and, if appropriate, to the Office of the Attorney General, the Legislature, the relevant policy committees, and any other authority the State Auditor deems proper. For nonpublic reports, the State Auditor cannot release the identities of the whistleblowers or any individuals providing information in confidence to further the investigations without those individuals' express permission.

The State Auditor performs no enforcement functions: this responsibility lies with the appropriate state agencies, which are required to regularly notify the State Auditor of any actions they take in response to the investigations, including disciplinary actions, until they complete their final actions. The chapters of this report describe the corrective actions that state agencies implemented on some of the individual cases for which the State Auditor completed investigations from January 2020 through December 2020. In addition, the table summarizes all corrective actions that state agencies took in response to investigations from the time that the State Auditor opened the hotline in July 1993 until December 2020. These investigations have also resulted in many state agencies modifying or reiterating their policies and procedures to prevent future improper activities.

Table
Corrective Actions
July 1993 Through December 2020

TYPE OF CORRECTIVE ACTION	TOTALS
<i>Convictions</i>	12
<i>Demotions</i>	26
<i>Job terminations</i>	103
<i>Resignations or retirements while under investigation</i>	45*
<i>Pay reductions</i>	60
<i>Reprimands</i>	359
<i>Suspensions without pay</i>	38
Total	643

Source: State Auditor.

* The State Auditor began tracking resignations and retirements in 2007, so this number includes only those that occurred during investigations since that time.

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DEPARTMENT/AGENCY	CASE NUMBER	ALLEGATION	PAGE NUMBER
<i>California State University, Los Angeles</i>	I2019-1172	Misuse of university time	35
<i>Food and Agriculture, California Department of, and District Agricultural Association</i>	I2019-0663	Misuse of state resources	53
<i>General Services, Department of</i>	I2018-1047	Misuse of state time	41
	I2019-0068	Misuse of state time	47
	I2019-0649	Misuse of state time and resources	49
<i>Social Services, California Department of</i>	I2019-0645	Improper leave reporting	59
<i>State Hospitals, Department of</i>	I2019-1405	Improper hiring decision, dishonesty	29
<i>Tax and Fee Administration, California Department of</i>	I2019-0989	Incompatible activities	21
<i>Transportation, California Department of</i>	I2019-2039	Failure to recoup excess salary advances	9