



Investigations of Improper Activities by State Agencies and Employees

Inexcusable Neglect of Duty, Inefficiency, Improper Payments, Misuse of State Resources, Attendance Abuse, and Improper Hiring

May 2022

INVESTIGATIVE REPORT I2022-1





CALIFORNIA STATE AUDITOR

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May 26, 2022

Investigative Report I2022-1

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

Dear Governor and Legislative Leaders:

The California State Auditor's Office identified improper governmental activities in 2021 that cost the State nearly \$400,000. This inappropriate spending by several state agencies resulted from inefficiency, improper payments, misuse of state resources, fraudulent attendance reporting, improper hiring, and neglect of duty. In this report, we describe just six of the investigations in which we substantiated improper activities, such as the following:

- An employee's inexcusable neglect of duty and dishonesty at the Department of Developmental Services caused the department to pay \$305,000 in unnecessary wages.
- A superintendent at the California Department of Transportation used a state-owned vehicle for personal purposes, driving a total of 41,000 unauthorized miles at a cost of nearly \$23,000.
- Two employees of the California State Lottery engaged in time abuse for almost two years and received at least \$16,000 in salary for hours they did not work.

The complaints that my office investigates are submitted to us in accordance with the California Whistleblower Protection Act, through which the Legislature encourages state employees to report waste, fraud, abuse of authority, or violation of law without fear of retribution and declares that public servants best serve the citizenry when they can act with candor and honesty. The Act also authorizes my office to issue public reports about substantiated allegations when the State Auditor determines that it serves the interests of the State.

When we notify a state agency or authority of a substantiated allegation, the entity must report to my office within 60 days any corrective or disciplinary action it takes in response to our recommendations, and it continues to report monthly thereafter until it has completed corrective action.

Respectfully submitted,

A handwritten signature in black ink that reads 'Michael Tilden'.

MICHAEL S. TILDEN, CPA
Acting California State Auditor

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Summary

Results in Brief

Under the authority of the California Whistleblower Protection Act (Whistleblower Act), the California State Auditor's Office (State Auditor) conducted investigative work from January 1, 2021, through December 31, 2021, on 1,527 allegations of improper governmental activity. These investigations substantiated numerous improper activities, including inexcusable neglect of duty, inefficiency, improper payments, misuse of state resources, attendance abuse, and improper hiring. Within this report, we provide information on a selection of these cases.

Department of Developmental Services

In 2020 an employee's inexcusable neglect of duty and dishonesty caused the Department of Developmental Services (Developmental Services) to pay \$305,000 in additional wages to workers whose earnings or productive capacity was impaired by a physical or mental disability. Developmental Services incurred the additional cost because an employee failed to submit an application to the U.S. Department of Labor that would have certified Developmental Services to lawfully pay subminimum wages to the workers in question. The responsible employee was dishonest with management about submitting the application, and his supervisors failed to ensure that he had done so.

California Department of Corrections and Rehabilitation

The California Department of Corrections and Rehabilitation (CDCR) paid eight employees nearly \$15,000 in salary for union leave time that either was not properly approved or should have been paid using union resources rather than state funds. Our investigation revealed that the union leave reconciliation process involving CDCR's Office of Labor Relations, CDCR's individual institutions, and the employee union was inefficient, in part due to their failure to communicate with each other to resolve discrepancies and to reconcile hours to source documents.

Department of Parks and Recreation

Two Department of Parks and Recreation district administrators reassigned a park ranger to perform staff services analyst duties without the required approval from headquarters and without a compelling management need. As a result of the district

Investigative Highlights . . .

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

- » *An employee's inexcusable neglect of duty and dishonesty, and his supervisor's failure to verify his work, caused Developmental Services to pay \$305,000 in additional wages to a certain group of workers.*
- » *CDCR paid eight employees nearly \$15,000 in salary for union leave time that either was not properly approved or should have been paid using union resources rather than state funds.*
- » *Two Parks and Recreation district administrators reassigned a park ranger to perform staff services analyst duties without approval or a compelling management need.*
- » *A superintendent at Caltrans misused a state-owned vehicle for nearly five years, totaling 41,000 miles and costing nearly \$23,000.*
- » *Two Lottery employees abused state time and received \$16,000 for hours they did not work.*
- » *A senior manager at Cal OES unlawfully preselected a candidate and provided her with confidential information that gave her an unfair advantage over other candidates in the hiring process.*

administrators' actions, the employee—who was not performing duties associated with park rangers—continued to collect the additional salary, pay differentials, and enhanced retirement benefits intended for park rangers for a 10-month period, at a cost to the State of more than \$12,500.

California Department of Transportation

For almost five years, a superintendent at the California Department of Transportation misused a state-owned vehicle for his commute and personal errands. Over this period, he misused the vehicle for a total of 41,000 miles, at a cost to the State of nearly \$23,000.

California State Lottery

Two employees of the California State Lottery abused state time for almost two years and received at least \$16,000 for hours they did not work. The employees' time abuse was facilitated by their managers, who failed to provide adequate supervision.

California Governor's Office of Emergency Services

A senior manager at the California Governor's Office of Emergency Services (Cal OES) unlawfully preselected a candidate and provided her with confidential information that gave her an unfair advantage over other candidates in the hiring process. That candidate—who had been a junior manager at Cal OES—initially participated as an evaluator on the hiring panel for the same position for which she eventually applied and to which she was promoted.

Introduction

Under the California Whistleblower Protection Act (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 California State Auditor's Office (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 1,281 calls and inquiries from January 1, 2021, through December 31, 2021. Of these, we received 819 through our website, 343 through the mail, 99 through the hotline, 19 through fax, and one from an individual 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.

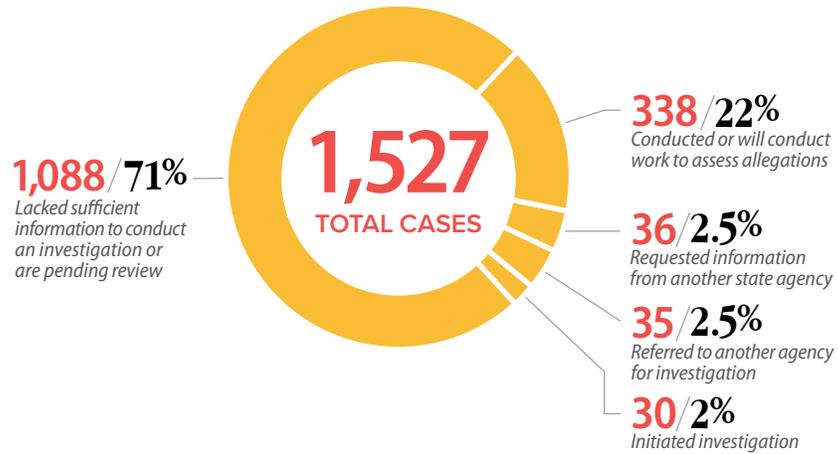
¹ The Whistleblower Act can be found in its entirety in Government Code sections 8547 through 8548.5. It is available online at <http://leginfo.legislature.ca.gov>.

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. For nearly 30 years, our investigative work has identified and made recommendations to remediate a total of \$584 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. 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.

During the one-year period covered by this report, we conducted investigative work on 1,527 cases that we opened either in previous periods or in the current period. As Figure 1 shows, 1,088 of the 1,527 cases either lacked sufficient information for investigation or are pending preliminary review. For another 338 cases, we conducted work or will conduct additional work—such as analyzing available evidence and contacting witnesses—to assess the allegations. For an additional 36 cases, we notified the respective agencies so that they could further investigate, and we requested that they gather information for 35 other cases to assist us in assessing the validity of the allegations. Finally, we independently initiated investigations for another 30 cases. Some of these cases may still be ongoing.

Figure 1
Status of 1,527 Cases, January 2021 Through December 2021



Source: State Auditor.

For information about the corrective actions taken in response to our investigations program, please refer to the Appendix, starting on page 43.

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Chapter 1

POOR FISCAL OVERSIGHT AND INEFFICIENCY

State law requires state employees to be wise stewards of the State's limited financial resources and to minimize waste and inefficiency, such as unnecessary or improper payments. This chapter provides several examples of investigations in which we substantiated that state agencies' inefficiency or lack of fiscal oversight resulted in the State improperly spending hundreds of thousands of dollars.

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DEPARTMENT OF DEVELOPMENTAL SERVICES

An Employee's Inexcusable Neglect of Duty Led to More Than \$300,000 in Unnecessary Spending

CASE I2020-0180

Results in Brief

As a result of an employee's inexcusable neglect of duty and dishonesty, a state-operated facility that provides services for individuals with developmental and intellectual disabilities (facility) had to pay more than \$305,000 in retroactive wages to workers whose physical or mental disabilities impair their earnings or productive capacity. The State incurred the additional cost because the facility failed to submit an application to the U.S. Department of Labor that would have allowed it to legally pay subminimum wages to its workers under the Fair Labor Standards Act of 1938 (FLSA). Because the responsible employee failed to submit the application, the facility did not receive the certification necessary to apply this exception to the minimum wage laws for calendar year 2019 and January 2020; as a result, the workers were entitled to California's full minimum wage for the hours they worked during this time.

Background

The FLSA establishes minimum wage and overtime pay standards that apply to employees in the private and public sectors. Under this law, qualifying employers may pay subminimum wages to workers whose earning or productive capacity is impaired by a physical or mental disability if the employers fulfill specified legal requirements and hold a valid subminimum wage certificate (certification) from the U.S. Department of Labor.

The Department of Developmental Services (Developmental Services) is responsible for administering a subminimum wage program (wage program) for its facilities. It administers its wage program at two state-run developmental facilities and one community facility, each of which provides services for individuals with developmental and intellectual disabilities. Each facility is responsible for submitting a renewal application to the U.S. Department of Labor for authorization to pay subminimum wages to workers participating in the wage program before the termination of its expiring certification.

About the Agency

Developmental Services works to ensure that Californians with developmental disabilities have the opportunity to make choices and lead independent, productive lives in the least restrictive setting possible. Developmental Services oversees state-operated facilities that provide residential services and programs designed to assist individuals with developmental and intellectual disabilities. The programs teach coping skills, impulse control, self-awareness, and enhanced decision-making, with the goal of facilitating clients' transition into the community.

Relevant Criteria

The FLSA, title 29 United States Code section 214(c), permits qualifying employers to pay workers whose earning or productive capacities are impaired by a physical or mental disability less than the federal minimum wage if the employers fulfill specified legal requirements and hold a valid certificate issued by the U.S. Department of Labor.

Title 29 of the Code of Federal Regulations, section 525.13(b), provides that if an employer timely and properly files to renew its subminimum wage certificate, the existing subminimum wage certificate remains in effect until the U.S. Department of Labor grants or denies the renewal application.

Government Code section 8547.2 defines an improper governmental activity as an activity by a state agency or employee that is economically wasteful or that is in violation of any state or federal law or regulation.

Government Code section 19572 specifies inexcusable neglect of duty, dishonesty, and other failure of good behavior of such a nature that it causes discredit to the appointing authority or the person's employment as causes for discipline of state employees.

In March 2018, the U.S. Department of Labor audited Developmental Services' wage program and found that one of its facilities was noncompliant with provisions of the FLSA from December 2013 through December 2015. As a result, it ordered Developmental Services to pay back wages totaling more than \$25,000 to 73 workers with developmental and intellectual disabilities who resided at the facility during that time.

In response to an allegation that Developmental Services failed to obtain authorization in 2019 to pay workers residing at one of its facilities a subminimum wage, we initiated an investigation.

An Employee Failed to Submit Required Information to the U.S. Department of Labor and Intentionally Misled His Supervisor

An employee at a Development Services facility failed to submit the subminimum wage renewal application (renewal application) to the U.S. Department of Labor for its 2019 certification and subsequently misled his supervisor about his actions. In January 2020, an advocacy group questioned the certification of one of Developmental Services' facilities to pay workers a subminimum wage. When questioned by his supervisor and the facility director, the employee responsible was initially dishonest about having submitted the renewal application for 2019. He claimed that it was his first attempt at submitting the renewal application electronically and that he was not aware that a system error had occurred until the advocacy group contacted Developmental Services one year after the original submission. He said that, upon discovery of the system error, he immediately informed his supervisor but told her that he could fix the problem and would ask for help if needed. Only after the supervisor requested a copy of the 2019 certification did the employee admit that he had "screwed up," that he had misled his supervisor about his ability to fix the error, and that the facility did not have a valid 2019 certificate.

Only after a supervisor requested a copy of the certification did the employee admit that he had "screwed up" and that he had misled his supervisor about his ability to fix the error.

In the absence of a fully submitted and approved 2019 renewal application, the workers participating in the wage program were entitled to retroactive pay for 13 months—from the beginning of January 2019 through the end of January 2020. The difference between the subminimum wage Developmental Services initially paid these workers and the minimum wage it owed them totaled more than \$305,000.

The employee's actions constitute cause for discipline because he was responsible for and experienced with the process for submitting the renewal application. He has been submitting the renewal applications on behalf of the facility for more than 10 years and received training through the U.S. Department of

Labor in May 2018 on the electronic renewal submission process. The U.S. Department of Labor also provides step-by-step written instructions for completion and submission of the renewal applications and provides applicants access to certification team specialists for technical assistance. If the employee still struggled to perform this duty, he should have asked for assistance from his supervisor or manager.

Developmental Services took disciplinary action against the employee in January 2021.

Developmental Services' Lack of Oversight of the Wage Program Contributed to the Unnecessary Spending

In its 2018 audit, the U.S. Department of Labor cited multiple problems related to how the facility calculated and documented its prevailing wage surveys and how it determined workers' pay. As part of a subsequent agreement with the U.S. Department of Labor, the facility agreed to require all staff, managers, and executives directly involved with the wage program to attend formal training to resolve the noted deficiencies. The training addressed multiple program requirements, including the renewal application.

Nonetheless, the facility director and supervisor still failed to provide adequate oversight of the program to ensure that the facility properly submitted the renewal application. In fact, neither individual recognized that the employee had failed to submit the renewal application until one year after it had been due. The facility director and the supervisor should have taken additional action to confirm that the renewal application had been submitted and that the certificate had been successfully obtained. For example, they should have required the employee to submit a copy of the certificate to the facility for recordkeeping purposes. Their failure to do so contributed to Developmental Services' responsibility to pay more than \$305,000 in back wages to affected workers.

On January 1, 2022, a new state law went into effect that will phase out and ultimately prohibit payment of subminimum wages to California employees with disabilities. The law requires the State Council on Developmental Disabilities to complete a multiyear phase-out plan by January 1, 2023, after which the subminimum wage prohibition will become effective January 1, 2025.

The facility director and supervisor failed to provide adequate oversight of the program to ensure that the facility properly submitted the renewal application.

Recommendations

To prevent improper governmental activity similar to that detailed in this investigation from recurring, Developmental Services should determine whether it will need to submit future renewal applications in order for its wage program to stay in compliance with the FLSA and, if so, it should take the following actions:

- Create written procedures to ensure compliance with the FLSA and include instructions specific to submission of the renewal application to the U.S. Department of Labor. The procedures should also include instructions for the required corrective actions related to retroactive payments when errors are identified.
- Provide formal training pertaining to compliance with applicable sections of the FLSA to all employees responsible for the wage program and submission of the renewal application, including supervisors and management. The training should include how to develop prevailing wage surveys, time studies, and wage rates, and how to maintain proper recordkeeping.

Agency Response

Developmental Services reported in February 2022 that it had submitted the renewal application to continue the wage program while the agency participates in the statewide effort to phase out the use of subminimum wages as Labor Code section 1182.12 requires. Developmental Services also reported that it will provide updates on the development of written procedures and training to staff who support the current wage program.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

Its Inefficient Practices Have Led to the State Inappropriately Paying for Employees' Union Leave

CASE I2020-2058

Results in Brief

The California Department of Corrections and Rehabilitation (CDCR) employs nearly 30,000 individuals who are represented by bargaining unit 6 (union). Multiple parties are responsible for ensuring that the work hours that these employees spend performing union activities (union leave) are correctly funded by either the State, the union, or the employees. Those responsible for accounting for union leave include CDCR's Office of Labor Relations (OLR), which acts as a liaison between the union and individual institutions; the human resources departments at CDCR's individual institutions; and the employees who log union leave on their timesheets. Our investigation found that 280 hours of union leave were either not properly approved or were paid for using state funds instead of union resources, which resulted in \$13,000 in salary that CDCR paid to eight employees. Additionally, one institution failed to record 48 personal leave hours for one particular employee, valued at approximately \$2,000. We further found that the parties involved in requesting, approving, and reconciling union leave failed to communicate with each other regarding discrepancies. Failing to properly account for union leave exposes state funds and union hours funded by employees to mismanagement and abuse.

About the Agency

CDCR has a mission to facilitate the successful reintegration of the individuals in its care back to their communities. It is responsible for providing them with education, treatment, and rehabilitative and restorative justice programs so that they will have the tools to be drug-free, healthy, and employable members of society. As part of its effort to fulfill this mission, the agency employs nearly 30,000 individuals represented by bargaining unit 6.

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 8547.2 specifies that inefficiency by state agencies or employees constitutes an improper governmental activity.

Government Code section 13402, et seq., assigns agency heads responsibility for establishing, maintaining, and effectively overseeing a system of internal controls within their state agencies.

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.

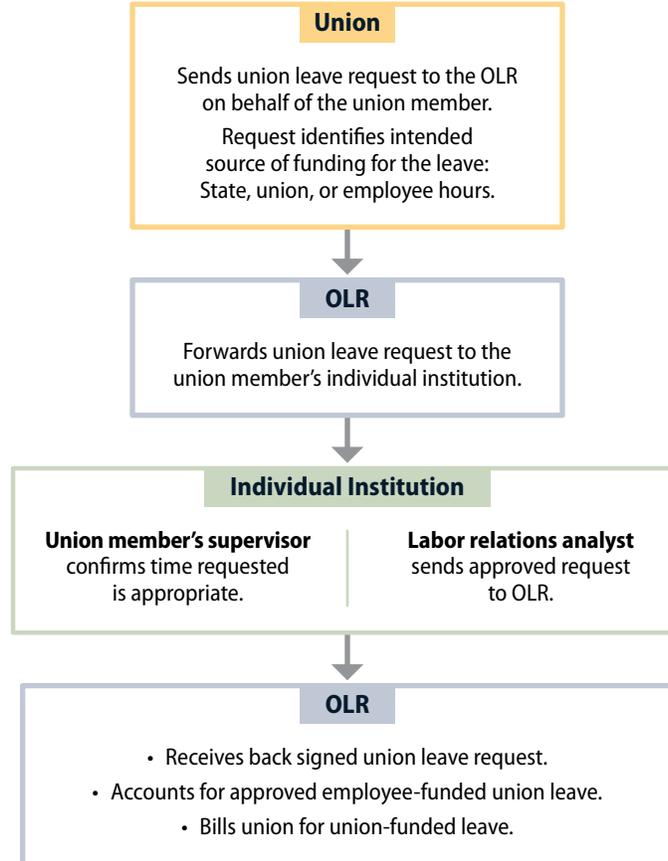
Background

The union represents correctional officers, parole agents, and other custody staff throughout the State. According to the collective bargaining agreement between the State and the union, employees are entitled to reasonable time off without loss of compensation to confer with union representatives. Union representatives, who are also state employees, are entitled to the same right to use union leave when representing employees. In addition, employees can use union leave for other union-related purposes, including, but not limited to, addressing grievances, engaging in bargaining unit contract negotiations, and attending union conferences. Depending on the purpose of an employee's union-related work absence, his or her leave may be compensated by state funds, union resources, or hours funded by employees. Three parties—the union, the OLR, and CDCR's individual institutions—are involved in the request and approval process for an employee's use of union leave.

Accurately accounting for union leave is critical to ensuring that the union, the employees, and the State are paying for their correct share.

The union, the OLR, and CDCR's individual institutions each have roles in ensuring the accurate accounting of union leave. When the union identifies a need for an employee to participate in union matters, it sends to the OLR a union leave request that identifies the category of union leave being requested, the dates of the time off, and the number of leave hours. The OLR forwards the request to the employee's individual institution, where his or her supervisor ensures that the time requested is appropriate and does not fall on the employee's day off. All three parties—the union, the OLR, and the individual institutions—keep copies of the union leave requests. Figure 2 shows this process.

Figure 2
CDCR's Union Leave Request Approval Process



Source: Interviews with OLR staff.

The OLR bears the responsibility of tracking and seeking reimbursement for union leave that the union funds. The OLR also accounts for union leave paid for using employee-funded hours. Employees who use union leave are responsible for documenting the time off on their timesheets, while supervisors are responsible for verifying that the employees' time away from work is authorized by the union and is accurately documented. Individual institutions process the employees' timesheets and report union leave in the State Controller's Office's (SCO) leave accounting system.

In September 2005, we reported that CDCR failed to track the total hours of union leave funded by employees. In response to a new allegation that several employees were improperly using union leave, we initiated an investigation.

Investigative Results

When we reviewed timesheets, leave records, and union leave reports from January 2019 through December 2020, we found inefficient practices within the OLR related to its union leave reconciliation procedures, which led to eight employees using union leave that was either unaccounted for or unapproved. For instance, the OLR did not always ensure that union leave requests accurately indicated the number of work hours needed to account for the dates requested. In one instance, the union submitted a leave request that was several hours short of fully accounting for the dates it requested off for an employee. Although the employee accurately reported the dates off on his timesheet, the OLR accounted for only the hours the union requested.

The OLR also failed to fully account for union leave funded by employees. Specifically, although the union requested the correct number of work hours to account for six of the employees' union leave, the OLR did not withdraw the correct number from the pool of employee-funded hours. The OLR reported that its staff and the union reconciled the pool of employee-funded hours every six months before 2020 and that they have been meeting more regularly to address a discrepancy the OLR identified in 2019. However, the reconciliation process did not include the review of source documents, such as union leave request forms.

We further determined that CDCR's individual institutions failed to ensure that their employees recorded their union leave use correctly on their timesheets and that the timesheets included sufficient support for that leave. For instance, several institutions failed to ensure that the union leave that employees reported was supported with union leave requests. In the cases we reviewed, some of this

CDCR's individual institutions failed to ensure that their employees recorded their union leave use correctly on their timesheets.

union leave should have been funded by employees. However, because of the lack of union leave requests, the OLR did not account for these hours. Instead, the State paid for the employees' time off.

In other instances, the OLR did account for employee-funded union leave that employees charged on their timesheets, but it could not provide evidence that the union requested this time off. Although it is possible that this leave had been through the appropriate approval process, the absence of evidence left us unable to determine what occurred. For example, one employee charged 64 employee-funded hours to his timesheet. Although the OLR accounted for all 64 hours, 24 of those hours did not include a corresponding union leave request. In another instance, an institution failed to recognize that an employee had approval to take state-funded union leave but reported on his timesheet that the leave had been union-funded. Although the union did not pay for the leave the employee incorrectly reported, the mistake led to the institution's reporting to the SCO the employee's time off under the incorrect union leave category, resulting in poor recordkeeping.

CDCR's inefficient union leave reconciliation practices led to eight employees reporting 280 hours of union leave that were either not correctly approved or not correctly accounted for.

Our limited review found that, in total, CDCR's inefficient union leave reconciliation practices led to eight employees reporting 280 hours of union leave that were either not correctly approved or not correctly accounted for. The State paid for 168 of these leave hours at a total cost of \$7,771, even though they should have been paid for either with union resources or by the employees. The employees charged an additional 112 hours of union leave on their timesheets for which the OLR could not provide evidence to establish that the union requested this time off. The total value of these 112 hours is \$4,985.

Finally, we identified an additional leave-related issue involving one of the individuals whose union leave we reviewed. Specifically, one institution failed to record 48 personal leave hours that this employee reported on his timesheet. Because of the institution's accounting error, the State paid this individual more than \$2,000 for hours during which he was not performing state work.

Recommendations

To remedy the effects of the improper governmental activities this investigation identified and to prevent those activities from recurring, CDCR, in conformity with the State's memorandum of understanding with the union, should take the following actions:

- Reconcile the unaccounted for or unapproved leave use that we identified for the eight employees whose records we reviewed to ensure that their union leave since January 2019 has been correctly recorded, supported with approved requests, and paid for by the correct source.
- Require the state employees who work on the reconciliation of employee-funded union leave to routinely cross-check that hours used are supported by union leave requests. They should further ensure that the dates and hours requested are consistent by including and thoroughly reviewing union members' union leave requests as part of the reconciliation process.
- Establish written policies and procedures instructing its individual institutions to reconcile employees' timesheets with union leave requests when the employees report taking union leave.

Agency Response

CDCR responded in January 2022 that although it was not able to provide us with evidence for the 112 employee-funded hours that the OLR recorded, it believes the reconciliation process with the union would have provided the approval. While we acknowledge in the report that these hours could have been approved by the union, the institution, and OLR, we highlighted this because an OLR representative stated that she did not check source documents, such as union leave requests, when reconciling employee-funded hours. Thus, the potential exists that the union may not have approved the hours the employees used.

In response to the recommendations in this report, CDCR reported in March 2022 that it had reviewed the hours identified in the report and would follow up with the union when the report is published. CDCR also reported that it is updating its union leave reconciliation procedures to ensure the clarity of the reconciliation requirements, including the requirements for the analysts who perform the reconciliation. The updates will provide direction for working with personnel offices at individual institutions and OLR staff to fix discrepancies and require monthly reconciliations. Finally, CDCR reported that it created a team to develop written procedures for union leave requests and that it anticipates fully implementing this recommendation by June 2022.

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DEPARTMENT OF PARKS AND RECREATION

District Administrators Overpaid a Park Ranger for Performing Analyst Duties

CASE I2019-0204

Results in Brief

Two Department of Parks and Recreation (State Parks) district administrators assigned a park ranger the duties of a staff services analyst (analyst) without having obtained the required approval from State Parks' management (headquarters) and without having a compelling management need. As a result of the improper reassignment, these district administrators caused the employee—who was not performing duties associated with park rangers—to continue collecting the additional salary, additional pay for specialized competencies (pay differentials), and special enhanced retirement benefits (safety retirement benefits) intended for employees in safety positions whose jobs provide public protection. State Parks improperly paid the employee additional salary, pay differentials, and safety retirement benefits for a 10-month period, at a cost of more than \$12,500.

Background

State Parks is headquartered in Sacramento and organized into 21 districts based on geographic locations. It delegates hiring decisions to its districts, each managed by a superintendent. However, final decisions about staffing require approval from headquarters.

State law mandates that state employees perform the duties of their appointed positions unless properly reassigned. Park rangers are classified as peace officers and are responsible for activities such as making physical arrests, issuing citations, conducting investigations, performing search and rescue activities, and providing emergency medical aid. Because park rangers are peace officers and engaged in public safety activities, they are exposed to an increased risk of physical injury. Therefore, they receive safety retirement benefits. They are also eligible to retire earlier and receive retirement payments based on a formula that results in higher benefits paid for time served. Additionally, they receive annual allowances to offset the cost of purchasing and maintaining their uniforms, as well as monthly allowances, including geographic recruitment and retention pay. These are benefits to which many other State Parks employees are not entitled.

About the Agency

State Parks helps to preserve the State's extraordinary biological diversity, protects its most valued natural and cultural resources, and creates opportunities for high-quality outdoor recreation. It employs state park rangers who perform peace officer duties and responsibilities, which include protecting and preserving the state parks and their visitors each year.

Relevant Criteria

Government Code section 19818.8 mandates that a state employee must not be assigned to perform the duties of any class other than that to which his or her position is allocated, except in specific, limited circumstances.

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.

Government Code section 8547.2 provides that any economically wasteful activity by a state agency or employee constitutes an improper governmental activity.

Government Code section 8547.6 provides that any information obtained by an agency from the State Auditor about an investigation must be kept confidential and must not be divulged or made known to anyone without the prior approval of the State Auditor.

Government Code section 19572 identifies failure of good behavior that causes discredit to an appointing authority as a reason for discipline of state employees.

In contrast to park rangers, analysts work in offices and do not face the unique conditions and risks that park rangers do. Thus, analysts are not entitled to receive safety retirement benefits. They generally perform administrative and analytical duties, including analyzing and tracking invoice payments, procurement, and contracting.

After we received a complaint that a park ranger was performing analyst duties not commensurate with a park ranger's classification and pay, we initiated an investigation.

District Administrators Improperly Reassigned an Employee and Allowed Her to Continue Collecting Enhanced Pay and Benefits

In December 2018, the employee at the center of this investigation voluntarily informed the district administrative officer and the district superintendent that she wished to resign as a park ranger. Instead of accepting her resignation, the district administrative officer asked the district superintendent if she could transfer the employee into a vacant analyst position, and he approved the request. However, State Parks' protocol requires that the district obtain final approval from headquarters to make a reassignment. Although the district requested approval from headquarters, the district administrative officer admitted that she never received official approval from human resources (HR) at State Parks' headquarters to make the transfer.

Further, although the employee had the education necessary to qualify for the analyst position, she did not meet other requirements to transfer into the position. Nevertheless, for 10 months, the district administrative officer, with the approval of the district superintendent, assigned the employee to perform analyst duties rather than park ranger duties, but the employee continued to receive a park ranger's salary in violation of state law and personnel rules.

For a 10-month period, the employee performed analyst duties, including issuing and paying contracts and overseeing vehicle maintenance. Although she did not perform any duties of her park ranger classification, she continued to receive salary and extra pay intended for a park ranger. In total, she improperly received \$12,563 more in compensation than she was due. This amount included \$1,250 to offset the cost of purchasing and maintaining her uniforms and \$520 monthly for education, recruitment and retention, and adjustments for geographic work locations.

Although the employee did not perform any duties of her park ranger classification, she continued to receive salary and extra pay earmarked for a park ranger.

Weak Administrative Controls and a Lack of Oversight Led to State Parks Overpaying the Employee

The two district administrators failed to obtain required approval from headquarters before reassigning the employee to perform analyst duties, resulting in the overpayment to the former park ranger. An HR manager at headquarters provided evidence to us showing that, in December 2018 and February 2019, he instructed various HR personnel, including the HR liaison to the district, to notify these district administrators that the transfer was not approved and the employee needed to continue to perform park ranger duties because she did not meet the minimum qualifications for the analyst position. Nonetheless, when we interviewed the district administrative officer and the district superintendent, each stated they were not aware that HR management had denied the request to transfer the employee into the analyst position. That said, they could not provide evidence that headquarters had approved the transfer.

The district administrative officer acknowledged that she did not receive an official notification from HR management that the employee had been transferred into the analyst classification. Instead, she asserted that she received verbal approval to transfer the employee. However, she could not recall who gave the approval. She recalled speaking only with the HR liaison from State Parks' headquarters. That HR liaison told us that he advised the district administrative officer in January 2019 that the transfer could not happen, and he stated that he discussed the issue with her again in July 2019. However, the HR liaison could not provide any evidence to support that he followed HR management's instructions to notify the district administrators that the employee's transfer was denied.

When interviewed, the employee stated that when she became aware that she was still receiving pay as a park ranger while working as an analyst, she immediately alerted the district administrative officer, who was her direct supervisor. The employee said that the district administrative officer assured her that the park ranger pay was appropriate because she was considered a park ranger on special assignment. However, when we asked the district superintendent if he had approved the employee to work on a special assignment, he told us he could not recall. He said that he felt comfortable with the decision to allow the employee to perform analyst duties because he thought it was a sound financial decision for overall efficiency. Nevertheless, because of the safety retirement benefits for park rangers, the employee stood to receive significantly more in her future pension than an analyst would receive. Thus, in addition to violating the law, the district's decision to allow the employee to perform analyst duties was economically wasteful.

In addition to violating the law, the district's decision to allow the employee to perform analyst duties was economically wasteful.

The district executive to whom the district superintendent reports stated that he learned that the park ranger was performing analyst duties only after we began our investigation. He said that he had previously instructed the district superintendent to consider the following options for the employee:

- Provide a reasonable accommodation to address the employee's concerns related to park ranger duties.
- Provide a limited-duty assignment for a medically related reason.
- Provide a training and development assignment.

As we previously describe, the district superintendent did not adhere to this directive and proceeded with the unauthorized reassignment.

The HR Liaison Unlawfully Disclosed Information About This Investigation

State law prohibits the disclosure of information about whistleblower investigations without proper authorization. Upon initiating the investigation, we informed the HR liaison that he must maintain the confidentiality of the investigation by not disclosing any information about it to any individual without prior approval of the State Auditor. Despite this warning, the HR liaison told the district executive that the State Auditor was conducting an investigation of the park ranger performing analyst duties. By informing the district executive, the HR liaison engaged in an improper governmental activity—a violation of state law—and could have compromised the integrity of our confidential investigation.

Recommendations

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

- Take appropriate corrective or disciplinary action against the district administrative officer and the district superintendent for their failures to follow state law and civil service rules when they assigned the employee to perform duties of a classification other than one to which her position was allocated.
- Take appropriate corrective or disciplinary action against the HR liaison who violated the law by breaching the confidentiality of our investigation.

- Provide training to all relevant staff about the confidential nature of the State Auditor’s work specific to whistleblower investigations.
- Recover the amount improperly paid to the employee to the extent permitted by state law.

Agency Response

In March 2022, State Parks reported that it was working with its performance management team to take the appropriate corrective actions for the district administrative officer, district superintendent, and HR liaison. Finally, State Parks reported that it was working with CalHR to determine whether it has any legal options to recover amounts improperly paid to the employee. It also reported earlier in January 2022 that it had identified and developed training that provides guidance on the confidentiality requirements of whistleblower investigations and would schedule its employees to complete this training after it was approved.

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Chapter 2

MISUSE OF STATE RESOURCES AND IMPROPER HIRING

State law prohibits state employees from using state resources for personal purposes. This chapter includes two examples of investigations in which we substantiated allegations regarding the misuse of a state vehicle and the misuse of state-compensated time. In each instance, increased oversight might have prevented the misuse from occurring.

This chapter also includes the results of an investigation that involves a manager who appointed an employee in violation of the California Constitution and various state laws, known as *civil service rules*. These rules establish that the State must appoint and promote employees through a fair process that is based strictly on merit, meaning the individuals' abilities to perform the work in question.

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CALIFORNIA DEPARTMENT OF TRANSPORTATION

A Superintendent Used a State-Owned Vehicle as His Primary Personal Vehicle

CASE I2021-0011

Results in Brief

From January 2017 through October 2021, a superintendent at the California Department of Transportation (Caltrans) misused a state-owned vehicle (state vehicle) for his commute and personal errands. The misuse totaled almost 41,000 miles, which represents a cost to the State of nearly \$23,000.

Background

Caltrans equips its maintenance facilities with various types of state vehicles for employees to use to perform their job duties, and it stores those vehicles at its maintenance facilities. Occasionally, employees may store state vehicles overnight at their homes when they intend to use them for business purposes on the following day. However, the law does not permit state employees to use state vehicles to regularly commute from their residences to their work locations, except in very limited circumstances. One such exception is when employees are required to respond to urgent or emergency calls outside of regular work hours, and those calls reasonably require the use of a state vehicle. For example, law enforcement officers may commute with a state vehicle when they are frequently on call to respond in person to emergencies after regular work hours.

If an employee frequently brings a state vehicle home and keeps it overnight, that employee must also have formal authorization to do so. To obtain the necessary vehicle home storage permit, the employee must meet each of seven specific requirements, which Figure 3 lists.

About the Agency

Caltrans manages more than 50,000 miles of California's highway and freeway lanes. Its maintenance employees are responsible for the care and upkeep of state highways to conserve the public's investment in the highway system and ensure that the system will continue to provide maximum benefits to the traveling public.

Relevant Criteria

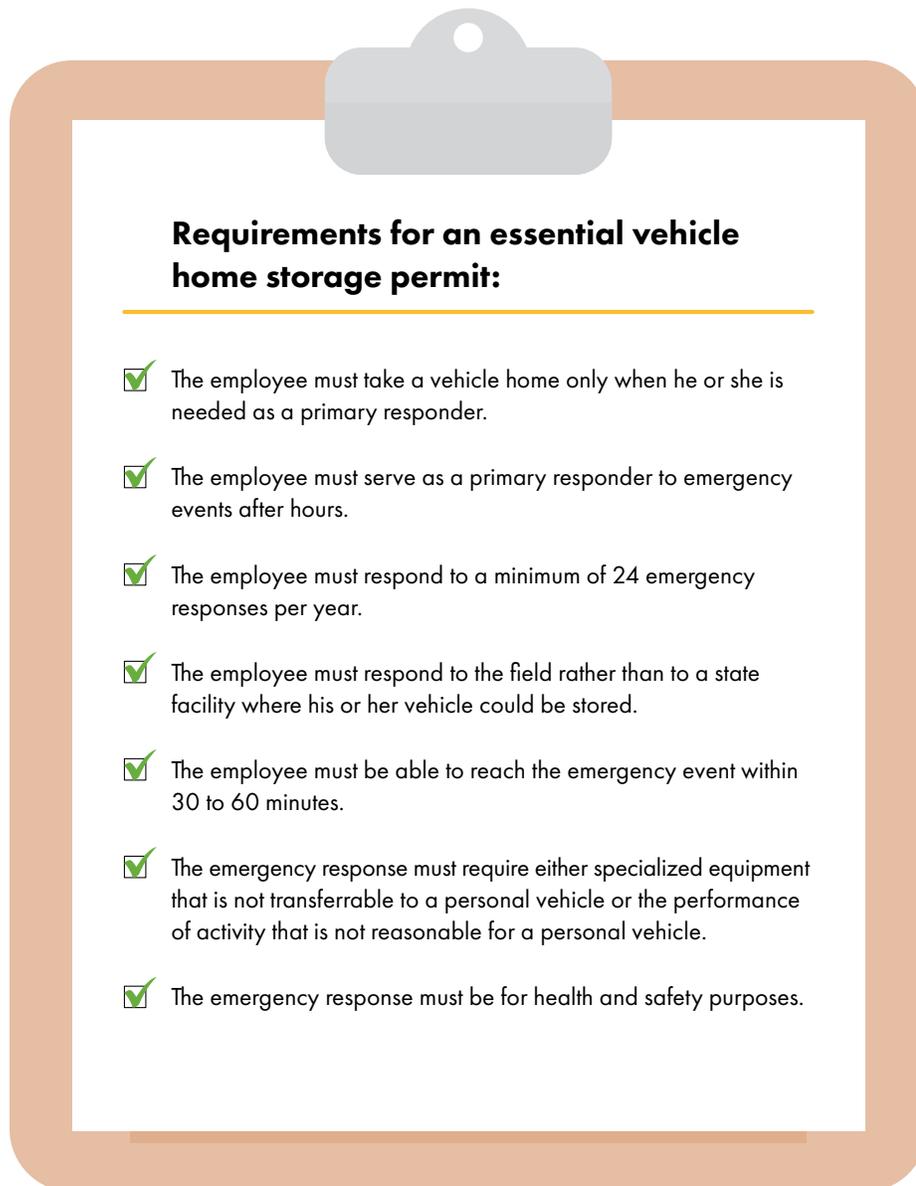
Government Code section 8314 prohibits state employees from using public resources, such as state-owned vehicles, for personal purposes.

Government Code section 19993.1 provides that state-owned vehicles shall only be used in the conduct of state business.

California Code of Regulations, title 2, section 599.802, specifies that misuse of a state-owned vehicle includes use by an employee to commute between work and the employee's home, or the vicinity thereof, unless a specified exception applies. Section 599.803 specifies that state employees are liable to the State for the actual costs attributable to their misuse of a state vehicle, including the operating expenses computed on a mileage basis for the distance traveled.

Section 599.808 requires employees to obtain in advance a vehicle home storage permit from their employing agencies to frequently store a state vehicle at or in the vicinity of their homes, regardless of the reason for storage.

Figure 3
Requirements for an Essential Vehicle Home Storage Permit



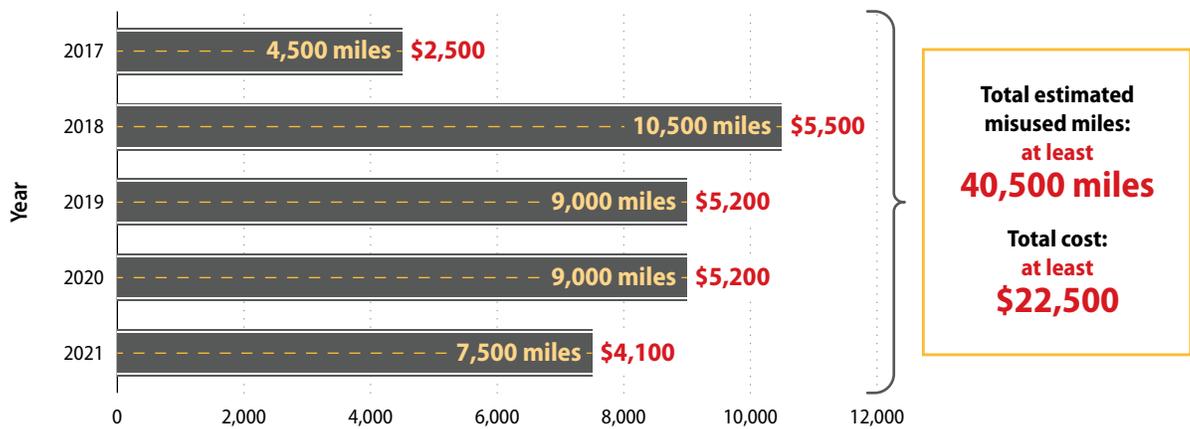
Source: *State Administrative Manual* section 4109.

The State may be liable for damages or injury for accidents involving state vehicles. Consequently, use of state vehicles must be limited to necessary state business and should not include personal activities, such as commuting.

Investigative Results

A superintendent violated the law when he misused a state vehicle for personal matters and commuted to work from three different locations—his primary and secondary residences and a state-owned parking lot located near his primary residence. A review of the GPS reports for the state vehicle that the superintendent used revealed that he regularly drove it for personal purposes from 2017 through 2019. During those three years, the superintendent’s misuse of the state vehicle totaled almost 24,000 miles, representing a cost to the State of nearly \$13,200. For 2020 through 2021, Caltrans’ GPS report had insufficient information for a detailed analysis, but the data show that the superintendent was still using the state vehicle for commuting and personal errands. Furthermore, the superintendent confirmed that he used the same state vehicle from January 2020 through October 2021 and did so in the same manner he had in the previous years. Therefore, we estimate the superintendent’s vehicle misuse from January 2020 through October 2021 to total nearly 16,500 miles and to have cost the State an additional \$9,300. Figure 4 shows his total misuse of about 40,500 miles, at a cost to the State of \$22,500.

Figure 4
The Superintendent’s Vehicle Misuse Totaled Approximately 40,500 Miles in a Five-Year Span for a Cost of Nearly \$22,500



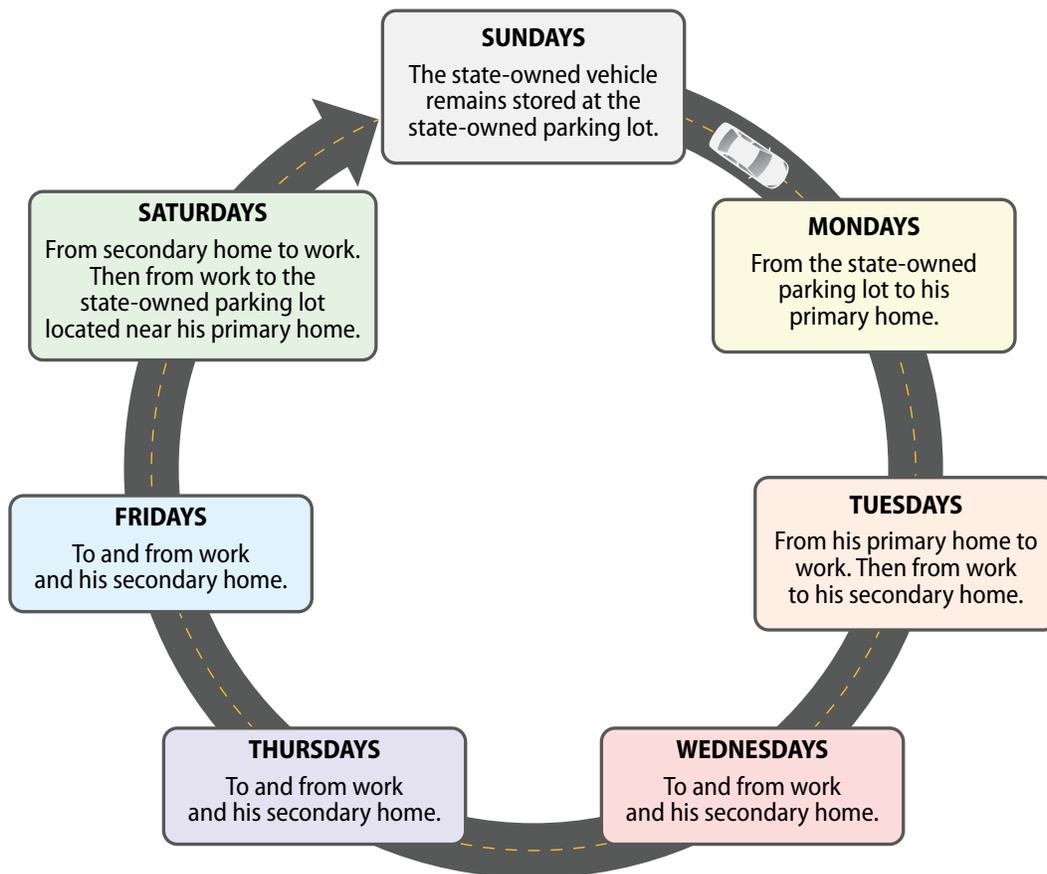
Source: Analysis of GPS reports from 2017 through 2021 and interview statements.

According to the GPS data and the superintendent’s own statement, his weekly commute included traveling from work to his primary home, to a parking lot located near his primary home, and to

his secondary home. Figure 5 demonstrates the superintendent's regular weekly commute using the state vehicle, which the GPS data support as his well-established pattern.

Figure 5

The Superintendent's Weekly Driving Pattern Involved Misusing the State Vehicle Nearly Every Day



Source: Analysis of Caltrans' GPS reports from 2017 through 2021 and interview statements.

The superintendent claimed that his use of the state vehicle to commute was justified, but his argument was not credible. He said that he used the state vehicle to commute because he had to respond to emergencies after regular workhours. However, his duties did not satisfy the exception in state law, which we previously describe. The superintendent and his previous manager explained that in the rare event that he was contacted outside of work hours, he was generally able to coordinate from home over the phone with his staff about how to proceed. According to his previous manager,

the type of emergency the superintendent was called upon to resolve largely related to ensuring required levels of staffing, which did not reasonably require him to use or take home a state vehicle on a daily basis.

Furthermore, the superintendent did not qualify for or obtain formal authorization to bring a state vehicle home and keep it overnight on a frequent basis, as state law requires. The superintendent admitted that he did not frequently respond to emergencies. He could not recall the exact number of emergencies to which he responded in 2019; however, he believed it was between five and 10. Although he struggled to recall exactly when he last physically responded to an emergency after hours, he first mentioned December 2020 and then March 2021, stating that he thought maybe he responded twice in 2021. He was not able to provide records of specific dates when he had to use a state vehicle to respond to emergencies.

The superintendent's managers confirmed that the superintendent was not justified in taking a state vehicle home each day. His previous manager, who supervised him from 2017 to 2019, told us that not many emergencies occur at the stationary facility where the superintendent works. The superintendent's current manager was also unable to think of any justification that would allow him to regularly take or store a vehicle at home. The superintendent was neither able to name the manager who assigned a state vehicle to him, nor was he able to identify who gave him authorization to take a state vehicle home on a daily basis. Both the previous and current managers agreed that the superintendent's commute and personal use of the state vehicle constitute a misuse of state resources.

In addition to commuting, the superintendent regularly misused the state vehicle for personal errands. He confirmed that he often used the state vehicle to drive to his primary home on his days off, to attend medical and dental appointments, to go to recreational activities, and to visit a family member. The superintendent stated that he used the state vehicle for personal purposes because it was available and convenient and because he did not have a personal car at his secondary home. The superintendent agreed that his personal use of the state vehicle constituted a misuse of state resources, and he offered to reimburse the State for the costs it incurred.

We found that minimal oversight from the superintendent's managers likely contributed to his misuse of the state vehicle. The managers' offices were located at a different Caltrans location and, according to one manager, they visited the superintendent's facility once a month only to attend meetings. The previous manager did not "keep tabs" on the superintendent because he believed that the superintendent

The superintendent regularly misused the state vehicle for personal errands.

was efficient and did a good job. Both managers said they were unaware that the superintendent was regularly commuting with a state vehicle.

After the completion of our investigation, we learned that the superintendent retired.

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:

- Consider including notice of this investigation in the superintendent's personnel file.
- Calculate the cost of the vehicle misuse and pursue collection of the funds from the superintendent.
- Improve management oversight procedures as appropriate and take steps to ensure that the Caltrans employees who use state vehicles at the superintendent's facility are doing so for state business only.

Agency Response

Caltrans reported in April 2022 that it plans to review the report and create a corrective action plan. Although the superintendent no longer works for Caltrans, Caltrans noted that it will be prepared to pursue disciplinary action should he return to Caltrans for employment within the applicable statute of limitations.

CALIFORNIA STATE LOTTERY

As a Result of Weak Managerial Oversight, the State Paid Two Employees \$16,000 for Hours They Did Not Work

CASE I2019-1845

Results in Brief

In response to an allegation that two California State Lottery (Lottery) employees were taking frequent extended lunches without accounting for their absences, we requested the Lottery's assistance to investigate. The investigation determined that both employees abused state time and were dishonest during investigative interviews. The Lottery also determined that the employees' managers failed to adequately supervise their subordinates.

Two Employees Engaged in Time Abuse for Almost Two Years

The Lottery analyzed nearly two years of electronic entry and exit records that employees generated when they swiped identification badges to enter and leave their main offices, starting with records from July 2018. It found that Employee A failed to account for at least 256 workhours over 21 months and that Employee B failed to account for at least 187 workhours over 18 months. As a result, the two employees received at least \$9,215 and \$6,812, respectively, in wages for hours they did not work.

When the Lottery investigators questioned the employees about the allegations, the employees were unable to explain the work hours in question and were dishonest in their answers. For instance, Employee A said that he could not remember a single instance when he took longer than 30 minutes for his lunch; however, Manager A, who directly supervised Employee A, stated that Employee A communicated by text to her that he would take a longer lunch "one or two times a week." Additionally, Employee A explained that his duties required him to work away from his desk for extended periods, and he told investigators that the frequent discrepancies between his timesheets and his electronic entry and exit records could be the result of those job duties. When investigators asked Employee A's manager about this explanation, she replied, "No duties take [Employee A] away from his desk two to four times a week for one to two hours in the middle of the day consistently." She added that Employee A's duties away from his desk could account for only "a few hours once a month."

Employee B was similarly dishonest. During his interview, Employee B stated that his daily work schedule during the period reviewed allowed for a 60-minute lunch break. When asked whether he might have taken lunch breaks in excess of 60 minutes, Employee B replied that he "[couldn't] say

About the Agency

Lottery is a public agency established to market and sell lottery products to the California public to provide supplemental funding for public education. Headquartered in Sacramento, the Lottery has nearly 800 full-time employees throughout California.

Relevant Criteria

Government Code section 19990 prohibits state employees from engaging in activities that conflict with their state duties, including failing to devote their full time, attention, and efforts to their state employment during work hours.

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 identifies inexcusable neglect of duty, dishonesty, and misuse of state property as causes for employee discipline.

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

As a result of its investigation, the Lottery served Employees A and B with formal discipline and proportional salary reductions

one way or another.” However, the Lottery’s review of Employee B’s electronic entry and exit records showed that his lunch break exceeded 60 minutes about 57 percent of the time. Further, the Lottery’s review of Employee B’s approved work schedule revealed that he was allowed only a 30-minute lunch period, not 60 minutes as he claimed, and it determined that Employee B did not routinely work longer in the day to make up for the time. Therefore, the Lottery concluded that Employee B misused state time whenever his lunch period exceeded 30 minutes.

As a result of its investigation, the Lottery served Employees A and B with formal discipline and proportional salary reductions. In addition, the Lottery reported that it will require both employees to submit revised timesheets for the time period in question.

The Two Employees’ Managers Failed to Provide Adequate Supervision

The Lottery’s investigation also determined that Manager A was aware that Employee A was engaging in time abuse and failed to take appropriate action to curb that behavior. During interviews with investigators, Manager A said that she personally observed Employee A leaving early and that she had received multiple complaints from Employee A’s coworkers about his time abuse. Additionally, a senior manager who supervised Manager A informed investigators that he had instructed Manager A to take steps to address attendance concerns related to Employee A. Manager A acknowledged taking action to ensure that Employee A was using work time appropriately, including installing a whiteboard and directing him to mark whenever he was away from his desk for more than an hour. However, Manager A never took steps to discipline Employee A and informed investigators that his behavior had not reached the level to warrant such action. Instead, Manager A described the internal complaints from Employee A’s coworkers as rumors and told investigators she “trie[d] to squash the remarks right away” rather than investigate the complaints.

The Lottery found that Manager B similarly failed to adequately supervise Employee B. Manager B told investigators that although Employee B occasionally took long lunches, he had no concerns with his attendance. However, the senior manager, who also supervised Manager B, recalled instructing Manager B to address attendance problems with Employee B. Additionally, although Manager B told investigators that he was certain that Employee B had a 60-minute lunch break, Manager B had twice signed and approved documents that outlined Employee B’s schedule and that showed he had a 30-minute lunch. Manager B also approved six separate whole-day leave requests that Employee B submitted from June 2018 through April 2019, all of which listed Employee B’s

approved daily work schedule and indicated only a 30-minute lunch. Nonetheless, Manager B took no action to curb Employee B's long lunch breaks.

Recommendations

The Lottery took appropriate disciplinary action with regard to the employees' misuse of state resources. In addition to the steps it has already taken, we recommend that the Lottery do the following within 90 days:

- Take appropriate corrective or disciplinary action against the managers involved to ensure that they provide adequate supervision of their subordinates in the future.
- Initiate and pursue reimbursement, whether through direct payment or reduced leave balances, from Employees A and B for the hours for which they were paid but did not work.

Agency Response

In November 2021, the Lottery reported that it agreed with our recommendations and that it has already taken action to address the improper governmental activities identified in this report. Specifically, the Lottery reported that it had begun the process of collecting funds from Employees A and B to reimburse the State for their unaccounted hours after it reached a settlement with each of the employees. Additionally, the Lottery stated that it had provided appropriate corrective action with regards to Managers A and B. The Lottery stated that Manager A left the Lottery before the completion of its investigation; as a result, the Lottery placed a corrective memorandum into the manager's official personnel file. The Lottery issued verbal corrective action to Manager B.

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CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES

Two Managers Knowingly Violated the Merit-Based Hiring Process

CASE I2020-1033

Results in Brief

A senior manager at the California Governor's Office of Emergency Services (Cal OES) unlawfully preselected and gave preferential treatment to a candidate in what was required to be a fair and objective merit-based hiring process. The candidate in question worked for the agency as a junior manager and had been employed in state service for more than 20 years. Thus, she knew or should have known that accepting such an advantage violates civil service hiring rules. The elements of the senior manager's bad faith appointment and the junior manager's bad faith acceptance of the promotion included the following:

- The junior manager participated as an evaluator on the original hiring panel, during which she interviewed and scored four other candidates with whom she ultimately competed for the midlevel manager position.
- Following the interviews by the original hiring panel on which the junior manager sat, the senior manager invited the junior manager to apply for the same midlevel manager position.
- Before the junior manager interviewed for the position, the senior manager provided her with a copy of the exact interview questions the panel would ask—questions that were almost identical to those she had asked of other candidates when she sat on the panel. The senior manager also gave the junior manager suggested answers to those questions, the interview score card, and copies of the other candidates' required statements of qualification for the position.
- With the help that the senior manager supplied, the junior manager received the highest score of the candidates. The senior manager appointed the junior manager to the position.

About the Agency

Cal OES is the State's lead agency for emergency management. Its mission is to protect lives and property, build the State's emergency response capabilities, and support communities.

Relevant Criteria

The California Constitution, article VII, section 1, requires that permanent civil service appointments and promotions be made under a general system based on merit and determined through a competitive process.

California Code of Regulations, title 2, section 250, which governs the hiring process for most civil service appointments, provides that the hiring process may include standardized and written tests, role-plays, and simulations, as well as any other selection instrument or procedure designed to objectively and fairly evaluate each candidate's qualifications to be successful in the position.

Government Code section 19680 prohibits any person from providing any special or secret information to either improve or injure a prospective employee's examination or certification chances.

Government Code section 19681 prohibits any person from obtaining examination questions or other examination material except by specific authorization before an examination. It also prohibits using any such examination questions or materials for the purpose of instructing or coaching or preparing candidates for examinations.

Government Code section 19682 makes a violation of either Government Code section 19680 or 19681 by any person a misdemeanor offense.

California Code of Regulations, title 2, section 243, holds that a valid civil service appointment exists only when the appointing power makes—and the employee accepts—the appointment in good faith.

California Code of Regulations, title 2, section 243.2, subdivision (a), authorizes a state agency to void an unlawful appointment if the action is taken within one year after the appointment is made and the appointing authority, the employee, or both failed to act in good faith.

Background

The California Constitution and various state laws require that civil service appointments and promotions be made as part of a general system based on merit, often referred to as the *merit principle*. To this end, state law requires a state agency to offer a position, and the successful candidate to accept civil service appointments, in good faith. Good faith appointments on behalf of an employing agency require, among other things, that the agency intends to follow the spirit and intent of applicable laws and policies for hiring civil service employees and to act in a manner that does not violate the rights and privileges of other people affected by the appointment, including other eligible candidates. An example of a bad-faith appointment is one for which the successful candidate is preselected—when the hiring decision makers have chosen the individual they intend to employ before, or in lieu of, conducting a fair competitive selection process and where the successful candidate is complicit in his or her own unlawful preselection.

After we received a complaint that a senior manager at Cal OES preselected a candidate for a midlevel manager position, we initiated an investigation and asked Cal OES to conduct it on our behalf.

A Senior Manager Preselected a Candidate and Unlawfully Provided Her With Preferential Treatment

In 2020, when Cal OES initially sought to fill the midlevel manager position, it properly advertised the vacancy and the required exam. It accepted applications until it received a sufficient number, and the senior manager convened a hiring panel to interview and evaluate the qualified candidates. Hiring panel members are responsible for interviewing applicants and for rating and scoring the applicants' interview responses. Typically, the agency offers the position to the candidate who receives the highest score from the hiring panel.

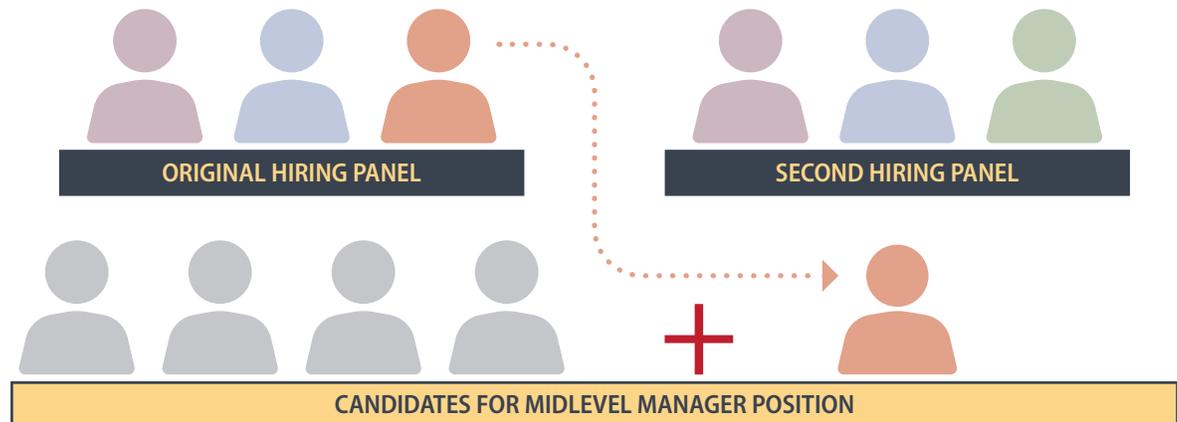
The initial hiring panel for this position consisted of the senior manager and two other managers, one of whom was the junior manager who later competed for the appointment to the position. The initial panel interviewed four candidates and selected the one with the highest score for further consideration. However, instead of hiring the highest-scoring candidate, the senior manager invited the junior manager from the initial hiring panel to apply for the position. After the junior manager agreed to apply, the senior manager immediately scheduled her interview for the following day. However, at the time, the junior manager had not yet submitted an application for the position or even qualified to apply by obtaining a passing score on the required exam. Further, the Cal OES investigator discovered that

Instead of hiring the highest-scoring candidate, the senior manager invited the junior manager from the initial hiring panel to apply for the position.

on the same day the senior manager invited the junior manager to apply for the position, the senior manager unlawfully emailed her a copy of the interview questions with the suggested responses, the interview score card, and the other candidates' statements of qualification for the position.

As Figure 6 shows, the senior manager then established a second hiring panel to conduct the interview with the junior manager. The second panel consisted of the senior manager, one manager from the initial hiring panel, and one new panel member who was later replaced by an alternate panel member. The new member of the second hiring panel said that if he had known about the junior manager's previous involvement, it would have been a concern as "she [the junior manager] wouldn't have been eligible since she was involved previously." The alternate member of the second hiring panel said that he was not aware the junior manager had been a member of the initial hiring panel and that if he had known, he would not have participated in the second hiring panel.

Figure 6
The Junior Manager Interviewed for the Same Position for Which She Served as a Hiring Panel Member



Source: Cal OES.

When the Cal OES investigator questioned the senior manager about whether the junior manager had an unfair advantage in the application and interview process, the senior manager said that she did not feel that they had done anything that was underhanded or against the rules. She said, "I really worked to make it clean, fair, and by the book." However, this answer is disingenuous, given the amount of experience the senior manager had as a supervisor,

the number of times she had worked as a hiring manager, and her familiarity with the hiring process. Most importantly, her unlawful action of providing the junior manager with copies of confidential information, including interview questions that other applicants did not receive ahead of time, demonstrates the process was the opposite of “clean, fair and by the book.”

The Junior Manager Failed to Act in Good Faith When She Competed for and Accepted the Promotion

At the time of these events, the junior manager had been employed in state service for more than two decades and had worked in a supervisory capacity for more than one year. As a junior manager, she knew or should have known the actions that constitute a good faith hire and that she should have accepted the position only if it was offered in good faith.

The Cal OES investigator found that the junior manager willingly participated in her preselection and in the unlawful hiring practices that resulted in her promotion to the midlevel manager position. When the investigator asked the junior manager if she felt she had an advantage in the interview process because she had participated in the initial interview panel, she admitted that it “looked bad” but stated that she believed the hiring process for her promotion was “legitimate” and done in “good faith and good will.” However, her response was not convincing: she should have known the elements of good faith hiring given her many years of state employment in multiple classifications and the mandatory supervisor training she had attended. In addition, the junior manager should have been aware that receiving a copy of the interview questions with the suggested responses, the scoring card, and a copy of the other candidates’ statements of qualifications provided her with an unfair advantage and constituted a violation of state law.

The junior manager should have been aware that receiving a copy of the interview questions with the suggested responses, the scoring card, and a copy of the other candidates’ statements of qualifications provided her with an unfair advantage and constituted a violation of state law.

As a result of this investigation, Cal OES took disciplinary action against the senior manager and the junior manager. In May 2021, the agency terminated the employment of the senior manager. Also in May 2021, it began the process of voiding the junior manager’s improper promotion and demoted her to a nonsupervisory classification. Furthermore, Cal OES sent an accounts receivable to the SCO to collect the additional salary the junior manager received during her unlawful tenure as a midlevel manager from June 2020 through May 2021. Cal OES also reported that it will provide training on the merit-based hiring process to all of its managers.

Recommendations

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

- Within the next 60 days, work with the CalHR and the State Personnel Board to complete the process of voiding the junior manager's unlawful appointment to the midlevel manager position.
- By June 2022, conduct the planned training on the merit-based hiring process for all employees involved in Cal OES's hiring and selection process.

Agency Response

Cal OES reported in November 2021 that it had completed the process of voiding the junior manager's appointment to the midlevel manager position. In March 2022, Cal OES reported that it was developing the training that it will provide to all employees involved in the hiring and selection process. Cal OES anticipates completing this requirement by June 2022.

Respectfully submitted,



MICHAEL S. TILDEN, CPA
Acting California State Auditor

May 26, 2022

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Appendix

CORRECTIVE ACTIONS TAKEN IN RESPONSE TO INVESTIGATIONS

Under the Whistleblower Act, the State Auditor may issue public reports only 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 2021 through December 2021. In addition, Table A 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 2021. These investigations have also resulted in many state agencies' modifying or reiterating their policies and procedures to prevent future improper activities.

Table A
Corrective Actions
July 1993 Through December 2021

TYPE OF CORRECTIVE ACTION	TOTALS
<i>Convictions</i>	12
<i>Demotions</i>	28
<i>Job terminations</i>	104
<i>Resignations or retirements while under investigation</i>	47*
<i>Pay reductions</i>	64
<i>Reprimands</i>	368
<i>Suspensions without pay</i>	38
Total	661

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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