



Investigations of Improper Activities by State Agencies and Employees

Inefficient Management of State Resources,
Misuse of State Time and Inaccurate Attendance
Records, and Inadequate Supervision

April 2019

REPORT I2019-2





CALIFORNIA STATE AUDITOR

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April 9, 2019
Investigative Report I2019-2

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, as authorized by the California Whistleblower Protection Act, presents this report summarizing some of the investigations of alleged improper governmental activities that my office completed between July 2018 and December 2018.

This report details eight substantiated allegations involving several state agencies and one university campus. Our investigations found inefficient management of state resources, misuse of state time and inaccurate attendance records, and inadequate supervision. In total, we identified about \$150,000 in inappropriate expenditures.

For example, the California Department of Tax and Fee Administration (CDTFA) and the former State Board of Equalization failed to ensure that 25 managers and supervisors, who worked non-standard schedules and were exempt from certain federal reporting requirements, accurately reported their leave. As a result, these employees were overpaid at least \$72,000 during a more than two-year period. We also estimated that overpayments to other CDTFA employees in similar job classifications may have totaled more than \$500,000 during the same period.

In an additional case, we describe the investigation of a California State University (CSU) campus police officer who engaged in a pattern of time and attendance abuse and failed to perform her duties adequately because she regularly took time at work to lie down and at times fell asleep. This misuse resulted in a waste of state funds that totaled as much as \$16,400. The CSU also paid the officer more than \$3,900 for other work hours for which she could not account or did not work.

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 must continue to report monthly thereafter until they have completed corrective actions.

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

As authorized through the California Whistleblower Protection Act (Whistleblower Act), the California State Auditor (State Auditor) conducted investigative work on 808 allegations of improper governmental activity from July 1, 2018, through December 31, 2018. This report contains eight examples of investigations that substantiated improper activities that include inefficient management of state resources, misuse of state time and inaccurate attendance records, and inadequate supervision.

California Department of Tax and Fee Administration

The California Department of Tax and Fee Administration (CDTFA) and the former State Board of Equalization failed to ensure that 25 managers and supervisors, who worked non-standard work schedules and who were exempt from requirements of the federal Fair Labor Standards Act, accurately charged their leave time. As a result, these departments have overpaid those 25 employees a total of at least \$72,000 since 2016. We estimated that the total overpayments made to all similarly affected employees throughout CDTFA may be more than \$500,000.

Judicial Council of California

The Judicial Council of California inefficiently administered its Assigned Judges Program (AJP) and failed to follow policy requirements by neglecting to verify that superior courts requesting retired judges from the AJP had attempted to fill their needs through other methods before seeking assistance from the AJP.

California State University

During 2017 and 2018, a California State University (CSU) campus police officer engaged in time and attendance abuse and failed to adequately perform her duties by regularly taking time at work to lie down and at times fall asleep. This misuse resulted in a waste of funds that totaled as much as \$16,400. CSU additionally paid this campus police officer more than \$3,900 for other work hours for which she did not work or could not account.

Investigative Highlights . . .

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

- » *Thirty employees at several agencies misused state time and cost the State approximately \$150,000.*
 - *Twenty-five employees failed to charge sufficient leave when absent for whole days.*
 - *A campus police officer regularly took time to lie down and at times fell asleep while on duty.*
 - *Three employees misused approximately 1,000 hours by arriving late to work, taking extended lunches, and leaving work early.*
 - *One employee failed to account for missed work time and unknown hours of overtime.*
- » *Several supervisors provided inadequate supervision that included inaccurate timekeeping practices and deliberate neglect of administrative duties.*

State Water Resources Control Board

Three engineers at the State Water Resources Control Board (State Water Board) misused an estimated 1,000 hours of state time by arriving late to work, taking extended lunches, and leaving work early. In a separate case, another State Water Board employee failed to accurately report his absences, resulting in an estimated 35 hours of work that he missed and failed to deduct as leave on his timesheets from May 2017 through early May 2018. This same employee, during the same time period, sometimes worked more than his regularly scheduled hours, but neither he nor his supervisor kept accurate records of the overtime, which compounded the inaccuracy of his time records. The misuse by these four employees cost the State more than \$48,000 in salaries paid for work the employees did not perform.

California Department of Transportation

From February 2016 through September 2018, an information technology associate (associate) at the California Department of Transportation (Caltrans) improperly claimed 80 hours of bereavement leave and 173 hours of work that she did not perform, which cost the State more than \$8,400. The associate's supervisor also inexcusably neglected his duty to oversee the associate, which enabled her improper use of bereavement leave and other leave.

State Controller's Office

A manager at the State Controller's Office allowed his subordinate employees to informally adjust their work schedules, which resulted in at least one of them failing to account for 23 hours of work time in late 2017.

Department of Industrial Relations

Two supervisors at the Department of Industrial Relations (Industrial Relations) failed to monitor the time and attendance of two clerical employees. Consequently, Industrial Relations could not determine the actual hours worked by these employees from June 2017 through March 2018.

California Department of Social Services

A supervisor at the California Department of Social Services failed to take progressive discipline with a subordinate employee whom the supervisor knew was wasting state time and not performing his job duties satisfactorily.

Summary of Recommendations

Each of the cases included in this report contains recommendations to each department whose employees engaged in improper governmental activities. As several of these cases involved inadequate monitoring and supervision of state employees, we have also made the following recommendations to the California Department of Human Resources (CalHR):

- Modify statewide policies regarding the responsibilities of supervisors and managers for monitoring the time and attendance of subordinate employees.
- Improve training for state supervisors and managers, particularly with regard to reviewing and monitoring time reporting and leave use by subordinate employees.
- Consider changing relevant bargaining unit agreements to require employees to submit substantiation for each claim of bereavement leave.

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Introduction

The California Whistleblower Protection Act (Whistleblower Act) allows state employees to report improper governmental activities—actions by state agencies or employees that violate the law; are economically wasteful; or involve gross misconduct, incompetence, or inefficiency¹—without fear of retribution. The Whistleblower Act further authorizes the State Auditor, as the recipient of whistleblower allegations, to investigate and, when appropriate, report on substantiated improper governmental activity. For more than 25 years, our investigative work has identified and made recommendations to remediate a total of \$577.9 million resulting from improper governmental activities such as gross inefficiency, theft of state property, conflicts of interest, and personal use of state resources.

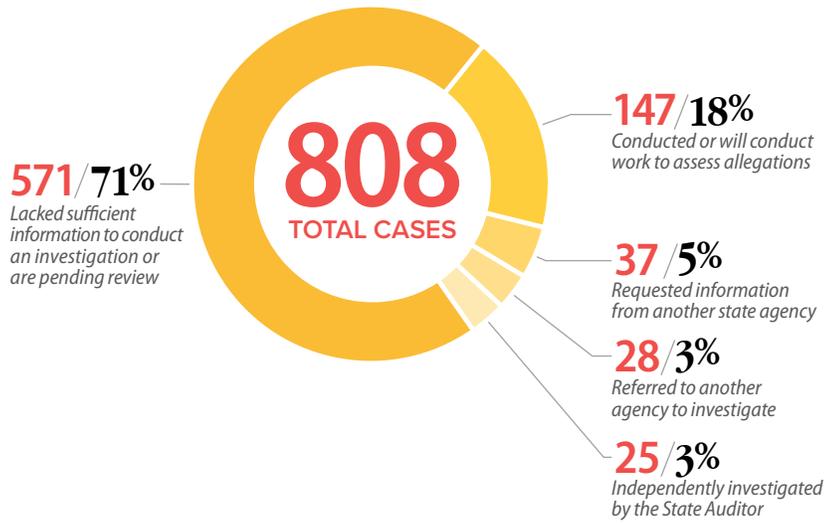
The State Auditor’s Investigative Work From July 2018 Through December 2018

The State Auditor enables submission of whistleblower allegations of improper governmental activity in several ways. From July 1, 2018, through December 31, 2018, the State Auditor received 636 calls or inquiries that fell within its jurisdiction. In addition, our office received hundreds of allegations that fell outside of our jurisdiction; when possible, we refer complainants to the appropriate federal, local, or state agencies.

During this six-month period, the State Auditor conducted investigative work on 808 cases that it opened either in previous periods or in the current period. As Figure 1 on the following page shows, the State Auditor’s investigative staff determined that 571 of the 808 cases lacked sufficient information for investigation or are pending preliminary review. For another 147 cases, the staff conducted work or will conduct additional work—such as analyzing available evidence and contacting witnesses—to assess the allegations. The State Auditor’s staff notified the respective departments for another 28 cases so they could investigate the matters further and independently initiated investigations for another 25 cases. Some of these cases may still be ongoing. In addition, the staff requested that state agencies gather information for 37 cases to assist in assessing the validity of the allegations.

¹ For more information about the State Auditor’s investigations program, please refer to the Appendix, starting on page 53.

Figure 1
Status of 808 Cases, July 2018 Through December 2018



Source: State Auditor

For more about the Whistleblower Act and the State Auditor’s responsibility and authority, see the Appendix starting on page 53.

CHAPTER 1

INEFFICIENT MANAGEMENT OF STATE RESOURCES

This chapter includes the following investigations in which we have substantiated the inefficient management of state resources. The departments involved in these investigations failed to properly manage the use of various state resources, including making overpayments to employees who inaccurately reported their leave and neglecting to verify the need for retired judges in a specific program before ensuring the validity of that need.

Including the cases that follow, we reviewed a total of 60 cases that involved inefficient management of state resources from July 2018 through December 2018. We conducted preliminary investigative work on 18 of the cases, and in six of these instances, we obtained sufficient evidence to request additional information from the departments, notify the respective departments so they could investigate the matters further, or launched investigations of our own, some of which may still be ongoing.

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CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

Its Management Allowed Exempt Employees to Submit Inaccurate Timesheets

CASE I2018-0053

Results in Brief

Executive management at the former State Board of Equalization (BOE) and at the California Department of Tax and Fee Administration (CDTFA) failed to ensure that certain supervisors and managers who worked non-standard work schedules accurately charged their leave time. As a result, these departments made at least \$72,000 in overpayments to 25 of these employees, all of whom are exempt from the Fair Labor Standards Act of 1938 (FLSA) reporting requirements, at three offices since 2016. Assuming that the same percentage of exempt employees throughout CDTFA as identified by a 2015 survey worked these schedules, we estimated that since 2016 the overpayments to all of the affected exempt employees across more than 50 organizational units may have totaled more than \$500,000.

Background

Like many other state agencies, CDTFA allows its employees to work non-standard work schedules, one of which is referred to as a *9/8/80 work schedule*. As Table 1 on the following page shows, this schedule consists of eight nine-hour days, one eight-hour day, and one scheduled day off in a two-week period. According to CalHR, a work schedule such as this provides employees with flexibility in work hours while maintaining an agency's operational efficiency, productivity, and effective service.

When employees who work 9/8/80 schedules are absent on a scheduled nine-hour work day, the State expects that they will account for their whole day absence by charging nine hours of leave, regardless of whether they are covered by or exempt from the requirements of the FLSA.

About the Department

State law created the CDTFA in July 2017 and transferred to it many of the duties, powers, and responsibilities related to the administration of taxes and fees that the BOE previously held. At that time, more than 4,000 BOE employees became CDTFA employees.

Relevant Criteria

The FLSA, codified in title 29 of the United States Code, section 201 et seq., establishes overtime pay, recordkeeping, and other labor standards affecting workers in the private and public sector. The wage and overtime pay provisions of the FLSA apply to most, but not all, state employees. Those employees who are not covered by the FLSA are referred to as *exempt employees*.

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.

In 2017 the State required FLSA-exempt employees to charge leave credits in whole workday increments through the California Department of Human Resources (CalHR) Policy 1501 titled *Non-Standard Work Schedule Policy for Work Week Group E/SE*.

Government Code section 19838 directs the State, when it identifies overpayment to an employee, 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 overpayment.

Table 1
Example of a Non-Standard Work Schedule That Follows a Pattern That Repeats Every Two Weeks

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	9 hours	9 hours	9 hours	9 hours	8 hours	
	9 hours	9 hours	9 hours	9 hours	0 hours	

Source: CaHR policy.

CalHR has provided consistent and increasingly clear guidance on this topic for many years. In 2004 an arbitration decision clarified that the term *whole-day increment* means the regularly scheduled daily work hours of an employee. CalHR issued two directives in 2005 to personnel offices at all state agencies explaining the arbitration decision and instructing personnel officers to charge employee leave balances accordingly. As a result of a State Auditor recommendation in August 2014 that CalHR issue guidance to state agencies regarding how to account for leave hours for employees who work non-standard work schedules, CalHR added to its online *Human Resources Manual* in November 2016 Policy 1501 titled *Charging Leave Credits for Excluded Employees*. This policy reiterated CalHR's 2005 direction. Finally, in July 2017, CalHR revised the title of Policy 1501 to *Non-Standard Work Schedule Policy for Work Week Group E/SE* and added more clarifying language. In particular, this policy provides the State's requirements for all exempt employees regarding what it refers to as *non-standard work schedules*.

In response to allegations we received about exempt employees at three CDTFA offices failing to charge sufficient leave when absent for whole days, we initiated an investigation.

Management Allowed Exempt Employees to Submit Inaccurate Timesheets, Which Resulted In Significant Overpayments

Although state law requires state agencies to keep complete and accurate timesheets, executive management at BOE and CDTFA allowed exempt employees to report inaccurate information on

their timesheets for at least three years. BOE and CDTFA allowed management to authorize exempt employees to work non-standard schedules, but CDTFA acknowledged that neither it nor BOE were consistent in enforcing that leave time was reported to match those non-standard work schedules. Both agencies allowed exempt employees who worked non-standard work schedules to report their leave time as if they worked a standard schedule of five eight-hour days each week. This approach violated state policy that has been in place since 2005.

Further, BOE's executives and human resources staff were aware from at least October 2015 that an agencywide discrepancy existed between the leave hours taken by exempt employees on non-standard work schedules and the leave hours they reported on time sheets, because its human resources division had conducted and reported on a survey about the issue. Among other things, the survey results indicated that exempt employees who worked a non-standard schedule had charged only eight hours of leave when absent for whole days on which they were scheduled to work nine hours. At that time, BOE's human resources division also reported to its executives that more than 40 percent of its 650 exempt employees at the time worked non-standard schedules.

However, CDTFA allowed this practice to continue until August 2018—one year after CalHR issued its policy intended to enforce the State's requirement that all exempt state employees charge leave in whole-day increments. At that time, CDTFA finally issued an administrative directive requiring employees to charge leave appropriately. Given that members of the executive and human resources staff were informed of this problem three years earlier, CDTFA should have taken action sooner and should have initiated collection of overpayments.

The attendance records we reviewed for 25 exempt employees from three CDTFA offices were consistent with CDTFA's acknowledgement that exempt employees consistently reported working a fixed five-day schedule on their timesheets even though they worked non-standard 9/8/80 schedules. The 25 employees charged eight hours leave for days on which they were absent, including days on which they were scheduled to work nine hours. This resulted in a one-hour overpayment for each nine-hour day absent. The employees and their immediate supervisors certified the timesheets as accurate. Because they did not fully account for their time off, the 25 employees we reviewed at the three offices were overpaid \$72,372 from January 2016 through May 2018. Table 2 on the following page provides details by office location.

BOE and CDTFA allowed exempt employees who worked non-standard work schedules to report their leave time as if they worked a standard schedule of five eight-hour days each week.

Table 2
BOE and CDTFA's Overpayments to Exempt Employees at Three Offices

OFFICE	NUMBER OF AFFECTED EMPLOYEES	NUMBER OF HOURS	AMOUNT OF OVERPAYMENT
San Francisco	11	892	\$40,747
Glendale	9	429	17,386
Return Processing	5	322	14,436
Totals	25	1,643	\$72,569

Source: Analysis of monthly timesheets, leave records, and pay records.

More importantly, the problems we found likely pertain to many more CDTFA employees because exempt employees continue to work non-standard 9/8/80 schedules at its many locations. As of July 2018, CDTFA employed nearly 500 FLSA-exempt employees in more than 50 organizational units—such as branches, sections, divisions, and offices—statewide. Assuming the same percentage of exempt employees continued to work non-standard schedules as the October 2015 agency-wide survey indicated, CDTFA could have overpaid its exempt employees more than \$500,000 because it allowed employees to consistently undercharge their leave. Because of this inaccurate leave tracking, CDTFA may also owe some leave hours back to these employees from paid holidays that may have occurred on their scheduled days off or because they may have unnecessarily charged leave time on scheduled days off.

Recommendations

To address the improper activities we identified in this investigation, CDTFA should take the following actions:

- Recover overpayments or adjust leave balances for the 25 exempt employees that this report identifies.
- Review attendance records for these 25 exempt employees to determine whether the State owes them any holiday credits or other leave credits because the employees may have unnecessarily charged leave time on days that they were scheduled to be off.

- Survey or otherwise determine leave use for all exempt employees who worked alternate schedules during the past three years to ascertain whether and by how much those employees were overpaid and to recover any overpayments as state law requires.

Agency Response

CDTFA reported in March 2019 that it plans to audit the attendance records of the 25 employees identified in the report. CDTFA stated that if it determines that any of these employees worked non-standard work schedules but incorrectly reported time on their attendance records, it will notify the employees and will require correction of attendance records for July 2016 through December 2018.

In addition, CDTFA stated it would require the 25 employees to reconstruct their attendance records to reflect their non-standard work schedules. CDTFA stated that then it will review these reconstructed records to determine if the State owes them any holiday credits or other leave credits because the employees unnecessarily charged leave on days they were scheduled to be off.

Finally, CDTFA stated that it will audit leave use for all FLSA-exempt employees from July 2016 through December 2018. CDTFA indicated that if it determines that the employees worked non-standard schedules but reported that they worked standard schedules, it will require those employees to reconstruct their attendance records and it will take appropriate steps, including adjusting leave balances or setting up accounts receivable, if necessary.

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JUDICIAL COUNCIL OF CALIFORNIA *It Inefficiently Managed State Resources*

CASE I2017-0405

Investigative Results

The Judicial Council of California (Judicial Council) inefficiently administered the Assigned Judges Program (AJP) because it did not verify that superior courts requesting retired judges from the AJP attempted first to fill their needs either internally or reciprocally with other superior courts, as the Judicial Council's policy requires.

We initiated an investigation after we received a complaint in April 2017 that the Judicial Council had not efficiently implemented the AJP because it had assigned and compensated retired judges to work in superior courts that already had surpluses of judges. In fact, the AJP spent nearly \$7 million of its \$27 million budget in 2016 to provide judges to the five counties that had the highest number of surplus judges. During interviews with Judicial Council staff, we learned that, in violation of Judicial Council policy, the AJP lacked any processes or procedures to verify that courts requesting from it the use of retired judges had first attempted to fill their needs either internally or reciprocally with other superior courts. Further, we found that the AJP had no mechanism for program staff to review whether the courts requesting additional resources already had more judicial positions than its workload justifies. In fact, program staff consistently reported that they did not even question the courts' requests but simply attempted to fill them as best they could. As a result, the chief justice approved the assignment of retired judges and the expenditure of state funds without sufficient supporting documentation that these represented the best use of AJP resources.

About the Department

The Judicial Council is the policymaking body of the California courts. Under the leadership of the chief justice, the Judicial Council is responsible for ensuring the administration of justice. Judicial Council staff implements its policies.

The California Constitution gives the chief justice authority to administer the AJP to expedite judicial business. Judicial Council staff manage the AJP by coordinating with superior courts to identify retired judges to cover court vacancies, illnesses, disqualifications, and calendar congestion in the superior courts. The chief justice then issues temporary judicial assignment orders for the AJP based on the work of Judicial Council staff.

Relevant Criteria

Government Code section 8547.2 states that economic waste or inefficiency by a state agency or employee constitutes an improper governmental activity.

During our investigation, we learned that the Judicial Council's executive staff was undertaking its own review of the AJP. In July 2018, the Judicial Council implemented the following program changes, some of which addressed not only the concerns we raised but others that addressed additional aspects of the AJP:

- Restructured how the Judicial Council allocates AJP service days and funds so that it assigns resources within the AJP based on the greatest need, as defined by its judicial needs assessment.
- Established that retired judges can work a maximum of 1,320 days for the duration of their participation in the AJP.
- Established a 90-day waiting period after retirement before a judge is eligible to apply to participate in the AJP.
- Established that retired judges can work a maximum of 120 days during any fiscal year.

By modifying the process to establish metrics for judicial participation and changing how it allocates service days and funds in the AJP, the Judicial Council has taken steps to administer the AJP in a more efficient manner.

Recommendations

To address the improper governmental activity we identified in this report, the Judicial Council should take the following actions:

- To ensure its efficient management of AJP funding and to determine the impact of its recent program changes, the Judicial Council should reassess the AJP no later than June 30, 2019, and it should examine in particular its allocation of service days and AJP funding to superior courts with surplus judges.
- To ensure that it has successfully implemented its recent AJP changes at the superior courts, the Judicial Council should periodically evaluate trial court compliance with the recent program changes.

Agency Response

The Judicial Council stated that it accepted our recommendations and that it would work toward fully implementing them.

CHAPTER 2

MISUSE OF STATE TIME AND INACCURATE ATTENDANCE RECORDS

This chapter includes the following investigations in which we have substantiated allegations involving misuse of state time and inaccurate attendance records. The employees in these investigations regularly arrived late, left early, wasted time, or had other substantial absences during their workdays for which they did not account on their timesheets. State employees are required by law to be honest and accurate in the reporting of their attendance on timesheets. State law also prohibits employees from using state-compensated time for personal purposes and requires them to devote their full time, attention, and efforts to their jobs during hours of duty. Employees who fail to comply with these requirements may be subject to disciplinary action.

Including these cases that follow, we reviewed a total of 130 cases that involved misuse of state time from July 2018 through December 2018. We conducted preliminary investigative work on 40 of the cases, and in 26 of these instances, we obtained sufficient evidence to request additional information from the respective departments, notify the respective departments so they could look into the matters further, or launch investigations of our own, some of which may still be ongoing.

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CALIFORNIA STATE UNIVERSITY

A Campus Police Officer Frequently Took Work Time to Lie Down With Her Sergeant's Approval and at Times Fell Asleep

CASE I2018-0210

Results in Brief

During 2017 and 2018, a California State University (CSU) campus police officer engaged in a pattern of time and attendance abuse and failed to perform her duties adequately. In 2017 the police officer regularly took time to lie down, and at times she fell asleep, while working the night shift in the patrol unit. We estimated that rather than performing her duties, the police officer lay down or slept for an average of one to four hours per shift for a period of nearly nine months, resulting in a waste of state funds ranging from \$4,094 to \$16,376.

The investigation found that the police officer's superiors facilitated her behavior. Specifically, Sergeant 1, with whom the police officer had a personal friendship, allowed her to remove a portion of her uniform, including her body armor and duty belt, and lie down during her shifts. In addition, neither her lieutenant nor the police chief initiated a formal investigation once they became aware of the police officer's alleged misconduct.

Furthermore, after the police officer transferred to an investigative position in 2018, she failed to work her full 10-hour shifts because she regularly included 30 minutes of her commute time at the start of her shift and 30 minutes at the end of her shift as part of her work days. Beyond these commute hours, she also could not account for additional hours included on her timesheets. The CSU paid her \$3,942 for these hours she either could not account for or did not work.

Background

CSU campus police departments vary slightly in their organization on each campus; however, each has patrol and investigative responsibilities that are limited to their jurisdiction, which state law generally defines as an area within one mile of the boundaries of each campus or other CSU-owned properties. Police officers assigned to a campus's patrol unit respond to both routine and

About the University

With 23 campuses statewide, the CSU system is the nation's largest four-year, public university system. Each campus employs its own police department, which is responsible for ensuring a safe academic environment for students, faculty, staff, and visitors. Campus police officers enforce all California Penal Code and Vehicle Code sections on designated campus areas 24 hours a day, 365 days a year.

Relevant Criteria

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

Government Code section 8547.2 states that economic waste or inefficiency by a state agency or employee, which includes CSU, constitutes an improper government activity.

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.

emergency calls for assistance to a dispatch center, perform security checks on and around campus, conduct traffic stops, and apprehend criminal offenders. The dispatcher assigns calls for service to the officers on duty on a rotating basis. Additionally, dispatch staff record the officers' activities in a dispatch system when they conduct patrol duties, such as security checks and traffic stops.

Investigators in the investigation unit are assigned cases, collect and review evidence, conduct interviews and searches, check criminal histories, prepare cases for court, and perform other investigative duties. Investigators at this police officer's campus check in with the dispatch center at the beginning and end of their shifts.

The CSU and this police officer's campus have various policies designed to ensure safety and accountability, including the following:

- Police officers must wear body armor when in uniform and at any time that they are in situations in which they could reasonably be expected to take enforcement action.
- Police officers must perform their respective duties without physical constraints and be alert, attentive, and capable of performing their assigned responsibilities during work hours. Employees suffering from non-work-related conditions that warrant temporary relief from duty may be required to use sick leave or other paid time off. Supervisors are required to take prompt and appropriate action if they observe or receive reports of employees who are perceived to be unable to safely perform their duties because of physical conditions.
- Supervisors observing any circumstance that raises a question regarding the physical fitness of an officer, including receiving a complaint or an officer sleeping while on duty, must prepare a written report indicating all such circumstances and submit it to the campus police chief.

In response to an allegation we received that a campus police officer had been sleeping on duty, we initiated an investigation and requested the assistance of the CSU Office of the Chancellor (Chancellor's Office) to conduct the investigation.

The Police Officer Regularly Lay Down During Her Shifts and Sometimes Slept

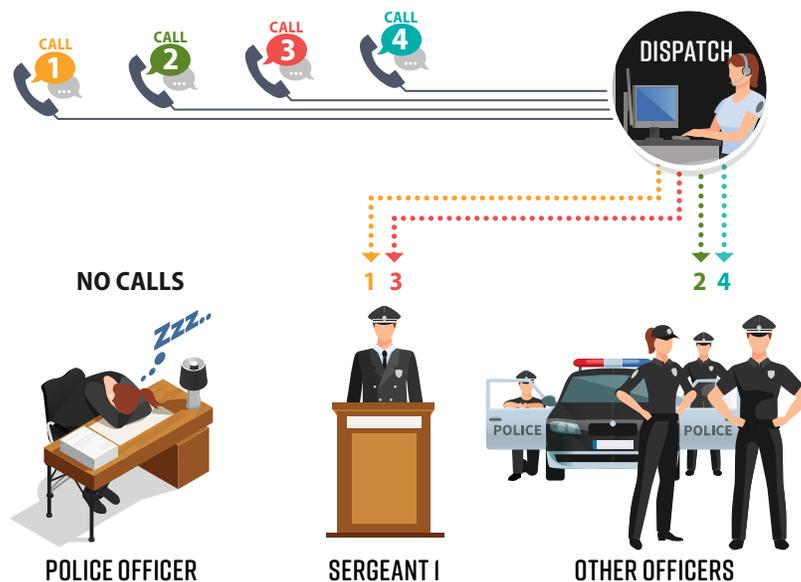
The investigation found that a police officer failed to perform her duties and was not always prepared for work assignments while on duty during night shifts. Starting in early 2017, the police officer began the practice of lying down for extended periods during her shifts. During these times, she removed some of her police uniform

A police officer failed to perform her duties and was not always prepared for work assignments while on duty during night shifts.

and equipment, including her body armor and duty belt, and sometimes slept. Several witnesses stated that the police officer's time abuse was extensive. Two witnesses said the police officer repeatedly slept four to six hours while on duty, while two others stated that they witnessed her sleeping for at least an hour on many occasions. Yet another witness indicated that he saw the police officer sleeping more days than not, but could not provide an estimate for how long she slept. Investigators concluded that the police officer continued this behavior until early September 2017, when her schedule changed and she no longer worked the night shift.

Some dispatch staff acknowledged when interviewed that they did not assign calls to the police officer because she was sleeping and unavailable to respond. Although dispatchers aim to assign calls on a rotating basis, investigators noted 37 instances when four or more calls came into the dispatch center but the police officer did not take her turn in responding to them. Figure 2 provides an example of the call distribution among available staff on these occasions.

Figure 2
An Example of the Imbalance of Dispatch Call Distribution



Source: CSU Office of the Chancellor and police department dispatch call-in logs.

The most egregious example of the police officer's failure to perform her duties occurred in August 2017, when 15 calls came in to the dispatch center over a nine-hour span and the police officer did not handle any of them.

We estimate that the police officer did not perform her duties for a total of 103 to 412 hours, for which she was paid from \$4,094 to \$16,376.

When interviewed, the police officer acknowledged that she was sometimes in pain or did not feel well while at work and that she would remove her body armor and duty belt and lay down because she was unable to perform her duties; however, she never sought or obtained a reasonable accommodation. She said that she might have fallen asleep on occasion while lying down but did not do so intentionally. She estimated that she lay down from 20 minutes to one hour, once or twice a shift, on most shifts.

The police officer's practice of lying down and, at times, sleeping resulted in a misuse of resources and a significant waste of CSU funds. The police officer's conduct also potentially compromised the safety of the campus. Based on witness accounts and the police officer's own admissions, we estimate that she failed to perform the duties of her position an average of one to four hours per shift. Investigators with the Chancellor's Office determined that the police officer's behavior may have continued for nearly nine months during the period that she worked the night shift. Thus, for the entire period, we estimate that she did not perform her duties for a total of 103 to 412 hours, for which she was paid from \$4,094 to \$16,376.

The Police Officer's Superiors Facilitated Her Time and Attendance Abuse

According to witness accounts and the police officer's statements, Sergeant 1 was aware of, and approved, the police officer's practice of lying down, and he was also likely aware that she sometimes fell asleep. All of the witnesses who observed the police officer sleeping stated that Sergeant 1 knew that she was either sleeping or lying down on duty. The police officer herself stated that he gave her verbal permission to remove her body armor and duty belt and to lie down.

When interviewed, Sergeant 1 was not forthright in the information he provided. He acknowledged that he allowed the police officer to occasionally remove part of her uniform, including her body armor and duty belt, because she was not feeling well and she said it helped relieve her pain. He initially claimed that he was aware that she was lying down for only 15 to 20 minutes at a time, but he later stated that he saw her lying down for 20 to 40 minutes at a time. He further stated that he did not require the police officer to use sick leave because they were short-handed and because she had used most of her sick leave. Sergeant 1 also claimed that he had no knowledge of, and never saw, her sleeping. However, as we previously noted, several witnesses stated that Sergeant 1 knew the police officer was sleeping. In fact, two witnesses stated that they heard Sergeant 1 give instructions to route calls to him or the other officer on duty because the police officer was sleeping.

In addition, Sergeant 1 failed in his duty to evaluate the police officer's physical condition and determine whether she was able to perform her duties. The police department policy manual states that supervisors must take prompt and appropriate actions when they observe or receive reports of employees who may be unable to safely perform their duties due to physical conditions. The manual also states that, whenever feasible, a supervisor should attempt to ascertain the source of the problem, should evaluate the employee's ability to perform duties, and should—in conjunction with the watch commander and the employee's lieutenant—determine whether or not the employee should be temporarily relieved from duties. The investigation did not find any evidence that Sergeant 1 took these steps. Further, when the sergeant became aware that the police officer might not be fit for duty, he did not submit a written report to the campus police chief as required by CSU policy.

This investigation also revealed that the police officer and Sergeant 1 had a personal friendship, but we were unable to determine whether the friendship influenced Sergeant 1's actions. The police officer said that she considers Sergeant 1 one of her best friends, and he asserted that he considers her a good friend and confidante. Sergeant 1 also explained that he and the police officer, along with their respective significant others, spent time together away from work on two or three occasions in 2017, and electronic evidence supports that the two frequently communicated about non-work-related activities and spent time together outside of work. However, evidence available during the time the police officer reported to Sergeant 1 did not indicate an inappropriate relationship—as defined by CSU policy—and both denied that favoritism played a part in the Sergeant's willingness to allow the police officer to lie down on duty.

Neither the lieutenant nor the police chief complied with CSU policy in addressing the police officer's alleged conduct. The lieutenant heard that the police officer was sleeping on duty and asked Sergeant 1 to inquire informally about the allegation. The lieutenant said that Sergeant 1 told him that the police officer was not sleeping but that he had let the police officer leave early, possibly just once, because she was sick. The lieutenant accepted Sergeant 1's denial of the allegation and did not pursue it further. In mid-2017 some staff notified the police chief that the police officer was sleeping on duty. He subsequently questioned staff about the allegations during previously scheduled meetings that focused on other topics and one person told him it was happening, some told him they heard from others that it was happening, and others denied that it happened at all, including Sergeant 1. Therefore, the chief said he did not have a definitive way of proving or disproving the allegation and ended the informal inquiry.

The Sergeant failed in his duty to evaluate the police officer's physical condition and determine whether she was able to perform her duties.

The Police Officer Claimed Portions of Her Daily Commute as Time Worked

Starting in January 2018, after the police officer began a new position in the police department's investigation unit, she started including hours on her timesheet that she had not worked, including portions of her daily commute. Based on an analysis of the police officer's statements, timesheets, and dispatch records, we determined that she included 103.5 hours on her timesheets that she did not work from January 2018 through September 2018, for which she was paid \$3,942.

When interviewed, the police officer said that she checked in with the dispatch center using her radio about 30 minutes before she arrived on campus to begin her shift and checked out with dispatch when she was about 30 minutes into her commute home. She said that her new supervisor, Sergeant 2, had instructed her that she could check in and out from home, which was more than 30 minutes from campus. Contrary to what the police officer said, Sergeant 2 denied telling her to check in and out from home. Instead, Sergeant 2 told investigators that he expected the police officer to check in when she was "in beat," or within one mile from campus where she could reasonably respond to an emergency or call. We determined a mile to be three to six minutes from campus for the police officer, even during peak traffic times. The police officer was paid \$2,628 for the 69 commute hours she included on her timesheets from January 2018 through July 2018.

The police officer was paid \$2,628 for the 69 commute hours she included on her timesheets from January 2018 through July 2018.

Dispatch records also showed that, beyond her commute hours, the police officer could not account for an additional 30 minutes per day on average during her 69 regular 10-hour shifts from January through July 2018. She was paid \$1,314 for these additional unaccounted hours. Figure 3 provides an example of her work hours, including her commute time and other unaccounted time. When asked about the unaccounted time, the police officer said she sometimes had to conduct investigative duties off campus and on her way home. However, she estimated she performed such duties only about one day a week.

According to the police officer, Sergeant 2 explained to her that because of the varying duties of her position, maintaining a set work schedule might not always be practical. Although the duties of the position may make establishing a set schedule difficult, the CSU expects the police officer to work four 10-hour days each week.

Figure 3
 The Police Officer's Timesheet and Dispatch Records Do Not Align With Her Hours Worked



Source: Police officer's timesheets, campus dispatch records, and the police officer's statement.

Recommendations

To address the improper governmental activities we identified in this investigation, the CSU campus should take the following actions:

- Take immediate and appropriate disciplinary action against the police officer for failing to be fully prepared to perform her duties and for inaccurately reporting the hours she worked while in the investigation unit; consider deducting her leave balances for the hours during which she was not performing her duties.
- Take immediate and appropriate disciplinary action against Sergeant 1 for approving and allowing the police officer to remove part of her uniform and to lie down while on duty, as well as for his failure to perform his supervisory duties.
- Develop a written policy within 90 days that explains how and when the police department expects employees to check in and out for their shifts. The policy should specify where all employees should be when they check in and out—for example, it should state whether the employees should be physically on campus.
- Provide training within 90 days to all police department staff that covers relevant sections of the police department policy manual, including the following requirements for all uniformed police department employees:
 - Employees should be prompt, prepared, and ready for work or assignments.

- Employees should be punctual in reporting to a duty station or assignment.
- Employees should not leave before the end of their scheduled hours.
- Remind supervisors immediately of their responsibility to identify and document when employees are perceived to be unable to perform their duties because of physical conditions, as outlined in applicable policies.

Agency Response

In January 2019 the campus reported that it planned to fully evaluate the recommendations and address each one to the extent permitted by the applicable collective bargaining agreement and laws, including Government Code sections 3300 to 3313, also known as the Public Safety Officers Procedural Bill of Rights Act (POBR), and the disciplinary process set forth in Education Code sections 89535 through 89540. In particular, POBR prohibits the campus from taking disciplinary action against a police officer if it did not complete an investigation and notify the police officer of the proposed discipline within one year of discovery of the allegations. However, POBR states that the public agency is not required to impose the discipline within that one-year period.

STATE WATER RESOURCES CONTROL BOARD

Employees Misused Hundreds of Work Hours, and Their Supervisors Did Not Monitor Their Attendance

CASES I2017-0905 AND I2018-0027

Investigative Results

In response to an allegation we received that an engineer at the State Water Resources Control Board (State Water Board) regularly left work early, we initiated an investigation and requested the State Water Board's assistance in conducting it. During its investigation, the State Water Board discovered two additional engineers who had engaged in similar behavior. Over the course of several years, the three engineers, who are classified as hourly employees and are required to account for any partial-day absences, misused an estimated 1,003 hours of state time by arriving to work late, taking extended lunch breaks, and leaving work early. Their misuse cost the State more than \$47,000 in salaries paid for work the employees did not perform.

In addition to the above allegation that the State Water Board investigated, we initiated our own investigation related to a separate complaint we received about another State Water Board employee who was allegedly also misusing state time. That investigation further demonstrated inaccurate reporting on monthly timesheets.

Regarding the three engineers, witnesses informed State Water Board investigators that they had observed these employees engaging in different forms of time abuse, including regularly arriving to work late, taking extended lunch breaks, and leaving work early. In interviews, the three engineers each eventually admitted to misusing hundreds of state work hours. Engineer A admitted that for about two years, he regularly arrived to work 30 minutes late and left up to 30 minutes early. Although he denied taking extended lunch breaks, surveillance footage contradicted his denial and showed that he had taken extended lunch breaks on several occasions. Similarly, Engineers B and C were also dishonest during their interviews with State Water Board

About the Department

Among other duties, the State Water Board is responsible for preserving, enhancing, and restoring the quality of California's water resources and drinking water to protect the environment and public health. It has 24 district offices throughout the State and employs engineers and other professional staff to carry out the State Water Board's mission.

Relevant Criteria

Government Code section 19990 prohibits state employees from engaging in activities that are clearly inconsistent or incompatible with their duties as state employees, 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 any state employees from using state resources, including state-compensated time, for personal purposes that exceed minimal and incidental use.

Government Code section 19572 identifies dishonesty, incompetency, or other failures of good behavior that cause discredit to an appointing authority as causes for discipline of state employees.

Government Code section 19838 directs the State, when it identifies overpayment to an employee, 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 overpayment.

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.

investigators and initially admitted to only leaving a few minutes early. Only when confronted with the possibility of surveillance footage did they acknowledge the full extent of their misuse of time. Engineer B admitted he was initially dishonest with the investigator and that he had left work about 25 minutes early every day since late 2017, and Engineer C acknowledged that since 2015, he had regularly arrived 30 minutes late. Table 3 shows the number of hours and the cost of the three engineers' misuse of state time.

Table 3
Cost of the Three Engineers' Misused Hours

EMPLOYEE	HOURS	COST OF MISUSED HOURS
Engineer A	483	\$27,054
Engineer B	110	5,375
Engineer C	410	14,633
Total Hours and Related Cost	1,003	\$47,062

Source: State Water Board's interviews and analysis.

The engineers' supervisor failed to recognize that three of his subordinate staff members misused state time for years. The supervisor stated that he trusted his employees to abide by their schedules and that during the past two years he was never informed that they were arriving late or leaving early. However, after learning that his subordinates had admitted to abusing state time for years, he merely stated that he was really busy with his own work and that he did not keep track of his subordinates' attendance. Because the supervisor typically starts his workday two-and-a-half hours after some of his staff start work, he cannot assure that his subordinate employees arrive on time. Other employees reported that the supervisor's lack of knowledge about the time and attendance abuse in his unit negatively affected office morale.

In response to a similar but separate complaint we received about possible time and attendance abuse by another State Water Board employee (Employee A), we initiated our own investigation and analyzed the employee's building key card data, timesheets, and other records from May 2017 through early May 2018. The results of this investigation confirmed that this employee had also inaccurately reported his hours worked. In particular, Employee A failed to account for 35 hours of missed work time and unknown hours of overtime.

As a result of this investigation and our request that the State Water Board ensure the accuracy of Employee A's timesheets, a State Water Board executive took appropriate action. He met with Employee A's supervisor to discuss the importance of ensuring that subordinate employees keep accurate time records and of the supervisor providing sufficient employee oversight. That same month, the supervisor implemented time and attendance monitoring by requiring his subordinate staff members to submit weekly email reports summarizing their hours worked, the type of work they conducted, and any leave they took. The supervisor also made procedural changes to ensure that he keeps accurate time records and provides sufficient oversight of his employees. Finally, the supervisor independently implemented a standard reporting format to ensure consistency in the level of detail in the reports that the employees submit.

Recommendations

To address the improper governmental activities we identified in this investigation, the State Water Board should take the following actions:

- Take appropriate disciplinary actions against Engineers A, B, and C for their misuse of state time and dishonesty during their interviews.
- Determine the amount of time it can charge Engineers A, B, and C to account for their missed work hours, reduce their leave balances accordingly, and if applicable, seek to recover from them any wages paid for time they did not work.
- Take appropriate corrective or disciplinary actions against the three engineers' supervisor, which should include providing supervisory training to ensure that he holds the three engineers accountable for their missed work time.
- Require this supervisor to implement policies and procedures to ensure that his subordinates account for all of their missed work hours.
- Require Employee A's supervisor to continue to monitor and examine weekly time reports for Employee A and other subordinate employees to ensure that they account properly for all of the time worked and the leave taken.

Agency Response

In February 2019 the State Water Board reported that it agreed with our recommendations regarding the three engineers and their supervisor. It stated that its 60-day response would

include the specific actions it intends to take to implement our recommendations and that it would report monthly thereafter until the recommendations are implemented fully.

Regarding Employee A and his supervisor, the State Water Board agreed with our recommendation and reported in February 2019 that its board members and management take very seriously their fiduciary responsibilities to protect and properly use the state funds entrusted to them. It further stated that it considers its initial response to our final recommendation above and its statement that it has begun to implement of the recommendation to constitute final resolution to our investigation. Although we appreciate the State Water Board's efforts thus far, we clarified that the State Water Board must continue to monitor and examine Employee A's time reports for at least several months to ensure that he properly accounts for his work and leave.

CHAPTER 3

INADEQUATE SUPERVISION

This chapter includes investigations in which we have substantiated the inadequate supervision of state employees. The supervisors and managers at the departments in these investigations failed to ensure that their subordinate employees properly accounted for their time, allowed subordinates to misuse state time, failed to monitor the time and attendance of their employees, and failed to ensure that an employee performed his job duties.

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CALIFORNIA DEPARTMENT OF TRANSPORTATION

An Employee Improperly Accounted For Her Time, and Her Supervisor Deliberately Neglected His Administrative Duties

CASE I2018-0009

Results in Brief

From February 2016 through September 2018, an information technology (IT) associate at the California Department of Transportation (Caltrans) improperly claimed 80 hours of disallowed bereavement leave and 173 hours of work that she did not perform at a cost to the State of \$8,431. In addition, the associate's supervisor inexcusably neglected his duty to oversee the associate, which enabled her improper use of bereavement and other leave.

Background

The associate has worked for Caltrans for 18 years and has held her current position for the last four years. The supervisor has worked for the State for about nine years and for Caltrans for five of those years. For the duration of his tenure at Caltrans, the supervisor directly managed about 15 IT employees.

The State's paid bereavement leave benefits apply differently depending on whether employees are excluded from collective bargaining (generally meaning managers or supervisors) or rank-and-file, who are typically subject to collective bargaining. Because collective bargaining agreements govern bereavement leave for rank-and-file employees, the benefits given for bereavement vary slightly depending on the bargaining agreement. The associate is subject to a specific bargaining agreement. Figure 4 on the following page shows the family relationships for which this bargaining agreement permits paid bereavement leave.

About the Department

Caltrans designs, constructs, maintains, and operates the California state highway system, as well as portions of the interstate highway system within the State's boundaries. To execute these duties, Caltrans employs more than 20,000 employees.

Relevant Criteria

The relevant bargaining agreement entitles a rank-and-file state employee to receive up to three days of paid bereavement leave for the death of certain family members.

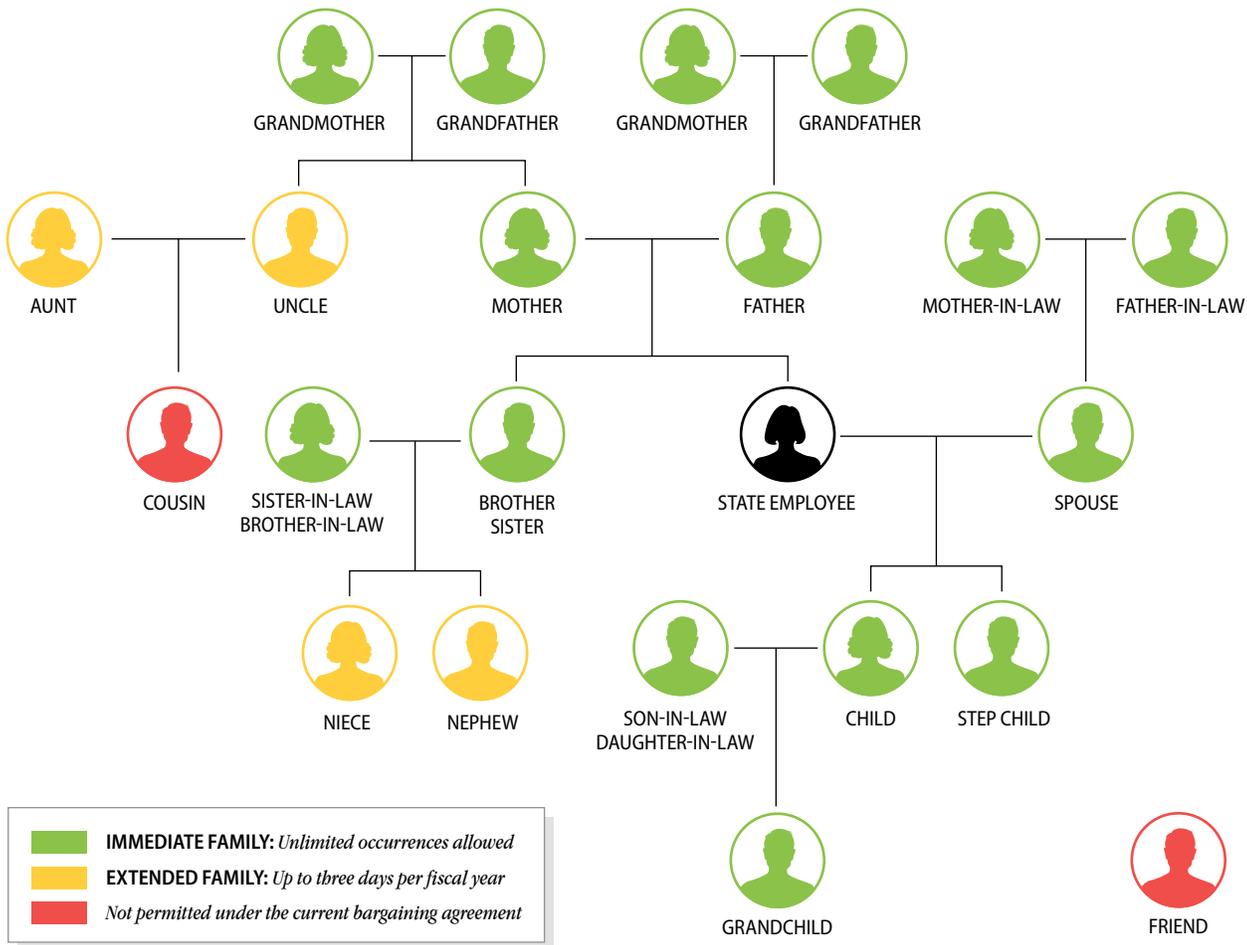
California Code of Regulations, title 2, section 599.665, requires state agencies to keep complete and accurate time and attendance records for all of their employees.

Government Code section 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 19572 identifies neglect of duty, dishonesty, willful disobedience, or other failure of good behavior causing discredit to an appointing authority as causes for discipline of state employees.

Government Code section 19838 directs the State, when it identifies overpayment to an employee, 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 overpayment.

Figure 4
Eligible Relationships for Bereavement Leave for Employees Under the Unit 1 Bargaining Agreement



Source: Analysis of the relevant bargaining agreement.

The frequency with which a rank-and-file employee may claim bereavement leave depends on whether the employee’s bargaining agreement has categorized relationships as part of the immediate or extended family. A rank-and-file employee may claim unlimited occurrences of bereavement leave for immediate family members’ deaths. Each occurrence of bereavement leave is limited to three days of paid time off. In contrast, the same employee can claim a total of three eight-hour days for bereavement leave for extended family members in each fiscal year. Bereavement leave for cousins and close friends was never allowed for rank-and-file employees during the applicable time period. If paid bereavement is not available, an employee may use another

category of accrued leave, such as vacation or annual leave credits. When requesting bereavement leave, an employee must provide substantiation of the death if a supervisor requests it.

In response to an allegation we received that the associate had misrepresented her time and attendance and that her supervisor had permitted her improper activities, we initiated an investigation and requested Caltrans' assistance in conducting it.

The Associate Dishonestly Claimed Bereavement Leave and Time She Did Not Work

Caltrans' investigation of the allegations revealed that from February 2016 through September 2018, the associate improperly claimed 80 hours of bereavement leave and failed to use 173 hours of other leave when she was not present during her regular work hours. Caltrans found that in fiscal year 2017–18, the associate improperly claimed 10 days of bereavement leave for four extended family members when she was allowed to use such leave for only three days. Caltrans also found that the associate had improperly claimed five days of bereavement leave for an immediate family member's death when only three days were permitted.

When Caltrans investigators questioned the associate, she asserted that she had not fabricated her claims and that she had been unaware of the collective bargaining agreement's limitations for bereavement leave. She provided the names, relationships, and locations for each of the deceased except for one aunt whom she had previously claimed had died in June 2017. She stated that she did not recognize the name she had entered on her timesheet and indicated that she had made an inadvertent mistake. However, one week after Caltrans investigators questioned her, the associate submitted a written statement retracting her bereavement leave claims for 80 of the 112 hours (71 percent) that she had claimed. Caltrans determined that the value of the retracted 80 hours totaled \$2,609. Table 4 on the following page summarizes the results of Caltrans' review.

One week after Caltrans investigators questioned the associate, she submitted a written statement retracting her bereavement leave claims for 80 of the 112 hours (71 percent) that she had claimed.

Table 4
The Associate Claimed and Then Retracted 80 Hours of Bereavement Leave, Some of Which Was Permitted by Her Collective Bargaining Agreement

FISCAL YEAR	MONTH	NUMBER OF HOURS INITIALLY CLAIMED	RELATION TO EMPLOYEE	TYPE OF FAMILY MEMBER	PERMITTED BY AGREEMENT	NUMBER OF HOURS SUBSEQUENTLY RETRACTED
2016-17	June 2017	16	Aunt #1	Extended	YES	16
2017-18	July 2017	8	Aunt #2	Extended	YES (new fiscal year)	8
	July 2017	8	Aunt #3	Extended	YES	8
	November 2017	16	Uncle #1	Extended	NO (only 24 hours allowed each fiscal year)	8
	November 2017	24	Uncle #2	Extended	NO (only 24 hours allowed each fiscal year)	24
	February 2018	24	Grandfather #1	Immediate	YES	0
	March 2018	16	Grandfather #1	Immediate	NO (claimed a total of 40 hours when 24 hours are allowed)	16
Total Hours		112	6 Deaths			80

Source: Analysis of the associate's reported bereavement leave, interview transcript, and subsequent written statement to investigators.

Although in her written statement the associate continued to assert that her impermissible use of the leave had been the result of mistakes, the statement and additional research revealed her dishonesty. For example, a review of her mother's Facebook page revealed that Aunt #2 was not an aunt as the associate claimed, but instead a close friend of the associate's mother, for whom no use of bereavement leave was permissible. In her written statement, the associate also changed Aunt #3's last name from the one she had initially provided to Caltrans investigators. Moreover, the associate provided a completely different first and last name for Uncle #2 in her statement than in her interview, and his place of death also changed from Maryland to California.

The Associate Significantly Undercharged Her Other Leave Categories by 173 Hours

In addition, when investigators compared the associate’s timesheets with the supervisor’s calendar of attendance, they found several days that the supervisor had marked her as not present at work for which the associate had not accounted on her timesheets. In her statement to the investigators, the associate wrote that she had mistakenly claimed three days worked that she had taken off. However, when human resources staff subsequently conducted an audit of the associate’s leave usage from 2016 through 2018, they concluded that the associate had not accounted for a significant amount of time away from work and, as a result, Caltrans had paid her for 173 hours she had not worked, at an estimated value of \$5,822. Had the associate accurately accounted for her hours, she would have had her pay docked because she had insufficient leave. Table 5 provides a breakdown of the unaccounted leave and the resulting overpayment.

Table 5
The Associate’s Unaccounted Leave and the Resulting Overpayments

MONTH / YEAR	HOURS	OVERPAYMENT AMOUNT
February 2016	8	\$257
August 2016	8	272
September 2016	8	257
August 2017	8	277
October 2017	8	269
November 2017	3	100
January 2018	16	524
February 2018	19	653
April 2018	32	1,072
May 2018	8	249
August 2018	15	544
September 2018	40	1,348
Totals	173	\$5,822

Source: Caltrans’ account receivable notices to the associate.

The associate's supervisor stated that even if he had known the bargaining agreement's restrictions, he still would have allowed the associate to claim the improper leave.

The Associate's Supervisor Intentionally Disregarded Crucial Administrative Duties

The associate's supervisor inexcusably neglected his duty to oversee the associate's time reporting, which enabled the associate's improper use of bereavement leave and failure to use leave for work days she missed. When Caltrans interviewed the supervisor regarding the associate's improper use of bereavement leave, he repeatedly stated that he was the "worst administrative manager" and that he, "actually decided consciously not to do certain things." He stated that he did not question the leave the associate submitted and that he was unaware that the associate's bargaining agreement established guidelines for the use of bereavement leave. More importantly, he stated that even if he had known the bargaining agreement's restrictions, he still would have allowed the associate to claim the leave.

When Caltrans asked about the associate's improper charging of time worked, the supervisor admitted that he had not validated any of the information his subordinate employees provided on their timesheets. For example, he stated that he had not cross-referenced employees' timesheets against the daily calendar he maintained to ensure that they claimed only the days they worked. He stated that he trusted his employees to report their time accurately.

Although the supervisor agreed that he was responsible for ensuring employees comply with applicable laws and policies, he stated that he failed to do so because he did not believe in the policies. When investigators asked the supervisor if he would change his ways to improve his administrative management of his employees, he responded, "Even if I could, and I should, I probably won't." The supervisor agreed that he had misused state funds by allowing employees to abuse his lackadaisical management.

Following the Investigation, Caltrans Promptly Disciplined the Associate and the Supervisor

Following its investigation, Caltrans took prompt action against the associate and the supervisor. In September 2018, Caltrans disciplined the associate for her inexcusable neglect of duty, dishonesty, willful disobedience, violations of Government Code section 19990, and failure of good behavior, causing discredit to Caltrans. Her salary was reduced one pay step for six months—a nearly 5 percent reduction. In December 2018, Caltrans initiated several accounts receivable to collect \$8,431 for the 253 hours it overpaid the associate.

Caltrans also disciplined the supervisor for inexcusable neglect of duty, willful disobedience, violations of Government Code section 19990, and other failure of good behavior causing discredit to Caltrans. The supervisor was demoted from his classification to a nonsupervisory IT classification effective September 2018. As a result of the demotion, the supervisor's pay was decreased by \$1,860 per month.

Caltrans reported subsequently that the associate and the supervisor had appealed the disciplinary actions to the State Personnel Board (SPB).

Recommendations

To address the improper governmental activities we identified in this investigation, Caltrans should take the following actions:

- Ensure that it recoups all overpayments that it made to the associate.
- Notify all Caltrans employees of the limitations of bereavement leave and where bargaining agreements can be located for additional information specific to bereavement leave.
- Remind supervisors of their responsibility to ensure that employees properly charge leave, including bereavement leave, and to not exceed the allowable limits that the bargaining agreements outline.
- Consider revising its policy to require supervisors to request employees to submit substantiation, such as a funeral announcement, for each claim of bereavement leave.
- Consider conducting leave audits of the other subordinate staff that the supervisor formerly oversaw.

The State Auditor will forward the results of this investigation to CalHR and recommend that it consider changing the bargaining agreement's provisions to require employees to submit substantiation for each claim of bereavement leave.

Agency Response

In February 2019, Caltrans reported that the SPB approved stipulated settlement agreements for the associate and for the supervisor in December 2018. With respect to the associate, Caltrans agreed to strike dishonesty and willful disobedience from the statement of causes and to shorten the length of time from six months to three months that the associate's salary was reduced.

For the supervisor, it agreed to strike willful disobedience and violations of Government Code section 19990 from the statement of causes and reinstate the supervisor to his former supervisory classification effective January 1, 2019, with the agreement that he must attend supervisory training.

Caltrans agreed with four of our five recommendations, and it provided us with the actions it intends to take in response to each recommendation. Regarding our first recommendation, Caltrans confirmed that it officially sent notice to the associate of the overpayments and agreed that if the associate fails to respond, it will begin collection efforts and continue until the entire amount has been collected.

Second, Caltrans stated that in March 2019, it issued a personnel information bulletin to all of its employees informing them of the limitations of bereavement leave as specified in their bargaining agreements and where the bargaining agreements can be located.

Third, Caltrans stated that in March 2019, it issued a labor relations alert reminding supervisors of their responsibility to ensure that all leave, including bereavement leave, is charged properly and does not exceed the allowable limits outlined in the bargaining agreements.

Fourth, Caltrans disagreed with our recommendation to consider revising its policy to require supervisors to request that employees submit substantiation for each claim of bereavement leave. Instead, Caltrans affirmed that it would continue to follow the relevant bargaining agreements and contact its labor relations staff for guidance. However, we contend that the bargaining agreements do not prohibit Caltrans from requiring its supervisors to request substantiation of bereavement leave from its employees.

Finally, Caltrans reported in March 2019 that it had completed 10 of the 11 required leave audits. It stated that it will compile all of the findings for our review when it has completed the final leave audit.

STATE CONTROLLER'S OFFICE

A Manager's Inaccurate Timekeeping Practices Allowed an Employee To Misuse State Time

CASE I2017-1308

Investigative Results

A manager at the State Controller's Office (SCO) allowed his employees to submit timesheets that did not reflect accurately the number of hours the employees worked each week because the manager had permitted the employees to informally adjust their work schedules. Consequently, a subordinate employee, who was classified as an hourly employee, failed to accurately account for 23 hours of missed work time during the three-month period we reviewed.

In response to an allegation we received that the employee failed to account for her missed work time, we initiated an investigation and requested the SCO's assistance in conducting it.

The investigation determined that in November and December 2017, the employee failed to account for 23 hours of work because of inaccurate timekeeping practices at the SCO. The employee worked an alternate schedule consisting of four 10-hour days, Monday through Thursday, with every Friday as her regular day off (RDO). When her RDO fell on a state holiday, the employee received eight hours of leave to use at a later date.

As Table 6 on the following page indicates, the employee twice failed to account for a full 40-hour work week. First, the employee switched her RDO from Friday of Week 1 to Thursday of Week 2 because Friday was a state holiday; thus, she was off on both days. However, she also accrued eight hours of holiday leave for Friday, which she used to take off another day at a later time. In addition, the employee switched her RDO from Friday of Week 3 to Monday of Week 3 because Friday was a state holiday; thus, again she was off on both days. However, she once again accrued eight hours of leave for Friday, which she also used to take off another day at a later time. Therefore, by allowing the employee to informally switch her RDOs, the manager essentially allowed her to take two additional days off without accounting for them, resulting in the employee failing to account for 20 hours during these three weeks.

About the Department

The SCO accounts for and distributes the State's financial resources. It also audits government agencies that spend state funds, administers the payroll system for state employees and for California State University employees, and safeguards many types of property until claimed for by the rightful owners.

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.

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

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

Table 6
Hours the Employee Missed by Switching RDOs

WEEK	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	HOURS SHORT
1	VACATION Charged 10 hours of leave	VACATION Charged 10 hours of leave	Worked 10 hours	Worked 10 hours	REGULAR DAY OFF (RDO) (State holiday) <i>Accrued 8 hours of leave and switched RDO to next Thursday</i>	0
2	Worked 10 hours	VACATION Charged 10 hours of leave	VACATION Charged 10 hours of leave	OFF <i>Did not charge leave.</i> Short 10 hours	RDO	10
3	OFF <i>Did not charge leave.</i> Short 10 hours	Worked 10 hours	Worked 10 hours	OFF (State holiday)	RDO (State holiday) <i>Accrued 8 hours of leave and switched RDO to Monday of this week</i>	10
Total Hours Short						20

Source: Analysis of the employee's work schedule and leave records.

Furthermore, in addition to the 20 hours she failed to charge during the three weeks, we determined that during a fourth week, the employee failed to charge three hours of leave on a day when she worked only seven of her scheduled 10 hours. In total, the employee failed to account for 23 hours of work during the three months we reviewed.

After the investigation, the SCO informed us that it would require employees' timesheets to reflect the number of hours they actually worked each week and that it would no longer allow them to switch their RDOs.

Recommendations

To address the improper governmental activity we identified in this investigation, the SCO should take the following actions:

- Immediately recover overpayments made to the employee or adjust her leave balances by 23 hours to account for her missed work time.

- By April 2019, review attendance records for the employee for the time period that she worked an alternate schedule to determine whether she owes the State any additional hours as a result of informally switching her RDO. If she does, recover any overpayments or adjust her leave balances accordingly.
- By June 2019, review the attendance records of the manager's other staff to determine whether the other employees also failed to account for any missed work time.
- Determine whether other managers or supervisors at the SCO also allowed employees to informally switch their RDOs. If so, the SCO should review attendance records for the relevant employees to verify that they accurately recorded their time off and hours worked. To the extent that the SCO determines other employees improperly accounted for their time, recover any overpayments or adjust their leave balances accordingly.

Agency Response

In February 2019, the SCO reported that it accepted the findings of our investigation. It stated that it notified the employee of its plan to establish an accounts receivable to recoup the 23 hours either through a cash payment or a reduction of the employee's leave balance. The SCO also stated that no later than April 2019, it will review the employee's attendance records for the period she worked an alternate schedule to determine whether she owes the State any additional hours that resulted from informally switching her RDO. The SCO further stated that it intends to conduct a review of the attendance reports for the manager's other staff to determine whether they also failed to account for any missed work time. Moreover, the SCO stated that in February 2019 it issued a memorandum to all of its staff reminding them that switching RDOs is not permitted and can result in formal corrective actions for underreported time. Finally, the SCO stated that it has asked all of its division chiefs no later than June 2019 to complete an analysis of timekeeping for any of their staff who may have switched RDOs informally to determine if any had underreported work time.

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DEPARTMENT OF INDUSTRIAL RELATIONS

Two Supervisors Failed To Monitor the Time and Attendance of Two Employees

CASE I2017-1245

Investigative Results

From June 2017 through March 2018, two supervisors working in the same division at the California Occupational Safety and Health Administration (Cal/OSHA) failed to monitor the time and attendance of two subordinate clerical employees. After we received an allegation that these employees had misused state time by working less than their required eight-hour workdays and that their supervisors had been aware of the problem, we initiated an investigation and requested the assistance of the Department of Industrial Relations (Industrial Relations). When Industrial Relations sought to verify the hours worked by the subordinate staff, it could not ascertain the actual hours worked because of the supervisors' lack of accurate timekeeping.

Industrial Relations determined that the two supervisors improperly granted the two employees informal flexible work schedules and also failed to consistently monitor and record the actual hours the employees worked. The two employees' formal schedules required them to work from 8 a.m. to 5 p.m. every day; however, the supervisors confirmed to investigators that since June 2017, they had allowed the two employees to occasionally arrive to work late—one employee up to 30 minutes—and to leave up to one hour early. They stated that they had instructed the employees to make up any missed time on the same day by taking a shorter lunch, staying later, or docking themselves on their timesheets. However, Industrial Relations determined that neither of the supervisors recorded the dates and times when the employees arrived to work late or left early, nor did they record the dates and times when the employees took shorter lunches or worked later to make up missed time. One supervisor told investigators he expected his subordinate employee to adhere to an "honor system."

The two supervisors had a responsibility to ensure and approve the accuracy of the employees' timesheets; however, for several months, the employees were allowed flexibility in their work schedules

About the Department

The mission of Industrial Relations is to protect and improve the health, safety, and economic well-being of over 18 million wage earners and help their employers comply with state labor laws. Cal/OSHA within Industrial Relations protects and improves the health and safety of working Californians and the safety of passengers riding on elevators, amusement rides, and tramways.

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.

Government Code section 19572 identifies incompetency or other failures of good behavior that cause discredit to an appointing authority as causes for discipline of state employees.

The Absence and Additional Time Worked report requires state employees to show absences, extra hours worked, and hours to be docked each month.

Since the supervisors did not maintain any alternate record of their staff's attendance, it was difficult to confirm or refute the allegations of misuse of state time.

without any monitoring or accountability. Industrial Relations reviewed employee badge entry records from July 2017 through May 2018 and confirmed that the two employees arrived 15 to 30 minutes late for work about 150 times each. One supervisor was surprised to learn the frequency of late arrivals of his subordinate employee. The other supervisor stated that he could not verify whether his subordinate employee made up missed worked time, admitting that he did not keep track of her hours.

As a result of the supervisors' poor record keeping and inadequate monitoring of their subordinate staff's work time and attendance, it was difficult to ensure the accuracy of the employees' time worked. Generally, state employees are required to fill out an Absence and Additional Time Worked report (absence report) each month, sign the absence report certifying its accuracy, and submit it to a supervisor for approval. The supervisor is responsible for reviewing the absence report and signing it to confirm its accuracy. However, as these employees were not required to record their daily hours worked on the absence report, no record exists of the time they actually worked in those months. Since the supervisors did not maintain any alternate record of their staff's attendance, it was difficult to confirm or refute the allegations of misuse of state time.

Industrial Relations concluded that as hourly employees with set work schedules, their supervisors should have required subordinate staff to record their actual hours worked on their timesheets or use some other reliable and consistent system by which actual hours worked would have been tracked on a daily basis. In the absence of such a record, Industrial Relations stated that the employees may have engaged in misuse of state time; however, it could not confirm the actual hours the employees did or did not work for the time period in question.

Following the investigation, Industrial Relations reported to us that it provided its findings and made its recommendations to the division chief, including a recommendation that hourly employees should be required to complete a daily timesheet or that another system is implemented to record the actual hours worked of employees in the unit. In addition, Industrial Relations' management issued non-disciplinary counseling memorandums to each of the hourly employees and supervisors involved about the requirement and importance of adhering to designated work hours and properly recording and accounting for actual hours worked.

Recommendations

To prevent the improper governmental activities from recurring, Industrial Relations should take the following actions:

- Provide instruction to all supervisors to maintain an accurate record of subordinate staff's daily work hours by either requiring all hourly employees to record the hours worked on their timesheet or using another reliable and consistent system to record daily hours worked by subordinate staff.
- Provide training to the two supervisors regarding proper time and attendance procedures.

Agency Response

In February 2019, Industrial Relations reported that it agreed with our findings and that it intends to implement our recommendations and provide training to the two supervisors regarding time and attendance procedures. In addition, Industrial Relations has instructed the two supervisors to better monitor the daily attendance of all employees in the unit.

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CALIFORNIA DEPARTMENT OF SOCIAL SERVICES *A Supervisor Failed To Ensure That an Employee Performed His Job Duties and Used State Time Appropriately*

CASE I2017-0638

Results in Brief

Despite being aware that a subordinate office technician at the California Department of Social Services (Social Services) was failing to adequately complete his job duties and was wasting state time, the supervisor failed to take appropriate corrective steps to remedy his subordinate's behavior.

Background

The supervisor has worked at Social Services for more than 10 years and has directly supervised the office technician for about four years. Both the supervisor and the office technician work in Social Services' State Hearings Division, which is responsible for providing independent and impartial due process hearings and for producing timely, legally correct decisions. The failure of employees to perform their jobs makes it difficult for the division to manage its time-sensitive workload and can cause hardships for claimants.

According to the California Department of Human Resources (CalHR), supervisors are responsible for conducting performance evaluations of subordinate employees at least annually. These evaluations provide employees with constructive written feedback on job performance. In addition, when the behavior of an employee is deemed unacceptable and in need of correction, a supervisor is responsible for implementing the State's three-phased progressive discipline process, which assists supervisors in taking discipline in accordance with applicable laws and regulations. Table 7 on the following page describes the three phases.

In response to an allegation we received that an employee was failing to complete his work and was wasting state time, we initiated an investigation and requested Social Services' assistance in conducting it.

About the Department

Social Services serves and protects needy and vulnerable children and adults. Its goals include strengthening families, encouraging personal responsibility, and fostering independence. Social Services' 4,200 employees are responsible for overseeing and administering its many programs.

Relevant Criteria

Government Code section 19572 identifies incompetency or other failures of good behavior that cause discredit to an appointing authority as causes for discipline of state employees.

Table 7
The Three Phases of the State’s Progressive Discipline Process

PHASE	DESCRIPTION
1. <i>Preventive</i>	Gives supervisors an opportunity to ensure that employees are aware of the supervisors’ expectations. For example, a supervisor should communicate to an employee what constitutes acceptable and unacceptable conduct at work and should provide feedback on job performance.
2. <i>Corrective</i>	Allows supervisors and employees to address performance or behavior issues that the supervisors have deemed unacceptable and in need of correction. This phase involves holding informal counseling meetings and formal corrective interviews to outline in writing the changes that employees must make. During this phase, supervisors give verbal instruction when assigning tasks and increase their monitoring of employee activity. For example, a supervisor may document unacceptable behavior and meet with an employee to discuss any problems.
3. <i>Disciplinary</i>	Allows supervisors to implement disciplinary actions, also known as <i>adverse actions</i> , against employees if necessary. Adverse actions include discipline such as an official letter of reprimand, reduction in salary, suspension without pay, demotion, or dismissal from state service.

Source: *State of California Supervisor’s Handbook*.

The Supervisor Failed to Supervise an Employee Whose Performance Was Unsatisfactory

When Social Services’ investigators interviewed the supervisor about the job performance of and corrective actions taken against the office technician who reported to him, the supervisor explained that he knew the office technician had not been performing his work and that he was barely able to complete the most basic tasks of his position. The supervisor said that he had removed the office technician from certain tasks because he made too many mistakes, and that he had observed the office technician wasting state time by sleeping at his desk, watching YouTube, and using his cellphone during work hours. However, when we asked Social Services to provide us with documentation regarding any actions that the supervisor had taken to address the office technician’s behavior, it provided us with only one instance in which the supervisor informed human resources about the office technician sleeping at work. Social Services was also unable to demonstrate that the supervisor had performed or provided the office technician with required annual performance evaluations for the entire four years during which he supervised him. Such annual performance evaluations would have served as another tool with which the supervisor could have addressed the office technician’s behavior.

Furthermore, the supervisor's failure to remedy the office technician's behavior negatively affected the rest of his staff. The supervisor admitted during the investigation that because the division deals with time-sensitive work, he generally passed the office technician's unfinished workload onto his other staff. Those staff members, in turn, complained to the supervisor that the office technician's poor work production caused low morale. When asked why he neglected to correct the office technician's behavior, the supervisor explained that he was afraid if he did so, the office technician would file a grievance with his union.

However, *State of California Supervisor's Manual* plainly requires and instructs supervisors to engage with an employee whose performance is insufficient in a detailed and interactive three-phase progressive discipline process that is designed to ensure that supervisors' actions are reasonable and consistent with applicable laws and regulations, thereby mitigating the risks to both supervisor and subordinate.

After the investigation, Social Services reported that it had issued a corrective memorandum to the supervisor for his failure to follow the State's progressive discipline process. In addition, it reported in June 2018 that the office technician would be on leave until December 2018. State payroll records show that the office technician still was employed at Social Services through that same month.

Recommendations

To address the improper governmental activities we identified in this report, Social Services should take the following actions:

- Require that the supervisor retake supervisory training regarding managing employee performance and the importance of following the State's progressive discipline process.
- Within the guidelines of the relevant bargaining unit agreement, place appropriate documentation in the office technician's personnel or supervisory file to demonstrate that he failed to complete his work and wasted state time in the event that he decides to return to his job at Social Services.

Agency Response

In February 2019, Social Services reported that it believes our report is accurate and that it agrees with our recommendations.

Appendix

THE CALIFORNIA WHISTLEBLOWER PROTECTION ACT

The Critical Role of Whistleblowers

Whistleblowers are critical to ensuring government accountability and public safety. Under state law, anyone who reports an improper governmental activity is a *whistleblower* and is protected from retaliation.² 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*, *State Contracting Manual*, executive order of the Governor, or a California Rule of Court.

Ways That Whistleblowers Can Report Improper Governmental Activities

Individuals can report suspected improper governmental activities by calling the toll-free Whistleblower Hotline (hotline) at (800) 952-5665, by fax at (916) 322-2603, by US mail, or through the State Auditor's website at <https://www.auditor.ca.gov/contactus/complaint>.

Of the 636 calls or inquiries that the State Auditor received in the six months covered by this report, 369 came through the State Auditor's website, 154 through the mail, 94 through the hotline, 17 via facsimile, one through an individual who visited the State Auditor's office, and one through an internal source.

Investigation of Whistleblower Allegations

The State Auditor confidentially investigates allegations of improper governmental activity by state agencies and state employees. The State Auditor may conduct an investigation independently, or it may elect to have another state agency perform the confidential investigation under its supervision.

² The California Whistleblower Protection 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>.

When the State Auditor Finds Improper Governmental Activities

If an investigation establishes that an improper governmental activity has occurred, the State Auditor may take one or more of the following actions:

- Confidentially report the matter to the Office of the Attorney General, the Legislature, law enforcement, or any other entity that has jurisdiction over the matter.
- Issue a confidential report to the head of the agency involved or to the entity with authority to take action against the state employee involved.
- Issue a public report on the matter, keeping confidential the identities of the individuals involved.

Under the Whistleblower Act, the State Auditor may issue public reports when an investigation substantiates an improper governmental activity. When issuing a public report, the State Auditor must keep confidential the identities of the whistleblower, any employees involved, and any individuals providing information in confidence to further the investigation. This report contains several examples of investigations that substantiated improper governmental activities, including misuse of state time and inaccurate attendance records, inadequate supervision, and inefficient use of state resources.

The State Auditor may also issue nonpublic reports to the head of the agency involved and, if appropriate, to the Attorney General, the relevant policy committees, and any other authority the State Auditor deems proper. For a nonpublic report, the State Auditor cannot release the identity of the whistleblower or any individuals providing information in confidence to further the investigation without their express permission.

The State Auditor performs no enforcement functions: this responsibility lies with the appropriate state agency, which is required to regularly notify the State Auditor of any action taken, including disciplinary action, until final action has been taken.

The Protection of Whistleblowers

State law protects state employees who blow the whistle on improper governmental activities. The State Auditor will protect a whistleblower's identity to the maximum extent allowed by law. Retaliation against a state employee who files a report is unlawful and may result in monetary penalties and imprisonment.

Corrective Actions Taken in Response to Investigations

The chapters of this report describe the corrective actions that state agencies implemented on individual cases for which the State Auditor completed investigations from July 2018 through December 2018. 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 2018. Furthermore, these investigations have 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 2018

TYPE OF CORRECTIVE ACTION	TOTALS
<i>Convictions</i>	12
<i>Demotions</i>	23
<i>Job terminations</i>	88
<i>Resignations or retirements while under investigation</i>	27*
<i>Pay reductions</i>	59
<i>Reprimands</i>	340
<i>Suspensions without pay</i>	32
Total	581

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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