

INVESTIGATIONS OF IMPROPER ACTIVITIES BY STATE AGENCIES AND EMPLOYEES

Misuse of Resources, Inaccurate Attendance Records,
Disclosure of Confidential Information, and
Improper Payments

Report I2017-1

INVESTIGATIONS

**COMMITMENT
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March 2, 2017

Investigative Report I2017-1

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

Dear Governor and Legislative Leaders:

Pursuant to the California Whistleblower Protection Act, the California State Auditor (State Auditor) presents this investigative report summarizing investigations concerning allegations of improper governmental activities that were completed between July 2016 and December 2016.

This report details 10 substantiated allegations involving several state agencies and universities. Through our investigations, we found misuse of state time and resources, failure to keep accurate time and attendance records, disclosure of confidential information, neglect of duty to supervise, and improper payments. In total, we identified almost \$40,000 in inappropriate expenditures related to the misuse of state time and resources, inaccurate attendance records, and improper payments.

For example, from January 2016 until July 2016 a parole agent with the California Department of Corrections and Rehabilitation misused a state vehicle for her personal commute at a cost to the State of about \$3,800. In addition, since June 2015 the parole agent had improperly stored the vehicle at her home without the required home storage permit. Further, she failed to file monthly reports disclosing her personal use of the vehicle as required, the value of which is taxable income. Finally, the parole agent's current supervisor purposely did not request a home storage permit for her because he believed she would not have qualified for one.

In addition, an analyst at the California Department of Transportation (Caltrans) misused state time by regularly taking excessive breaks and extended lunches during her workdays, and she violated state law and a Caltrans directive regarding incompatible activities. We estimated that the analyst misused an average of 130 hours of state time from July 2015 to March 2016 at a cost to the State of about \$4,300.

State agencies must report to the State Auditor any corrective or disciplinary action taken in response to recommendations made by the State Auditor. Their first report is due no later than 60 days after we notify the agency or authority of the improper activity and monthly thereafter until corrective action is completed.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

The California Whistleblower Protection Act (Whistleblower Act) empowers the California State Auditor (State Auditor) to investigate and report on improper governmental activities by agencies and employees of the State. Under the Whistleblower Act, an *improper governmental activity* is any action by a state agency or employee related to state government that violates a law; is economically wasteful; or involves gross misconduct, incompetence, or inefficiency.¹

This report details the results of 10 significant investigations that the State Auditor either completed or directed other state agencies to complete on its behalf between July 1, 2016, and December 31, 2016. The following paragraphs briefly summarize the investigations, which are discussed more fully in the individual chapters of this report.

California Department of Corrections and Rehabilitation

From January 2016 until July 2016, a parole agent with the California Department of Corrections and Rehabilitation (CDCR) misused a state vehicle for her personal commute at a cost to the State of about \$3,800. In addition, beginning in June 2015, the parole agent had improperly stored the vehicle at her home without the required home storage permit. Further, she failed to file required monthly reports disclosing her personal use of the vehicle, the value of which is taxable income. Finally, the parole agent's current supervisor purposely did not request a home storage permit for her because he believes she would not qualify for one.

California Department of Transportation

An analyst at the California Department of Transportation (Caltrans) misused state time by regularly taking excessive breaks to smoke and extended lunches during her workdays, and she violated state law and a Caltrans directive regarding incompatible activities. We estimated that the analyst misused 130 hours of state time from July 2015 to March 2016 at a cost to the State of about \$4,300.

Investigative Highlights . . .

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

- » *A parole agent misused a state vehicle for her personal commute, stored the vehicle at her home without the required permit, and did not disclose her personal use of the vehicle as taxable income.*
- » *An analyst misused an estimated 130 hours of state time from July 2015 to March 2016 by regularly taking excessive breaks and extended lunches to smoke during her workdays.*
- » *Two tax technicians disclosed confidential information to unauthorized third parties and referred taxpayers to private businesses for tax preparation services.*
- » *A pharmacist at a state hospital undercharged leave for absences and was overpaid for nearly 100 standby hours over a 20-month period.*
- » *An adult correctional facility improperly paid a program chief more than \$2,500 over six months for supervising inmate workers when she was not eligible to receive the additional pay.*
- » *An employee in a professional job classification misused state time and resources by doing personal activities during workdays and by instructing support staff to assist her in these personal activities and allowing them to remain idle during work hours.*

¹ For more information about the Whistleblower Protection Act, please refer to the Appendix beginning on page 57.

Department of State Hospitals

From January 2014 through August 2015, a pharmacist at a state hospital failed to use sufficient leave for absences and was overpaid for 99 standby hours. In addition, pharmacy management neglected their duties to ensure the accuracy of the pharmacist's time and attendance records, and personnel staff failed to identify the problems and made other errors in the records. The combined 99 hours of undercharged leave and overcompensated time represent a cost to the State of about \$5,000.

State Board of Equalization

Two tax technicians at the State Board of Equalization (BOE) engaged in improper governmental activities when each referred taxpayers to private businesses for tax preparation services, disclosed confidential information to unauthorized third parties, and responded dishonestly to BOE investigators when questioned.

CDCR, California Institution for Women

The California Institution for Women, an adult correctional facility operated by CDCR, improperly paid a program chief a total of \$2,520 from March 2015 through September 2015. The program chief received this overpayment via a monthly Institutional Worker Supervision Pay differential (extra pay) intended for those involved in the supervision of inmate workers. In addition, from December 2014 through February 2015, CDCR paid the program chief \$1,080 in extra pay even though it did not maintain the initial approving paperwork on file to authorize these payments and keeping a record of this paperwork is a requirement for issuing the pay under CDCR's procedures.

Department of Health Care Services

An employee in a professional job classification at the Department of Health Care Services (DHCS) misused state time and resources by spending a significant portion of her workdays' business hours doing personal activities, such as shopping online, sending and receiving personal emails, and visiting social media websites. In addition, the employee was dishonest about how often she misused state resources. Further, the employee misused state resources by instructing support staff to assist her in activities unrelated to work and by allowing them to remain idle during work hours.

DHCS

In August 2014, a division chief at DHCS improperly created and maintained a do-not-hire list of candidates for jobs in her division. Division management used this list until at least May 2016, during which time division management had neither a clear, consistent understanding of what actions qualified a candidate to be placed on the list nor a well-defined understanding of when in the hiring process they should use the list to exclude candidates. Thus, the division could not guarantee that it made hiring decisions based on candidates' merit or that it did not exclude eligible candidates because of illegally discriminatory criteria.

San Diego State University

From June 2015 to June 2016, San Diego State University (San Diego State) erroneously paid a maintenance employee more than \$2,100 for a 3 percent increase in his monthly salary to which he was not entitled. The error resulted from an inaccurate hire date in San Diego State's human resources information system.

California Department of Social Services

A supervisor at the California Department of Social Services neglected her supervisory duties when she failed to engage in progressive discipline with an employee whom the supervisor knew was not satisfactorily performing her job responsibilities for many years. In addition, the supervisor was dishonest when she was interviewed during the investigation.

California State University, Fresno

A library employee at California State University, Fresno, misused university resources during a 13-month period when he used his university computer to visit more than 48,000 webpages related to online videos and games unrelated to his work. He also misused university time when he used the computer for personal purposes, which could have cost the university as much as \$22,200.

Table 1 on the following page summarizes the improper governmental activities that appear in this report, the financial impact of the activities, and the status of the entities' implementations of our recommendations.

Table 1
Issues, Financial Impact, and Status of Recommendations for Cases Described in This Report

CHAPTER	DEPARTMENT	ISSUE	COST TO THE STATE AS OF DECEMBER 31, 2016*	STATUS OF RECOMMENDATIONS		
				FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING
1	California Department of Corrections and Rehabilitation	Misuse of a state vehicle, failure to obtain a home storage permit, and failure to submit monthly reports of taxable personal use of the vehicle	\$3,800			✓
2	California Department of Transportation	Misuse of state time	4,300	✓		
3	Department of State Hospitals	Failure to keep accurate time and attendance records	5,000		✓	
4	State Board of Equalization	Disclosure of confidential information	NA	✓		
5	California Department of Corrections and Rehabilitation, California Institution for Women	Improper payments	2,500 [†]		✓	
6	Department of Health Care Services	Misuse of state resources	NA	✓		
7	Department of Health Care Services	Improper hiring practices	NA	✓		
8	San Diego State University	Overpayment to a maintenance employee	2,100		✓	
9	California Department of Social Services	Neglect of duty to supervise, dishonesty	NA		✓	
10	California State University, Fresno	Misuse of state resources	22,200		✓	

Source: California State Auditor's analysis.

NA = Not applicable because the situation did not involve a dollar amount or because the finding did not allow us to quantify the financial impact.

* We estimated the costs to the State as noted in individual chapters of this report.

† This amount reflects the improper payments made in 2015. We also identified nearly \$1,100 in extra pay for which the initial approving paperwork was not maintained. However, we did not include this additional amount in Table 1 because the lack of paperwork did not violate state law.

Chapter 1

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION: A PAROLE AGENT MISUSED A STATE VEHICLE, FAILED TO OBTAIN A HOME STORAGE PERMIT, AND FAILED TO SUBMIT MONTHLY REPORTS INDICATING TAXABLE PERSONAL USE OF THE VEHICLE CASE I2016-0112

Results in Brief

From January 2016 until July 2016, a parole agent with the California Department of Corrections and Rehabilitation (CDCR) misused a state vehicle for her personal commute at a total cost to the State of \$3,821. We also found that since June 2015, the parole agent had improperly stored the vehicle at her home without the requisite home storage permit. Further, she failed to file required monthly reports disclosing her personal use of the vehicle, even though the value of this use is taxable income. Finally, we discovered that the parole agent's current supervisor purposely did not request a home storage permit for her because he believes she would not qualify for one.

Background

The Division of Adult Parole Operations (parole division) within CDCR primarily works to supervise adult parolees residing in California. Because the State has determined that parole agents are required to conduct substantial travel to fulfill their duties to supervise and monitor parolees, the parole division assigns state vehicles to parole agents. However, staff in administrative roles—such as those who supervise parole agents—do not have the same compelling reason for using state vehicles because they work principally in offices supervising staff. When administrative supervisors need to travel for state business, many parole offices—including the one where the subject of this investigation worked—have pool vehicles available for their use.

The State deems an employee's use of a state vehicle for purposes other than to conduct state business, including—with limited exceptions that do not apply in this case—his or her commute

About the Department

The Division of Adult Parole Operations within the California Department of Corrections and Rehabilitation is responsible for the supervision of adult parolees in California.

Relevant Criteria

Government Code section 8314 prohibits state employees from using state vehicles for personal enjoyment, private gain, or personal advantage.

Government Code section 19993.1 limits the use of state vehicles to the conduct of state business.

California Code of Regulations, title 2, section 599.802, states that misuse of a state-owned vehicle occurs when it is used for purposes other than to conduct state business.

California Code of Regulations, title 2, section 599.808, bars employees from frequently storing a state vehicle at home unless their department has approved a vehicle home storage permit for those individuals. The State has defined "frequently" as more than 72 nights over a 12-month period or more than 36 nights over any three-month period.

Executive Order B-2-11 specifies that state agencies may only issue home storage permits that are cost-efficient or essential.

State Administrative Manual section 8572.4 requires employees to provide monthly records to their supervisor that are consistent with the law and departmental requirements on the personal and business use of state vehicles.

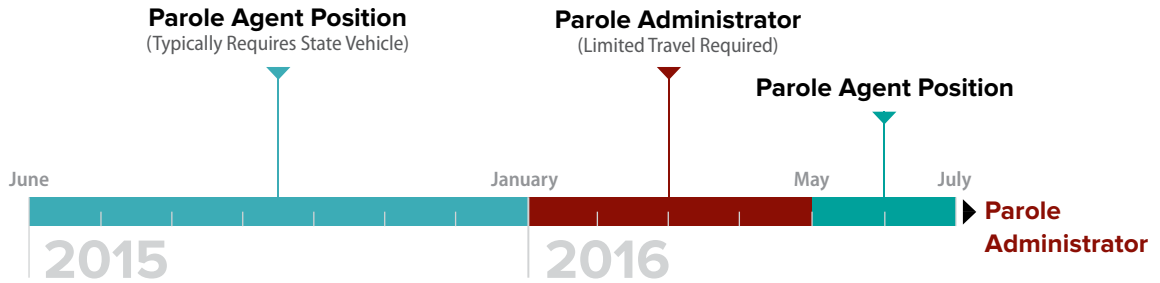
to and from work, a misuse of a state vehicle. Additionally, the value of personal use of a state vehicle, including personal commutes between home and headquarters or parole offices and between headquarters or parole offices to home, is reportable taxable income. To ensure accurate reporting, CDCR requires its employees to submit a monthly Personal Use of State Provided Vehicle Employee Certification form (personal use certification) disclosing their commuting miles regardless of whether they have driven commute miles during the month. CDCR transfers the data on the personal use certification to the State Controller's Office (SCO). SCO is responsible for reporting state employees' income, including the value of the employees' personal use of state vehicles, to the Internal Revenue Service.

The parole division has stringent rules (mirroring state standards) regarding storing a state vehicle at an employee's home. Before a state vehicle can be stored frequently at an employee's home, the employee must obtain a home storage permit. To do so, the employee must meet *all* criteria under one of two categories: *cost-effective* use or *essential* use of the vehicle. For example, at CDCR, to be eligible under the *cost-effective* category, the employee's vehicle must function as the employee's office, and the employee's duty statement must reflect duties that require more than 50 percent of work to be conducted in the field. The *essential* category includes the eligibility requirement that an employee should take the car home only when he or she is needed to report as a primary responder and must respond to at least 24 emergencies per year.

Our investigation focused on the parole agent's use of a state vehicle from June 2015 until July 2016. As Figure 1 shows, the parole agent performed alternately the functions of two different roles over the course of these 13 months. One of these two roles did not require her to travel for state business; thus, she did not need consistent access to a state vehicle. Figure 1 illustrates that the employee had multiple duties during the period that we reviewed. She performed parole agent duties—functioning as an employee relations officer—in the second half of 2015. Then, as an assistant regional administrator, she worked in the role of a parole administrator in early 2016. Returning to her parole agent responsibilities in May 2016, the employee continued to carry out some parole administrator duties and then took another assignment as a parole administrator, or district administrator, in July 2016.²

² The State allows employees to work outside their main job duties to fill other roles for temporary periods. The State calls such roles *out-of-class* assignments. The parole agent's job classification never changed during the 13-month period. When she was acting in the role of parole administrator, she was fulfilling an out-of-class assignment.

Figure 1
Overview of the Parole Agent’s Functional Positions From June 2015 to July 2016



Sources: Parole agent’s interview and California Department of Corrections and Rehabilitation’s personnel documents.

From January 2016 Until July 2016, the Parole Agent Repeatedly Misused a State Vehicle for Her Personal Commute at a Cost to the State of \$3,821

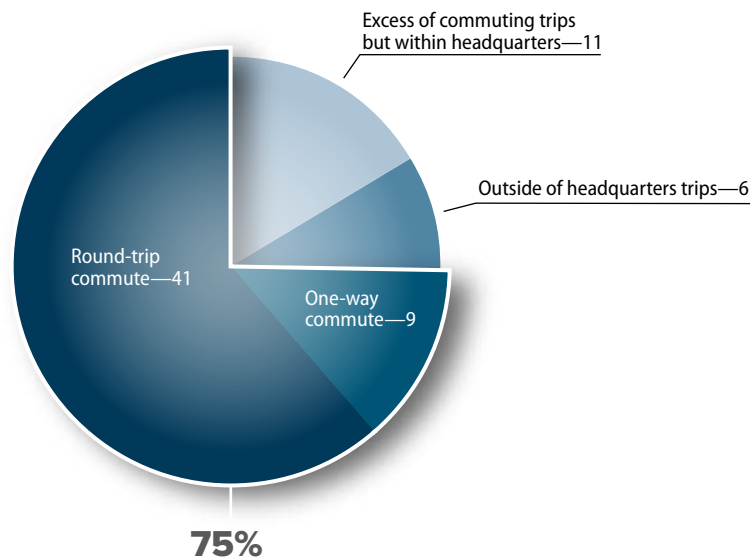
In January 2016, the parole agent temporarily began fulfilling the duties of a parole administrator. In this role, she planned, organized, and supervised multiple units within the parole division. Although this assignment ended in May 2016, the parole agent stated that she continued to perform some of the parole administrator duties in addition to her regular duties until she began another assignment. While working as a parole administrator, her duty statement did not specifically indicate any travel obligations for the assignment, and when we asked the parole agent whether she had to travel to the field for this assignment, she stated that she worked “just in the office.”

We reviewed the parole agent’s mileage logs for the time she worked in the role of a parole administrator, and we concluded that she did not conduct any significant travel for state purposes that would have warranted the assignment of a state vehicle. Specifically, of the 67 trips she logged from January to May 2016, only six trips—each with distances of greater than 150 miles—indicated locations other than her headquarters.³ In comparison, she logged 50 trips for her personal commute—either round trip or one way from her home. As Figure 2 on the following page indicates, these trips constituted 75 percent of her state vehicle use. When we interviewed the parole agent, she confirmed that she regularly stored the vehicle at home whenever she needed to travel into the field and that the travel also included her personal commute for at least 75 percent of her trips in the state vehicle. Therefore, the results indicate that the parole

³ The parole agent logged 69 trips from January 2016 to May 2016. However, the mileage records for two of the trips are illegible; therefore, we were unable to determine the number of miles she drove on these two trips. As a result, we excluded the two trips from our analysis.

agent did not conduct any significant travel for state purposes warranting the assignment of a state vehicle. As mentioned in the Background section, the parole agent worked in one of the offices that had pool vehicles available to use when the need arose for her to conduct state business as a parole administrator. However, the State instead paid \$2,727 to lease and fuel the state car she used during this period.

Figure 2
Breakdown of the Parole Agent's Logged Trips From January 2016 to May 2016



Source: California State Auditor's analysis of the parole agent's mileage logs.

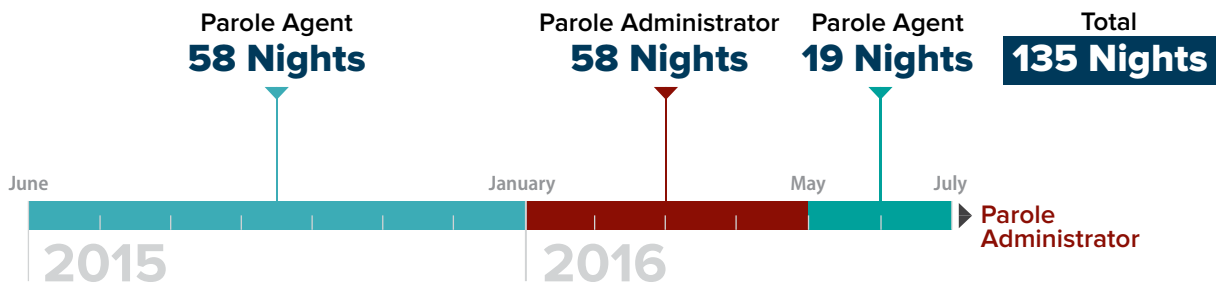
Although her final assignment with parole administrator duties ended in early May 2016, the parole agent's mileage logs indicate that she continued to use the vehicle primarily to commute to and from work. Our analysis of her mileage logs concluded that 21 of the 26 additional trips she logged between early May 2016 through June 2016 were for her personal commute. The State paid another \$1,094 to lease and fuel her car during these additional two months. In total, the bill for the state vehicle that the parole agent used primarily for her personal commute was \$3,821.

The Parole Agent Improperly Stored Her Vehicle at Home 135 Times From June 2015 to July 2016

State law requires employees who park state vehicles at home to file a home storage permit if the number of nights exceeds 36 in any three-month period or 72 in a 12-month period. Our analysis of the parole agent’s mileage log indicated that she reached the 36-night limit by December 2015 and that she exceeded the yearly limit by 63 additional nights. When we interviewed the parole agent, she admitted that she regularly stored the vehicle at home and used her personal vehicle only when she was not planning on traveling anytime during a given week. Nevertheless, our investigation revealed that she did not have a home storage permit on file during the entire time she used the state vehicle.

The parole agent’s supervisor from June 2015 to July 2016 failed to ensure that a home storage permit was filed for the parole agent despite claiming that her job duties required significant travel that would exceed the established home-storage thresholds. Figure 3 illustrates the number of nights she stored her vehicle at home during this time frame.

Figure 3
 Overview of the Number of Nights the Parole Agent Improperly Stored the State Vehicle From June 2015 to July 2016



Sources: Parole agent’s interview and California Department of Corrections and Rehabilitation’s personnel documents.

Our analysis of the parole agent’s travel from June 2015 through December 2015 indicated that she took her vehicle home 58 times while she worked in this position. As discussed in the previous section, the parole agent worked temporarily as a parole administrator from January 2016 to May 2016. We concluded in the previous section that the parole agent did not conduct any significant travel for state purposes that warranted the assignment of a state vehicle. Our analysis of her travel during this time indicates that she took her vehicle home an additional 58 times while working in this administrative position. The parole agent returned to the regular duties of a parole agent from May 2016

Although parole division policy required her to disclose where the vehicle was stored for each of these trips on the mileage log, the parole agent deliberately left that field blank.

until July 2016. However, she continued to park the vehicle at home another 19 times, further exceeding the home-storage threshold established by state law.

We asked the parole agent why she did not have a home storage permit on file. She stated that since the vehicle she used was a pool vehicle, her former supervisor never asked her to submit the form. She admitted that although the parole division identified the vehicle as a pool vehicle, she was the only person who regularly used the vehicle. Her mileage log corroborated this because the parole agent logged 98 percent of the miles that vehicle traveled, or 163 of the 167 trips, from June 2015 to July 2016. Although parole division policy required her to disclose where the vehicle was stored for each of these trips on the mileage log, the parole agent deliberately left that field blank.

When we asked her former supervisor why he had not sought a home storage permit for the parole agent, he stated that he assumed she drove the vehicle less than the threshold requiring her to obtain a home storage permit. Generally, he estimated that she used the vehicle maybe 12 or 13 days of the month. Her supervisor failed to recognize that even if she had only driven the vehicle home 12 or 13 days each month, over time she would have exceeded the threshold established by state law requiring her to file a home storage permit.

The Parole Agent Has Not Made Required Disclosures of Her Personal Commute Mileage Since June 2015

As the Background section mentions, any parole division employee who uses a state vehicle is required to file a personal use certification each month disclosing all personal commute miles. The parole division requires employees to submit the personal use certification regardless of whether they have incurred any commute miles. We reviewed the data CDCR reported to SCO from June 2015 through July 2016 and found that the parole agent did not report any commute miles. Because CDCR never received the required disclosures, it could not report the parole agent's vehicle-related taxable fringe benefits to SCO. Further, employees who misrepresent their taxable income may be subject to tax penalties.

The Parole Agent's Current Supervisor Knowingly Assigned Her a State Vehicle Even Though the Assignment Violated CDCR's Policy

During our investigation, we learned that in July 2016 the parole agent accepted another assignment in the role of a district administrator, whose duties entail the supervision of a group of

parole units. As part of this change in assignment, she returned the state vehicle that was the focus of our investigation, and her new supervisor assigned her a different state vehicle in July 2016.

Her new supervisor admitted that he assigned the parole agent a pool vehicle even though she uses it exclusively. He also stated that although she does not have a home storage permit, all district administrators typically take their vehicles home with them regularly. When asked why he assigned the parole agent a pool vehicle when the vehicle was intended for her exclusive use, he stated that he knew home storage permits would not be approved for district administrators. Even though this supervisor admitted that he knew the assignment and home storage of state vehicles for district administrators violated the parole division's policy, he was adamant about the need for district administrators to have state vehicles for their own use.

Recommendations

To remedy the effects of the improper governmental activities identified by this investigation and to prevent similar activities from recurring, CDCR should take the following actions:

- Require the parole agent to submit a personal use certification for the personal use of her assigned state vehicles from June 2015 to present.
- Review the duty statements of all employees within the parole division who have held the positions discussed in this report and who have state vehicles for their exclusive use to determine whether the assignments of state vehicles comply with the laws and policies of the State and the parole division. If CDCR determines that a vehicle assignment is appropriate, it should also do the following:
 - Modify each employee's duty statement to indicate the percentage of time the employee should expect to perform fieldwork.
 - Ensure that the state vehicles assigned to these employees are not pool vehicles.
 - Ensure that each employee has an approved home storage permit on file.
- Discontinue the practice of assigning pool vehicles for the exclusive use of individuals to circumvent state laws and parole division policies.

- Train all parole division employees who drive state vehicles about the following:
 - How to properly document their use of a state vehicle on their mileage logs.
 - How to obtain a home storage permit and for whom it is necessary.
 - How and when to submit a personal use certification reporting all personal commutes driven in a state vehicle.
- Train all parole division supervisors who oversee employees with state vehicles regarding the department's policy for the proper usage and storage of state vehicles.

Agency Response

CDCR reported in January 2017 that it agreed with our recommendations and stated that it intended to implement a corrective action plan. Specifically, in response to our first recommendation, CDCR stated that by the end of February 2017, it will direct the parole agent to submit personal use certifications for all personal use of state vehicles from June 2015 until the present. In addition, CDCR stated that the parole agent will receive additional training on all aspects of state vehicle use.

Regarding the second recommendation, CDCR stated that it would review the duty statements of the positions that we recommended it review. For each employee who the parole division deems to have a properly assigned vehicle, the division will modify the duty statement to indicate the percentage of time the employee is expected to travel overall to perform the essential functions of his or her job. In addition, CDCR stated that supervisory staff within the parole division will be instructed to review and confirm that the issuance and use of state vehicles in the performance of employees' duties comply with applicable laws, rules, policies, and regulations and that supervisory staff will confirm that vehicles assigned for exclusive use are not designated pool vehicles. CDCR committed to ensure that by the end of April 2017, parole division staff who are authorized to have assigned state vehicles at home overnight will have current and complete home storage permits on file.

In response to our third recommendation, CDCR reported that it will identify all parole division vehicles that are pool vehicles. It also stated that it would train all staff using state vehicles on the definition, use, and documentation required for using pool vehicles by mid-February 2017. Additionally, CDCR stated that it

would reissue its policy on the authorized use of state vehicles after amending the policy to include specific direction to not issue or allow pool vehicles for the exclusive use of any division.

CDCR affirmed for our fourth recommendation that the parole division would develop a comprehensive training plan related to state vehicle assignment, use, documentation, home storage, and certification. CDCR stated that the training plan will be delivered to supervisory staff who will provide the training to subordinate staff by the end of April 2017. CDCR also stated that it will track state vehicles in a recently developed database but did not describe how this database would help fulfill this recommendation.

Lastly, in addressing our fifth recommendation, CDCR reported that the parole division will ensure that the comprehensive training plan mentioned in response to our fourth recommendation is presented in a timely manner to all supervisors who have staff using state vehicles. CDCR estimated that it will complete this task by the end of February 2017.

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Chapter 2

CALIFORNIA DEPARTMENT OF TRANSPORTATION: AN ANALYST MISUSED STATE TIME FOR LENGTHY SMOKING BREAKS AND LUNCHES CASE I2015-0736

Results in Brief

We received complaints alleging the misuse of state time by employees at the California Department of Transportation (Caltrans). We asked Caltrans to investigate this complaint on our behalf and to report its findings to us.

Based on Caltrans' findings, we determined that an analyst misused state time by regularly taking excessive smoking breaks and extended lunches during her workdays, and she violated state law and a Caltrans directive regarding incompatible activities. We estimated that on average, the analyst misused 130 hours of state time from July 2015 to March 2016 at a total cost to the State of \$4,304.

Background

The analyst, who reported during the time of the investigation to a now-retired staff services manager, provides administrative support to staff in Caltrans' Division of Local Assistance (division). The analyst has a 30-minute daily lunch break. In addition, her supervisor allowed her to split the two 15-minute breaks to which she is legally entitled so that she could take four 7-minute smoking breaks throughout her workday.

About the Department

The California Department of Transportation (Caltrans) designs, constructs, maintains, and operates the California state highway system as well as that portion of the interstate highway system within the State's boundaries.

Relevant Criteria

Government Code section 8314 prohibits state employees from using public resources, including state-compensated time, for personal or other purposes not authorized by law.

Government Code section 19990 prohibits state employees from engaging in activities that are clearly inconsistent or incompatible with their duties as state employees. One such incompatible activity is failure to devote one's full time, attention, and efforts to state employment during hours of duty.

Government Code section 19572 identifies various causes for which the State may take disciplinary action against an employee, including a violation of the prohibitions set forth in section 19990.

Caltrans' Incompatible Activities Directive states that its employees should not willfully engage in any activity that is or gives the appearance of being incompatible with their duties as state employees, that discredits their department or the State, or that has an adverse effect on the confidence of the public in the integrity of government.

The Analyst Took More Time Than Allowed for Her Breaks and Lunches

The investigation determined that the analyst regularly took extended breaks and lunches, largely for smoking, from July 2015 to March 2016. During the investigation, a Caltrans investigator monitored the analyst's activities for four days in February 2016 and March 2016. The investigator witnessed the analyst taking smoking breaks near Caltrans' designated smoking area on nine occasions. Most of the breaks ranged from four to 20 minutes. However, on one of those occasions the investigator observed the analyst leave

the building for lunch, return approximately 65 minutes later, and then immediately take a 10-minute smoking break, all of which resulted in a total of 75 minutes away from her work.

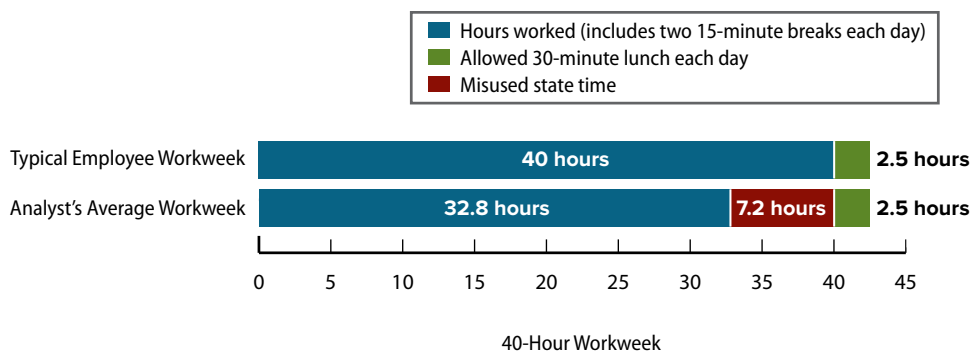
Subsequently, during her interview with Caltrans investigators, the analyst admitted to the following:

- Taking extra breaks to smoke cigarettes and that the duration of her breaks ranged from six to 20 minutes each.
- Taking an extended 20 to 45 minutes beyond her normal 30-minute lunch every day since October 2015, especially when the weather was nice. The analyst indicated that the longest lunch break she took was 75 minutes.
- Neglecting to inform her supervisor of her additional breaks and extended lunches.

Figure 4 displays the typical amount of break time in an average 40-hour workweek compared to the analyst's average workweek. It illustrates that on average, she worked 32.8 hours and misused 7.2 hours of state time each week because she took additional smoking breaks and extended lunches.

Figure 4

The Analyst Misused an Average of 7.2 Hours per Week of State Time by Taking Extended Breaks and Lunches



Source: California State Auditor's analysis of the analyst's time from July 2015 to March 2016.

We estimated that the analyst failed to account for 130 hours of extended break and lunch times from July 2015 through March 2016, and these hours represent a total loss to the State of \$4,304.

Recommendations

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

- Take appropriate corrective or disciplinary action against the analyst for her misuse of state time.
- Have the analyst review and sign Caltrans' policies and directives related to the misuse of state time and incompatible activities.

Agency Response

In January 2017, Caltrans provided its response and actions related to our recommendations. Specifically, Caltrans stated that the division issued a letter of warning to the analyst in January 2017. In addition, the analyst reviewed and signed the employee expectation memorandum and the relevant policies and directives in January 2017.

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Chapter 3

DEPARTMENT OF STATE HOSPITALS: PHARMACY AND PERSONNEL STAFF FAILED TO KEEP ACCURATE TIME AND ATTENDANCE RECORDS CASE I2015-0576

Results in Brief

A pharmacist at a state hospital failed to charge sufficient leave for absences and was overpaid for standby hours during the period we reviewed, January 2014 through August 2015, for a combined total of 99 hours. In addition, pharmacy management neglected their duties to ensure the accuracy of the time and attendance records, and personnel staff failed to identify the problems and made other errors in the records. The combined 99 hours of undercharged leave and overcompensated time represents a total cost to the State of \$5,001.

Background

State regulations require all state employees, including pharmacists, to keep accurate records of their attendance and hours worked. The policies and procedures of the Department of State Hospitals (State Hospitals) require employees to complete monthly timesheets indicating the hours they worked each day, the days on which they were absent, and the type of accumulated leave—such as vacation or sick leave—used to cover those absent hours. Supervisors are responsible for verifying the accuracy of and approving each timesheet. Pharmacy supervisors at this state hospital also use daily sign-in sheets on which each employee records his or her arrival and departure times, and the supervisors use this information to complete monthly attendance reports for all pharmacy employees. Finally, personnel employees at this state hospital use the approved timesheets and the monthly attendance reports to ensure the proper accounting of all hours, that employees' leave balances are charged appropriately for all absences, and any overtime compensation is calculated and paid accurately.

Many different factors affect how State Hospitals accounts for the hours and pay of pharmacists. The pharmacists, who are hourly employees, sometimes are required to be on standby duty outside

About the Department

The Department of State Hospitals (State Hospitals) serves mentally ill patients who are mandated for treatment by a criminal or civil court judge. It oversees five hospitals and three psychiatric programs located in state prisons, and it employs 70 pharmacists who fill prescriptions for patients.

Relevant Criteria

California Code of Regulations, title 2, section 599.665, provides that state agencies must keep complete and accurate time and attendance records for all of their employees. To fulfill this duty, State Hospitals requires employees to submit complete and accurate timesheets reflecting their time worked and to charge leave balances appropriately when the employees are absent. Each manager is responsible for the attendance reported by the manager's staff.

Government Code section 19838, subdivision (d), provides that when the State has overpaid an employee, the State must take administrative action to recover the amount within three years from the date of overpayment.

of their regularly scheduled hours, during which time they must remain reachable and readily available to return to work if they are urgently needed. The collective bargaining agreement for pharmacists provides that they earn one hour of compensating time off (CTO) for every four hours they spend on standby duty. The agreement also contains a unique provision that allows CTO earned through standby to count toward pharmacists' regular workday hours for the purposes of qualifying for overtime. For instance, if a pharmacist works only five hours on a given day but also remains on standby duty for an additional 12 hours, earning three hours of CTO, the pharmacist could use the three CTO hours to bring his or her total hours worked for that day to eight. Additionally, as hourly employees who are entitled to earn overtime, any standby CTO hours that pharmacists might earn in a week when they have already met the weekly 40-hour requirement are credited to them at an increased overtime rate.

In response to an allegation we received that a pharmacist's work hours and standby hours were improperly credited, we initiated an investigation and requested the assistance of State Hospitals to conduct the investigation.

A Pharmacist, Pharmacy Management, and Personnel Staff Neglected Their Duties to Maintain Accurate Time and Attendance Records and Thus Cost the State a Total of \$5,001

During 2014 and 2015, pharmacy management at a state hospital exercised poor administrative control over their timekeeping and attendance records that allowed a pharmacist to be significantly overpaid. They assigned the pharmacist to work an inordinate number of standby hours, which allowed her to accrue considerable extra work hours. Provisions in the collective bargaining agreement then allowed the pharmacist to either use these extra hours to supplement her regular work hours if she had worked fewer than 40 hours during a week or receive CTO hours at a premium overtime rate if she had already met the 40-hour requirement. However, pharmacy management did not assign a set schedule to the pharmacist and allowed her to work a variable number of hours on either four or five days each week. Further complicating matters, when completing her timesheets and the pharmacy attendance reports, neither the pharmacist nor her supervisor distinguished her standby hours earned from her regular hours worked.

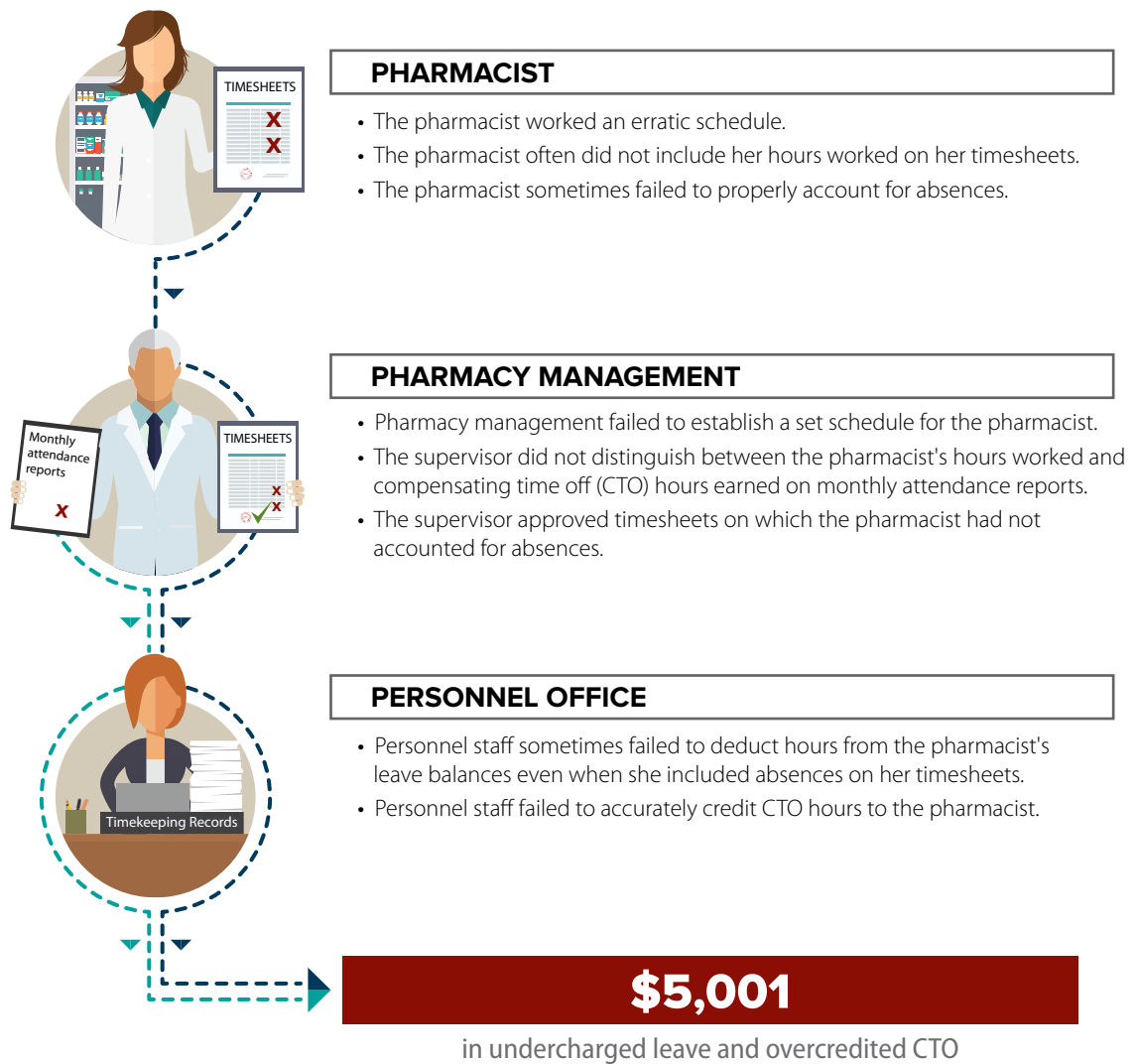
When completing timesheets and attendance reports, neither the pharmacist nor her supervisor distinguished her standby hours from her regular hours.

These practices led to inaccurate, inconsistent, and confusing time and attendance records that ultimately resulted in the pharmacist undercharging leave and being overcredited CTO hours. Because the records were so confusing, we found it difficult to identify days for which the pharmacist should have charged leave and days on

which she had worked standby or overtime hours. Thus, to properly analyze the pharmacist’s time and attendance for our investigation, in some instances we had to reconstruct her attendance records based on sign-in sheets and other available documents.

After thoroughly reviewing the documents from January 2014 through August 2015, we determined that State Hospitals overpaid the pharmacist for 99 hours. As Figure 5 illustrates, the combined negligence of the pharmacist, pharmacy management, and the personnel staff cost the State a total of \$5,001 in combined undercharged leave and overcredited CTO hours.

Figure 5
The Combined Negligence of the Pharmacist, Pharmacy Management, and Personnel Staff Cost the State a Total of \$5,001



Source: California State Auditor’s analysis of the Department of State Hospitals’ employee attendance records.

Specifically, the pharmacist's leave balances were undercharged by 35 hours, which resulted from a variety of circumstances. The pharmacist often did not include the number of hours she worked on her timesheets. In addition, the pharmacist sometimes failed to account for all her absences on her timesheets. For example, during one week, the pharmacist only worked 25 hours and was not on standby. However, she did not include any vacation or other type of leave use on her timesheet, falling 15 hours short of the 40-hour weekly requirement, yet she was paid as if she had worked the full 40 hours. In this and in other instances, both her supervisor and the personnel specialist who reviewed the monthly timesheet and attendance records also failed to note the omission. On other occasions, the personnel specialist failed to deduct hours from the pharmacist's leave balances even though the pharmacist had appropriately accounted for her absences on her timesheets.

We also found that the pharmacist received excess CTO credit of about 64 hours. Although we could not determine exactly how the personnel staff calculated the hours they credited to the pharmacist, poor administrative control over the pharmacist's schedule and the confusing nature of her attendance records likely affected the calculations.

Recommendations

To remedy the effects of the improper governmental activities described in this report and to prevent them from recurring, State Hospitals should take the following actions:

- Initiate immediate action, in accordance with Government Code section 19838, to collect the overpayment from the pharmacist.
- Provide counseling or training to the pharmacist and pharmacy management regarding proper time and attendance procedures.
- Provide counseling or training to the responsible personnel staff regarding proper procedures for processing the attendance records.
- Review the pharmacist's time and attendance records from September 2015 to present to ensure she was not overpaid for any additional hours or had leave balances that were not reduced because of absences.

Agency Response

State Hospitals reported that it agreed with our findings and would take immediate action to address our recommendations. Specifically, in December 2016 it issued a notice of overpayment to the pharmacist, explaining its intent to reduce her CTO balance by 99 hours. However, it stated that the pharmacist has disputed this proposed action. In addition, State Hospitals said that in February 2017, it provided face-to-face training to the pharmacist, pharmacy management, and the responsible personnel staff regarding the proper procedures for keeping and processing time and attendance records. Finally, State Hospitals informed us that by February 2017, it plans to review the pharmacist's attendance records from September 2015 through December 2016 to ensure that it did not overpay the pharmacist for any additional hours.

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Chapter 4

STATE BOARD OF EQUALIZATION: TWO EMPLOYEES DISCLOSED CONFIDENTIAL INFORMATION TO UNAUTHORIZED THIRD PARTIES CASE I2015-0686

Results in Brief

Two tax technicians at the State Board of Equalization (BOE) engaged in improper governmental activities when each of them referred taxpayers to private businesses for tax preparation services, disclosed confidential information to unauthorized third parties, and were dishonest with BOE investigators when questioned. We had asked BOE to investigate this complaint on our behalf and report its findings to us.

Background

The responsibilities of the two tax technicians included issuing permits to new businesses by mail and in person, issuing tax exemption certificates, performing account maintenance duties, conducting taxpayer interviews, and performing occasional receptionist duties, such as answering incoming calls and assisting taxpayers who walk into the office.

Two Tax Technicians Improperly Referred Taxpayers to Private Businesses, Disclosed Confidential Taxpayer Information, and Responded Dishonestly to BOE Investigators

The first tax technician provided a taxpayer with the contact information of a retired BOE employee for tax preparation services on at least one occasion during normal business hours. In addition, she admitted to inappropriately disclosing confidential taxpayer information on numerous occasions over several years to the relatives of BOE taxpayers and an unauthorized bookkeeper.

The second tax technician similarly engaged in incompatible activities by improperly referring taxpayers to private businesses while she was working and by disclosing confidential taxpayer

About the Board

The State Board of Equalization (BOE) administers programs related to sales and use taxes, property taxes, special taxes, and the tax appellate program. The revenue from these programs supports hundreds of state and local government programs and services.

Relevant Criteria

Government Code section 8314, subdivision (a), states that it is unlawful for any state employee to permit others to use public resources for personal or other purposes not authorized by law. In addition, subdivision (c)(1) states that any person who intentionally or negligently violates this section is liable for a civil penalty not to exceed \$1,000 for each day on which a violation occurs, plus three times the value of the unlawful use of public resources.

Government Code section 19990 prohibits state employees from engaging in any activity that is clearly inconsistent, in conflict with, or inimical to their duties as state employees, including by providing confidential information to unauthorized persons or by not devoting their full time, attention, and efforts to their offices during hours of duty.

Government Code section 19572, subdivision (f), states that dishonesty constitutes a cause for discipline of an employee.

Revenue and Taxation Code section 7056, subdivision (a) (1), states that it is unlawful for a BOE employee to disclose any information concerning any taxpayer, except as specifically authorized by statute. Section 7056.5, subdivision (a), states that any willful unauthorized inspection or unwarranted disclosure or use of confidential tax record information by a BOE employee is a misdemeanor.

information to unauthorized third parties. Specifically, the second tax technician admitted that she referred taxpayers, on at least five separate occasions, for tax preparation services to two local tax preparers, including the retired BOE employee mentioned previously. In addition, the second tax technician admitted to disclosing confidential taxpayer information, such as Social Security numbers, account status, and personal phone numbers, to the retired BOE employee and a second bookkeeper on numerous occasions.

When interviewed by BOE investigators, both tax technicians were misleading, evasive, and dishonest by providing statements that contained inaccuracies and conflicted with the facts. BOE found that these tax technicians' actions violated its policies regarding incompatible activities, confidentiality, and professional conduct. Further, BOE stated that each tax technician's supervisory file contained previous counseling memorandums for issues similar to those in this investigation which, when combined, reflect continuing patterns of incompatible activities and misuse of state property.

BOE reported that the retired employee, to whom the two tax technicians referred taxpayers for tax preparation services and to whom one of them provided confidential information on various occasions, formerly worked with the two tax technicians. In addition, BOE stated that while the retired employee was employed with BOE, it had also served this employee with disciplinary action for disclosing confidential information to a third party. However, she retired before the disciplinary action's effective date.

Before the completion of BOE's investigation, the first tax technician transferred to another state agency. Therefore, BOE stated that it would not document the investigation or the investigation's findings in her official personnel file.

BOE acted to dismiss the second tax technician. However, the second tax technician retired before the dismissal took effect. BOE stated that it would not document either its findings or its attempted disciplinary action in the tax technician's official personnel file because she retired.

Recommendations

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

- Work with the first tax technician's current employing agency to place appropriate documentation about the investigation in her official personnel file.

- Place a memo in the second tax technician's official personnel file that details the findings of its investigation, its dismissal filed and served on her, and this tax technician's retirement from BOE before the effective date of the dismissal so that other state agencies are fully aware of the findings should she return to state employment.

Agency Response

In February 2017, BOE reported that it placed in the first tax technician's official personnel file the appropriate documentation regarding the investigation. In addition, BOE stated that it was coordinating efforts with the first tax technician's current employing agency to take additional action about her conduct. Further, BOE stated that it placed in the second tax technician's official personnel file a letter that details the findings of the investigation, the dismissal filed and served on her, and her retirement before the effective date of the dismissal.

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Chapter 5

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, CALIFORNIA INSTITUTION FOR WOMEN: IT IMPROPERLY PAID A PROGRAM CHIEF FOR INMATE SUPERVISION CASE I2016-0015

Results in Brief

The California Institution for Women (CIW), one of the adult correctional facilities operated by the California Department of Corrections and Rehabilitation (CDCR), improperly paid a program chief a total of \$2,520 from March 2015 through September 2015. The program chief received this overpayment in the form of a monthly \$360 Institutional Worker Supervision Pay (IWSP) differential (extra pay) intended for those involved in the supervision of inmate workers. In addition, from December 2014 through February 2015, CDCR paid the program chief \$1,080 in extra pay even though it did not maintain the initial approving paperwork on file to authorize these payments, which is a requirement to issue pay under CDCR's IWSP procedure.

CIW issued this extra pay after the program chief certified each month that she directly supervised an employee who supervised inmates (inmate-supervising employee). However, by March 2015 the program chief no longer directly supervised this employee who directly supervised inmates and neither she nor the executive to whom she reported (supervising executive) followed protocol by notifying the CIW personnel office (CIW personnel) that the program chief no longer qualified for the extra pay. Finally, personnel staff failed to conduct the required annual audit of the IWSP program that could have prevented the improper payments.

About the Department

The California Department of Corrections and Rehabilitation (CDCR) enhances public safety through safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies that help offenders successfully reintegrate into communities upon their release. It operates 35 adult facilities, including the California Institution for Women.

Relevant Criteria

California Code of Regulations, title 15, section 3040, subdivision (a), provides that every able-bodied person committed to the custody of CDCR is obligated to work as assigned by the CDCR staff to whom the inmate's custody and supervision may be delegated.

California Department of Human Resources' California State Civil Service Pay Scales section 14, Pay Differential 67, provides that state employees in certain classifications, who are assigned to supervise inmates in addition to performing their regular responsibilities, are entitled to extra pay ranging from \$190 to \$400 per month, provided they meet specific requirements. This extra pay may also apply to employees having direct supervisory responsibility over employees who meet the specific requirements to receive the extra pay.

Government Code section 19838, subdivision (d), provides that the State must take administrative action to recover any overpayment within three years from the date of overpayment.

Criteria for Receiving the Institutional Worker Supervision Pay Differential (Extra Pay) at the California Department of Corrections and Rehabilitation

An employee must have the following to qualify for extra pay:

- Regular, direct responsibility for supervision, on-the-job training, and work performance evaluation of at least two inmates who substantially replace civil service employees for a total of at least 173 hours per pay period.
- A valid, approved medical clearance on file.

These criteria also apply to employees having direct supervisory responsibility over employees who meet the conditions stated above.

Source: California Department of Human Resources' California State Civil Service Pay Scales, section 14, Pay Differential 67.

Background

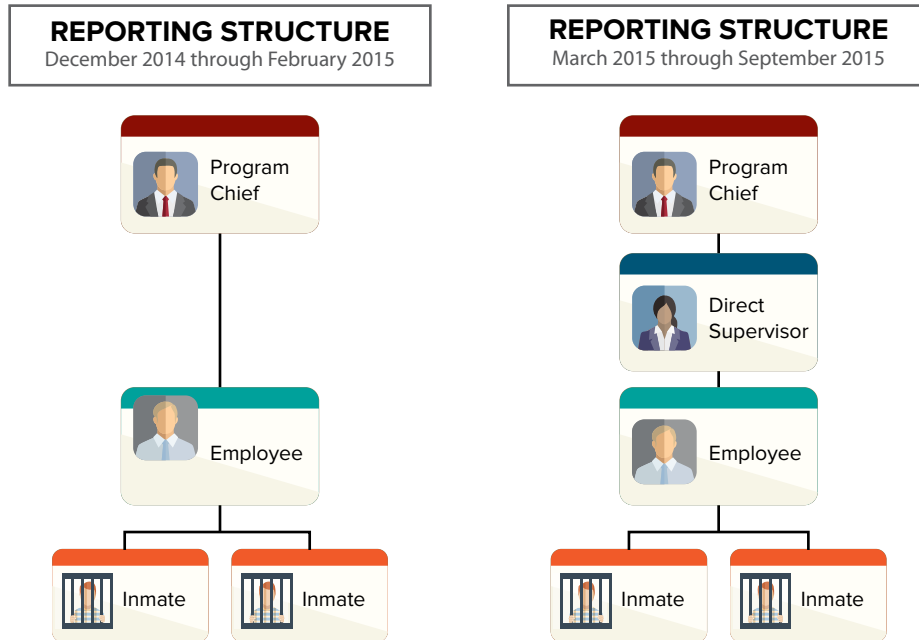
CIW, like other CDCR facilities, employs inmates in a variety of positions and regularly assigns noncustody staff to supervise inmates' work. For example, office technicians at CIW can act as supervisors to delegate responsibilities and provide guidance to inmates for activities such as cleaning bathrooms or waxing floors. State employees in certain classifications who are assigned to supervise inmates in addition to performing their regular responsibilities—and who meet specific requirements—are entitled to extra pay ranging from \$190 to \$400 per month. The amount of extra pay an employee receives depends on the employee's civil service classification. As the text box summarizes, section 14 of the California State Civil Service Pay Scales provides that the direct supervisors of those employees who directly supervise inmates may also be entitled to extra pay, and details the criteria an employee or supervisor must meet to qualify for the extra pay.⁴

The left side of Figure 6 represents the reporting structure from December 2014 through February 2015 when the program chief directly supervised the inmate-supervising employee. The right side of Figure 6 represents the reporting structure from March 2015 through September 2015 when another employee directly supervised the inmate-supervising employee.

We conducted two previous investigations in 2008 and 2009, respectively, in which we substantiated that CDCR made improper IWSP payments because of its ineffective controls over the IWSP program. As a result, CDCR established a new IWSP procedure that created several checks and balances that were intended to ensure that an employee has met and maintains the initial and continued eligibility criteria to receive the extra pay. For example, the employee's initial IWSP approval packet is to be kept in the employee's official personnel file (personnel file) and must include various documents substantiating the employee's eligibility. One of the key elements in the IWSP procedure is that all employees eligible to either receive, approve, or issue IWSP should be familiar with the program requirements as well as the purpose and objective of Pay Differential 67.

⁴ Pay Scales—California Department of Human Resources, October 2015: www.calhr.ca.gov/state-hr-professionals/Pages/pay-scales.aspx.

Figure 6
 The Reporting Structure From December 2014 Through September 2015



Sources: Interviews with the program chief, employee who directly supervised the inmates, and other witnesses.

In accordance with CDCR’s IWSP procedure, the qualifying employee who directly supervises inmates must demonstrate continued eligibility each month and submit a monthly timesheet, each inmate’s monthly timesheet, and a certification that the employee met the criteria set out in the text box on the previous page, each of which must be signed by the employee and the employee’s direct supervisor. The qualifying employee’s supervisor similarly must certify that he or she supervised an inmate-supervising employee who met the criteria. Upon verification of each such employee’s eligibility for the month, CIW personnel signs the employee’s certification and processes the extra pay.

In addition, the IWSP procedure specifies that to prevent improper payments, supervisors should notify personnel immediately when an employee no longer qualifies for the extra pay. Finally, the IWSP procedure states that personnel staff at each correctional facility are responsible for conducting an annual IWSP audit, recovering any overpayments, and retaining IWSP documentation for at least three years after an employee is paid.

In 2010 CDCR transferred various personnel responsibilities for its health care employees to the California Correctional Health Care Services (Correctional Health Care). Specifically, Correctional Health Care assumed responsibility for hiring health

care employees, and its regional human resources liaisons assumed responsibility for the initial IWSP eligibility approval for these employees. However, CDCR personnel specialists and transactions supervisors retained payroll responsibility for all health care employees, such as reviewing the monthly IWSP documents and processing the extra pay.

CDCR Improperly Paid a Program Chief for Extra Pay to Which She Was Not Entitled

From December 2014 through February 2015, the program chief directly supervised an employee who directly supervised inmates and met the criteria as described in the text box in the Background section. Even though the program chief was entitled to and received the extra pay during this three-month period, CIW personnel did not keep any documentation in her personnel file to support that the program chief's extra pay had been authorized initially, as required by CDCR's IWSP procedure to ensure the program chief's eligibility for the extra pay.

The program chief continued to receive the extra pay after the employee supervising inmates began reporting to a new direct supervisor; thus she no longer qualified for the extra pay.

More importantly, the program chief continued to receive the extra pay after the employee supervising inmates began reporting to a new direct supervisor in March 2015. Once the program chief ceased to directly supervise the employee who supervised the inmates, she no longer qualified for the extra pay. However, neither the program chief nor her supervising executive notified CIW personnel of this change.

The employee supervising the inmates and the program chief stated that they were unfamiliar with the qualification criteria of Pay Differential 67 and with CDCR's IWSP procedure that indicates who must review and sign an employee's monthly IWSP documents. Specifically, the employee who supervises the inmates stated that she did not know that her direct supervisor was supposed to sign all her monthly IWSP documents; therefore, after February 2015, she gave her new direct supervisor her timesheets but continued to give the program chief the other IWSP documents. The employee also continued to list the program chief as her supervisor on the inmate time logs and her monthly certifications after February 2015 because she believed the program chief was the assigned IWSP supervisor.

The program chief stated that she continued to sign as the direct supervisor of the employee on the employee's IWSP documents because of the past precedent set by the former program chief—this program chief's predecessor who retired in December 2014—who had signed these documents. The program chief did not think that she was collecting this extra pay inappropriately, and she also thought that she qualified to receive the pay because she

managed the entire program. Because the supervising executive continued to sign the program chief's monthly certification, she thought everything was appropriate. The program chief said that she would never "cheat the department" and said that she stood by this practice based on the past precedent set by the now-retired program chief whom had always received this extra pay.

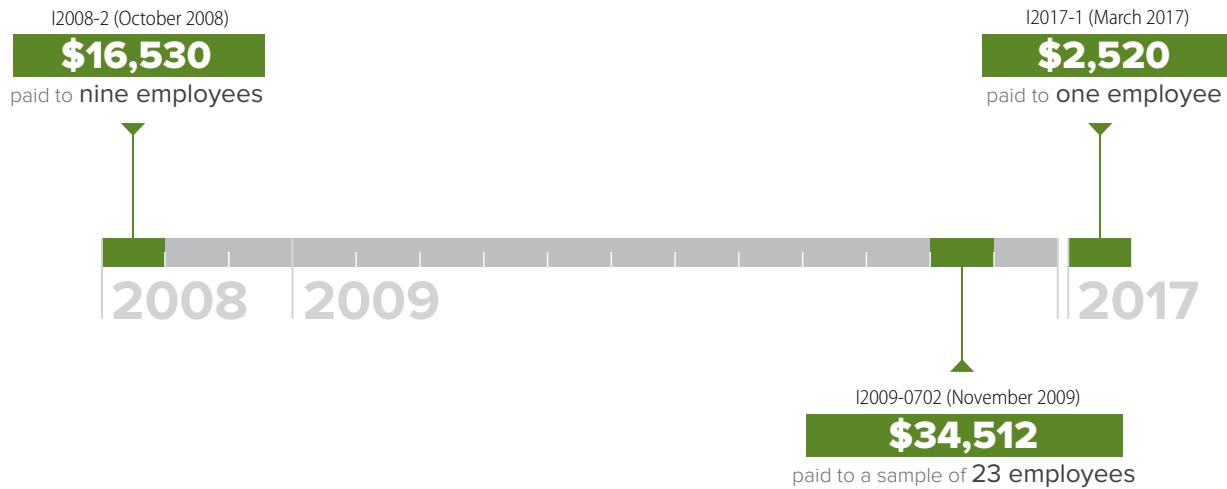
The supervising executive also was unfamiliar with the qualification criteria of Pay Differential 67 and CDCR's IWSP procedure. Specifically, he did not know what CDCR's procedure was for initially approving an employee for the extra pay and did not recall completing any forms to initiate the program chief's extra pay. In addition, he did not even know whether the program chief directly supervised inmates or whether she directly supervised an employee who supervised inmates. The supervising executive signed the program chief's monthly timesheet and certification, but he did not review these documents in conjunction with the inmate-supervising employee's monthly IWSP documents, even though these documents are tied directly to whether the program chief qualified for the extra pay each month. He also stated that he did not recall a supervisory change specifically for IWSP when the employee began reporting to the new direct supervisor. He stated that he expected everything was in order and had been validated by payroll in CIW personnel each month. Regardless, he did not notify CIW personnel that the program chief no longer qualified for the extra pay, which was only discontinued when the program chief transferred to another correctional facility.

Ultimately, the program chief received a total of \$2,520 from March 2015 through September 2015 to which she was not entitled since she did not directly supervise the employee who supervised inmates during these seven months. In addition, the program chief received \$1,080 in extra pay from December 2014 through February 2015 even though CIW personnel did not keep the approval paperwork in her personnel file as required to ensure her eligibility for the extra pay.

Control Issues Still Plague CDCR's IWSP Program Despite Our Prior Investigations and Two Audits by the State Controller's Office

As demonstrated by our previous and current investigations, CDCR still has pervasive control issues with the IWSP program. Although this specific case does not have a large fiscal impact, without proper direction and enforcement of its policies, CDCR and Correctional Health Care are creating a heightened risk for improper IWSP overpayments on a much larger scale. Figure 7 on the following page shows how quickly these improper payments can add up when the payments are made to multiple employees.

The supervising executive did not even know whether the program chief directly supervised inmates or whether she directly supervised an employee who supervised inmates.

Figure 7**Timeline Showing Our Investigations of the Institutional Worker Supervision Pay Program and the Improper Extra Pay We Identified**

Source: California State Auditor's investigative reports.

In addition to our investigations of the IWSP program, in August 2014 and December 2014, respectively, the State Controller's Office (SCO) published audit findings after reviewing the payroll processes at three of CDCR's adult institutions from July 1, 2010, through June 30, 2013. SCO found many of the same deficiencies regarding IWSP payments that we identified in this and our previous investigations, including improper payments made to employees who did not fulfill the requirements to receive the pay and employees who received the extra pay even though they lacked sufficient documentation to support the initial request and appropriate management authorization. Table 2 shows the improper payments identified by the SCO audits.

The employees that we interviewed who received, approved, and issued the extra pay were unfamiliar with the program requirements under CDCR's procedure and Pay Differential 67. In the most recent instance, CDCR personnel staff did not recognize or question that the timesheets and IWSP documents of the employee who supervised inmates were signed each month by two different individuals who were purportedly her direct supervisors. In addition, CIW personnel failed to maintain all IWSP documents and initial IWSP approval packets for the program chief and for the employee during the required retention period.

We also identified breakdowns between CDCR personnel and Correctional Health Care personnel at CIW related to the IWSP program. The human resources liaison handles the initial

IWSP approval packets and organization charts for all health care employees while the CDCR personnel specialist processes health care employees' monthly IWSP documents and issues the pay. When the CDCR personnel specialist reviews an employee's monthly IWSP documents, she assumes the employee has already been approved for the extra pay and a copy of the initial packet is in the employee's personnel file. The CDCR personnel specialist stated that she does not know who the employee's supervisor is because she does not have access to Correctional Health Care's organization chart. In addition, any supervisor can sign an employee's IWSP documents, and the CDCR personnel specialists only check that someone signed as the supervisor.

Table 2
Improper Institutional Worker Supervision Payments Identified in the August 2014 and December 2014 Payroll Process Reviews by the State Controller's Office

FUNDING	CALIFORNIA STATE PRISON (CSP) SACRAMENTO	CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES AT CSP SACRAMENTO	CALIFORNIA STATE PRISON, LOS ANGELES COUNTY	CALIFORNIA INSTITUTION FOR MEN	TOTAL
Improper payments	30 employees	10 employees	7 employees	6 employees	53 employees
Totals	\$50,865	\$13,770	\$3,420	\$10,260	\$78,315
Lacked initial authorization	44 employees*		6 employees	9 employees	59 employees
Totals	Unknown		\$14,645	\$49,841	\$64,486

Source: State Controller's Office payroll process reviews.

* All 44 employees worked at California State Prison, Sacramento. The review did not distinguish which of the 44 employees worked for California Correctional Health Care Services and which did not.

Of even greater long-term importance, CDCR and Correctional Health Care have not agreed about which entity is responsible for the annual IWSP audit for health care employees. CIW personnel staff have not conducted the required annual audit of the IWSP program since 2013. CDCR staff have not followed up on the lapse in the required annual institutional IWSP audit because they believed that once the shift of IWSP responsibilities occurred, Correctional Health Care assumed this responsibility. Correctional Health Care contends that the responsibility shifted for it to handle hiring and initial IWSP approval packets for health care division employees, but CDCR maintained oversight over payroll for these employees. Therefore, Correctional Health Care staff stated that CDCR still maintains responsibility for the annual IWSP audit because it is a payroll function. In the absence of its own IWSP policy, Correctional Health Care staff have abided by CDCR's IWSP procedure.

Recommendations

To remedy the effects of the improper governmental activity identified by this investigation and to prevent it from recurring, we recommend that CDCR take the following actions:

- Seek repayment from the program chief for the \$2,520 in improper payments.
- Revise the IWSP procedure to require that personnel staff review and ensure that an employee's direct supervisor signs the qualifying employee's timesheets and IWSP documents each month.
- Ensure that all CDCR and Correctional Health Care organization charts are current and accurate and that the assigned personnel specialist has access to them.
- Enforce its current procedure to retain IWSP documentation.
- Enforce its current procedure for personnel staff to conduct annual audits of the IWSP program.
- Train all employees, supervisors, and personnel staff who receive, approve, or issue the extra pay to ensure that they are familiar with the requirements of the IWSP procedure and Pay Differential 67.

Agency Response

CDCR reported in February 2017 that it believed Correctional Health Care should provide the initial responses to the recommendations because the supervising executive reported to Correctional Health Care. However, CDCR informed us that it would address all of the recommendations in subsequent follow-up responses.

Correctional Health Care responded to two of the recommendations that relate to employees under its direction. Specifically, Correctional Health Care reported that it will release its own IWSP policy and stated that it will reinforce the policy through training with the appropriate managers and supervisors and with Correctional Health Care human resource staff who approve, issue, or receive the extra pay. In addition, Correctional Health Care stated that its position rosters and organization charts for all facilities were current and accurate. Further, Correctional Health Care stated that it would electronically transmit updated position rosters and organization charts to each facility's personnel officer on a monthly basis and as updated. Correctional Health Care did not address the other recommendations.

Chapter 6

DEPARTMENT OF HEALTH CARE SERVICES: AN EMPLOYEE MISUSED STATE RESOURCES FOR PERSONAL PURPOSES CASE I2015-0003

Results in Brief

We received an allegation that an employee in a professional classification at the Department of Health Care Services (DHCS) was misusing state resources. We asked DHCS to investigate this complaint on our behalf and report its findings to us.

Based on the results of the DHCS investigation, we concluded that the employee misused state time and resources by spending a significant portion of her workdays using her state computer for personal activities such as shopping online, sending and receiving personal emails, and visiting social media websites. In addition, we determined that the employee was dishonest in her answers when asked about how often she misused state resources. We also concluded that the employee further misused state resources by instructing support staff to assist her in activities unrelated to work. Finally, she allowed support staff to remain idle during work hours while she took lengthy breaks.

Background

The employee's essential duties, according to her job classification, are to provide DHCS with professional services, including providing advice, reviewing and drafting documents, and providing program support. From September 2012 through at least January 2015, DHCS assigned support staff to work with this employee during her work hours. The support staff performed various administrative support functions at the employee's direction to assist her with her work responsibilities for DHCS.

About the Department

The Department of Health Care Services (DHCS) provides Californians with access to affordable, integrated, high-quality health care, including medical, dental, mental health, substance use treatment services, and long-term care.

Relevant Criteria

Government Code section 8314 prohibits state employees from using state resources for personal purposes.

Government Code section 19990 prohibits state employees from engaging in activities that are clearly inconsistent or incompatible with their duties as state employees. One such incompatible activity is the failure to devote one's full time, attention, and efforts to state employment during hours of duty.

Government Code section 19572, subdivisions (f) and (p), specify that dishonesty and misuse of state resources constitute causes for discipline of a state employee.

Relevant Policy

DHCS's *Health Administrative Manual* section 6-1010.4 states that its employees are granted access to Internet and email resources to provide education, research, marketing, procurement, and service opportunities in the performance of the employees' duties. Additionally, all employees are restricted from participating in mailing lists.

DHCS identified more than 3,300 non-work-related emails in the employee's email account.

The Employee Admitted Using a State Computer for Personal Activities During Work Hours

The employee admitted during her interview with DHCS that she had used her state-issued computer for personal purposes. Specifically, the employee asserted that she shopped online “a couple of times,” sent and received personal emails, and accessed Twitter and Facebook a “handful of times.” However, she was dishonest regarding the frequency with which she visited the non-work-related sites. In fact, when DHCS reviewed the employee’s network account report that covered April 2015 to July 2015, it indicated that the employee accessed nearly 800 non-work-related websites including those for social media, department stores, and financial institutions. Other employees also observed non-work-related webpages such as Facebook, JC Penney, and Macy’s displayed on the employee’s state computer during work hours.

DHCS performed a search of the employee’s email account and identified more than 3,300 non-work-related emails. These thousands of email messages were apparently sent to the employee’s email account from many of the same non-work-related websites as those found in the review of the employee’s network account.

The Employee Instructed Support Staff to Assist Her With Activities Unrelated to Work

In addition to the support staff’s administrative duties that were intended to help the employee perform her work, the employee also instructed the support staff to perform activities not related to work during business hours. Each of the following activities violates state law:

- Assisting the employee with online shopping.
- Reviewing and sending personal emails.
- Configuring the state-issued computer so that the employee could watch television shows.
- Bringing the employee breakfast or lunch.
- Helping the employee with makeup.

The Employee Wasted State Resources When She Kept Support Staff Unoccupied

The employee took lengthy breaks during business hours, during which time she allowed the assigned support staff to remain idle. One of the support staff recalled a time when there were no assignments from the employee for six hours during a single workday. On another occasion, when support staff interrupted the employee during an extended break, the employee became angry and verbally abusive.

DHCS recommended that the employee's managers meet with staff from several of its offices, including human resources, legal services, civil rights, and labor relations, to determine the appropriate corrective or disciplinary action to take against the employee. DHCS also indicated that the employee should discontinue using her state email for matters unrelated to work by unsubscribing from non-work-related email lists and by refraining from using the Internet to access websites not related to work.

Recommendations

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

- Take appropriate corrective or disciplinary action regarding the employee's misuse of state time, computer, and support staff, and for engaging in activities incompatible with her state duties.
- Provide the employee with training related to appropriate Internet and email use, time and attendance, and ethics in the workplace.

Agency Response

DHCS reported in February 2017 that it agreed with our recommendations. In addition, DHCS stated that it provided the employee with a counseling memo after the investigation. DHCS also stated that it had provided the employee with other work-related tools that will reduce the employee's need for assistance from support staff. Further, DHCS informed us that it had provided the employee with privacy and security training related to Internet use and with training regarding time and attendance. DHCS stated that it would continue to provide the time and attendance training on an ongoing basis. Finally, DHCS stated that the employee completed the ethics training.

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Chapter 7

DEPARTMENT OF HEALTH CARE SERVICES: A DIVISION CHIEF ENGAGED IN IMPROPER HIRING PRACTICES CASE I2015-1088

Results in Brief

In August 2014, a division chief at the Department of Health Care Services (DHCS) improperly created and maintained a do-not-hire list of candidates for jobs in her division. Division management used this list until at least May 2016, during which time division management had neither a clear, consistent understanding of the types of actions that warranted a candidate's placement on the list nor a well-defined understanding of when in the hiring process division management should use the list to exclude candidates. Therefore, the division could not guarantee that it made hiring decisions based on candidates' merit or that it avoided excluding eligible candidates because of illegally discriminatory criteria.

Background

California Code of Regulations, title 2, section 250, requires state agencies to design the hiring process in such a way that agencies screen candidates equally and not based upon non-job-related factors or such illegally discriminatory criteria as race, religion, or sexual orientation.

When we received an allegation that the division may have created and might be maintaining a do-not-hire list for candidates, we were concerned about the potential for illegal discrimination in these protected categories. If the division had a do-not-hire list cataloging only candidates' names unaccompanied by justifications for the names' inclusion, it would be impossible to identify whether individuals on such a list had particular political or religious affiliations or whether they were of certain ages. Therefore, we conducted some preliminary work and then asked DHCS to further investigate the allegation.

About the Department

The Department of Health Care Services finances and administers a number of individual delivery programs for such health care services as Medi-Cal and substance abuse treatment services.

Relevant Criteria

The California Constitution, article VII, section 1, requires that permanent civil service appointments and promotions must be made under a general system based on merit ascertained by competitive examination.

California Code of Regulations, title 2, section 250, requires that hiring decisions in state civil service must be made based on the candidate's merit and fitness for the position, defined exclusively as the consideration of each individual's job-related qualifications for a position. In addition, all phases of the selection process must provide for the fair and equitable treatment of applicants and employees on an equal opportunity basis without regard to political affiliation, race, color, ancestry, national origin, sex, sexual orientation, religion, disability, medical condition, age, or marital status. To accomplish this objective, the selection process must be designed to screen applicants based solely on their job-related qualifications for the position and without consideration of illegally discriminatory criteria.

The document did not include any explanation about why a division employee had placed a candidate on the do-not-hire list.

A Division Chief Improperly Created an Indefensible Do-Not-Hire List

A division chief created a do-not-hire list in August 2014. According to an email the division chief sent to her subordinate managers indicating its creation, the purpose of the list was to tell other managers to “stay away from the candidate.” The email did not include criteria regarding what type of action would warrant a candidate’s placement on the list. In addition, the email did not name procedures that indicated any specific time when division management would review the list during the hiring process.

During our investigation, we obtained a current copy of the list. As of May 2016, the list had 27 names of individual candidates along with the name of the division employee who added each candidate. Seven of the entries included the month and year the division employee added a candidate to the list. All entries occurred during 2015. The document did not include any explanation about why a division employee had placed a candidate on the list.

We interviewed three members of management within the division in May 2016 and determined that each had a different understanding of the types of actions that warranted a candidate’s placement on the list. When we asked the division chief what prompts management to add candidates to the list, she stated that problems with a background check, bad references, or a failed second-phase interview with her would justify placement on the list. The branch chief had the lowest threshold for placement. She said that if the candidate simply said something that she considered to be a “red flag,” she would add that individual’s name to the list. The section chief stated that only serious problems would prompt her to include a candidate on the list. If the candidate simply received a bad reference, she would not include him or her on the list.

We also identified similar discrepancies about the specific point in the hiring process when management would review the list during the hiring process. The division chief said that management would consult the list only before sending a candidate to her for the second phase of interviews. The branch chief stated that she would review the list before scheduling initial interviews. The section chief said that she would look at the list only when management were about to extend an offer of employment.

Because division management lacked both a consistent understanding of the actions that could qualify candidates for placement on the list and a clear grasp about when in the hiring process the list could exclude candidates, DHCS could not guarantee that it was not excluding eligible candidates from the process. More importantly, DHCS had no written explanation

about why its management placed any particular candidate on the list; thus, it could not ensure that management added a candidate to the list based on job-related criteria and not on other impermissible factors, including illegally discriminatory criteria. Further, placement on the list was based on the particular division employee's subjective point of view without any analysis of whether that placement was truly warranted or even legal.

Placement on the do-not-hire list was subjective and without any analysis of whether that placement was warranted or legal.

DHCS Substantiated the Allegations and Proposed Actions to Address the Improper Acts

In July 2016, we requested that DHCS further investigate this division's do-not-hire list on our behalf. In October 2016, DHCS reported that it had reviewed the information we provided and had interviewed division staff. It also affirmed that the list existed and that division managers did not have a clear and consistent understanding of how and when they should use the do-not-hire list. When its staff interviewed division management, DHCS learned that—following our interviews of staff in May 2016—the division elected to discontinue using the list, and it removed the list from its electronic files.

The division chief shed additional light on the creation of the do-not-hire list during her interview with DHCS. The division chief claimed that she created the list mainly as a work efficiency measure. She said that because of a DHCS reorganization that occurred in July 2012, the division experienced high volumes of incoming job applications. As a result, the division chief noticed that she interviewed repeat candidates whom she previously denied for other division positions. Therefore, she created the list to save time and resources by avoiding the reevaluations or reinterviews of candidates whom management had already denied in another section or unit of the division.

DHCS stated that it planned the following actions to prevent similar situations from reoccurring: First, it said that the deputy director for its Office of Civil Rights would conduct equal employment opportunity training and provide counseling for the division chief and the division's management team to ensure that they understand the equal employment opportunity concerns related to the do-not-hire list and that they screen candidates using only job-related and objective examination criteria in the future. Second, DHCS stated that its Office of Civil Rights staff would implement a series of management training sessions to ensure that all of its management fully understand and adhere to the DHCS nondiscrimination policy to ensure equal employment opportunity for all candidates and employees.

Recommendations

To address the improper governmental activity identified in this investigation and to prevent similar improper activities from occurring, DHCS should implement the two actions it proposed in its investigative report:

- Its Office of Civil Rights should conduct equal employment opportunity training and provide counseling for the division chief and the division's management team to ensure that they understand the equal employment opportunity concerns related to the do-not-hire list and that they use job-related and objective examination criteria when evaluating candidates in the future.
- Its Office of Civil Rights should implement a series of management training sessions to ensure that DHCS management fully understand and adhere to its nondiscrimination policy to ensure equal employment opportunity for all candidates and employees.

Agency Response

DHCS reported in December 2016 that it agreed with and had taken action in response to our recommendations. Regarding our first recommendation, DHCS stated that in December 2016 and January 2017 it had provided the equal employment opportunity training to division employees at the staff management III level and above. In addition, DHCS subsequently stated that it provided the training to all other managers and supervisors in January 2017.

Regarding the second recommendation, DHCS reported that it had developed the management training and that its Office of Civil Rights began conducting small group training for managers and supervisors in December 2016. In addition, it reported that it provided this training for all managers and supervisors in January 2017. Further, DHCS stated that it intends to repeat the training every two years and that the training will also be available as needed.

Chapter 8

SAN DIEGO STATE UNIVERSITY: IT OVERPAID A MAINTENANCE EMPLOYEE BECAUSE OF AN INCORRECT DATE IN A COMPUTER SYSTEM CASE I2016-0195

Results in Brief

We received a complaint alleging that a maintenance employee at San Diego State University (San Diego State) was improperly receiving a 3 percent increase to his monthly salary. We asked San Diego State to investigate this complaint on our behalf and to report its findings to us.

Based on San Diego State's findings, we determined that it erroneously paid the maintenance employee amounts totaling an additional \$2,106 from June 2015 to June 2016 because of an inaccurate hire date in a computer system.

Background

The maintenance employee was hired by San Diego State as a temporary employee from February 1997 to March 1998. In April 1998, the maintenance employee accepted another temporary appointment that ended in June 1998. For the seven years between June 1998 and June 2005, the maintenance employee did not work in any capacity for San Diego State. He was hired for another temporary assignment in June 2005 and then became a permanent employee of the university in December 2005. Figure 8 on the following page shows the dates of the maintenance employee's assignments at San Diego State.

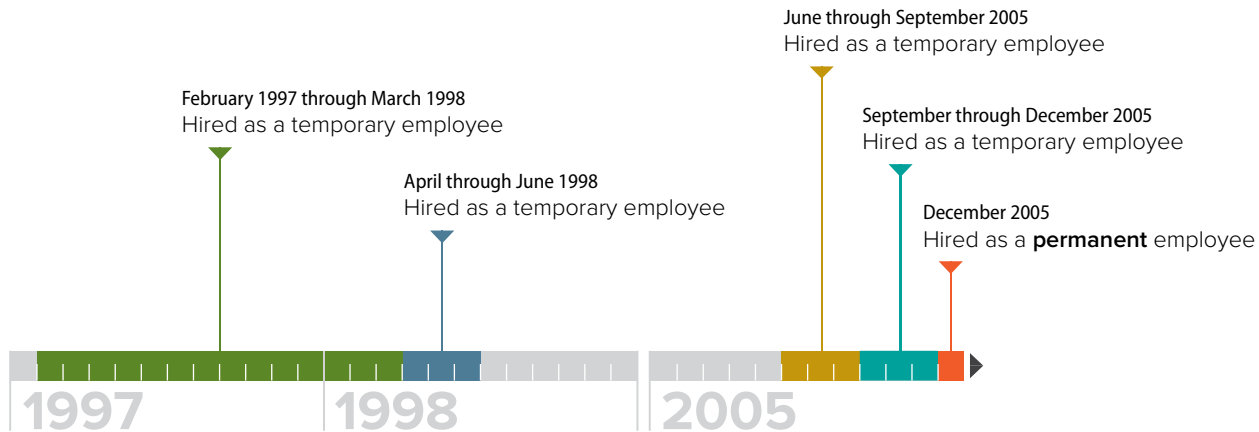
About the University

San Diego State University is the oldest institute of higher education in San Diego and has grown to become a leading public research university. It provides more than 35,000 students with the opportunity to participate in a distinguished academic curriculum.

Relevant Criteria

The State Leadership Accountability Act, which is contained in Government Code section 13401, requires all levels of management at state agencies to be involved in assessing and strengthening the systems of internal accounting and administrative control to minimize fraud, errors, abuse, and waste of government funds.

Government Code section 8547.2, subdivision (c), states that any economically wasteful action by a state agency undertaken in the performance of official duties is an improper governmental activity.

Figure 8**The Dates of the Maintenance Employee's Assignments at San Diego State University**

Source: State Controller's Office employment records for the maintenance employee.

In June 2015, San Diego State initiated a one-time staff equity program, which provided a 3 percent salary increase to eligible employees who qualified by meeting both of the following criteria:

- Eleven or more years of continuous service in a single job classification.
- A salary lower than the midpoint of the salary range of that job classification.

San Diego State used data from its human resources information system to determine employees' eligibility for the program and used the employees' most recent hire date to determine years of continuous service in a classification for each employee. According to the analysis of data from the system, 231 employees were eligible for the staff equity program.

San Diego State Improperly Paid a Maintenance Employee \$2,106 Because of an Incorrect Date in Its Human Resources Information System

San Diego State's human resources information system contained an incorrect override entry that replaced the maintenance employee's June 2005 hire date with his first hire date in February 1997. Consequently, San Diego State calculated the maintenance employee's continuous service within a classification as being greater than the program's 11-year threshold rather than as the maintenance employee's actual length of continuous service,

which was 10 years. This error caused San Diego State to mistakenly grant the maintenance employee a 3 percent salary increase. The salary increase changed the maintenance employee's monthly salary from \$4,949 to \$5,098 and equaled an overpayment of \$2,106 by the time the error was discovered.

After we requested that San Diego State review how it determined the salary increase for the maintenance employee, San Diego State recognized that it had incorrectly qualified the maintenance employee for the staff equity program. San Diego State voided the maintenance employee's 3 percent salary increase and notified him that it had been mistakenly awarded. Effective July 1, 2016, San Diego State corrected the maintenance employee's monthly salary and initiated an account receivable for the maintenance employee's overpayment of \$2,106. In August 2016 and January 2017, the maintenance employee signed written agreements to repay \$2,106 through monthly payroll deductions, which began in December 2016.

Finally, because of the discovery of the incorrect override entry in its human resources information system, San Diego State reviewed the analysis it used to qualify employees for the staff equity program. It identified seven additional employees whose most recent hire dates were incorrect; however, none of the seven employees had qualified for the staff equity program or received the 3 percent salary increase.

Recommendation

To address the improper governmental activity we identified in this report, San Diego State should continue to collect repayment according to its written agreements with the employee.

Agency Response

San Diego State reported in January 2017 that it concurred with our recommendation and stated that it will continue to collect repayment until the entire amount has been repaid.

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Chapter 9

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES: A SUPERVISOR NEGLECTED TO SUPERVISE AN EMPLOYEE PROPERLY AND RESPONDED DISHONESTLY TO INVESTIGATORS CASE I2015-1146

Results in Brief

We received an allegation that a supervisor at the California Department of Social Services (Social Services) failed to supervise appropriately and to discipline progressively an employee who—for many years—was not performing to the standards of the employee’s job classification. We asked Social Services to investigate this complaint on our behalf and to report its findings to us.

Based on Social Services’ findings, we concluded that the supervisor neglected her supervisory duties when she failed to engage in progressive discipline with an employee whom the supervisor knew was not satisfactorily performing her job responsibilities. In addition, the supervisor was dishonest with Social Services’ investigators when they interviewed her regarding the allegation.

Background

The supervisor has been employed in her current job classification with Social Services for more than 15 years. The employee has also been employed in her job classification for more than 15 years and has reported directly to the supervisor for at least 15 years.

The supervisor’s duties include providing direct supervision of several office staff members; managing, reviewing, and editing staff work assignments; assisting with specific services to the public; ensuring operational procedures are established and revised; managing administrative tasks; planning, approving, and monitoring staff attendance; and applying disciplinary actions involving staff, as necessary.

According to the California Department of Human Resources, the following are included among a supervisor’s many direct responsibilities:

About the Department

The California Department of Social Services employs more than 4,200 employees and is responsible for the oversight and administration of programs serving California’s most vulnerable residents.

Relevant Criteria

Government Code section 19572, subdivisions (c), (d), and (f), specify that inefficiency, inexcusable neglect of duty, and dishonesty constitute causes for discipline of an employee.

- To conduct and document—at least annually—a discussion in which the supervisor and employee review the employee’s duty statement, how and when the employee will be evaluated, and what the consequences will be if the employee does not meet the standards of the job.
- To conduct—at least annually—performance evaluations of an employee throughout his or her employment.
- To use preventive action with employees to avoid a need for more formal discipline; however, if discipline becomes necessary, to then apply the remaining steps of progressive discipline—corrective action and adverse action—to address an employee’s poor performance.

In addition, the California Department of Human Resources states that the steps of progressive discipline include the following:

- A verbal counseling or informal memo directed at the employee that identifies the problem and the actions needed to correct the problem.
- A counseling memo issued to the employee that includes a description of the problem, a summary of prior attempts to correct the problem, expectations placed on the employee, and the possible consequences for similar failures in the future.
- A formal adverse action memo issued to the employee for the incidents covered in the counseling memo, as well as new conduct, that would have a negative, often financial, impact on the employee’s job status.

The Supervisor Failed for Years to Supervise an Employee With Unsatisfactory Performance and Did Not Take Corrective Action

When Social Services interviewed the supervisor in March 2016, she acknowledged that she had recognized as early as 2001 that the employee’s work was inadequate. In addition, the supervisor said that the employee had not been performing her fair share of work compared to other staff members in the office, had been submitting work products that the supervisor considered poor quality and lacking in substance, and, since at least 2014, had not been completing specific tasks required of her position. Nevertheless, the supervisor failed to initiate corrective measures for any of these issues and continued to approve the employee’s annual salary increases despite the employee’s deficient job performance over the years.

The supervisor added that although she never properly addressed the employee's job performance issues, she was consulting with Social Services' Performance Management Unit (PMU) regarding appropriate corrective measures to initiate with the employee. However, when Social Services' investigators subsequently questioned PMU staff, they stated that they had not spoken with the supervisor about the employee's performance issues since October 2015. The supervisor further claimed that she was unaware that some of the employee's performance issues negatively affected the morale of others in the office. However, witness statements contradicted the supervisor's account, citing that staff had reported to the supervisor ongoing issues regarding the employee's work habits over the years, particularly since about 2014, and that staff believed the supervisor ignored their complaints.

Finally, although the supervisor was required to evaluate the employee's work performance annually, she stated that she had provided only two or three performance evaluations of the employee within the last five years and that each of the evaluations contained negative ratings. The supervisor claimed that she was too busy to follow up or to provide timely evaluations.

The supervisor affirmed that she was aware of the requirements for disciplining an employee, yet she neither took any type of corrective action against the employee, nor did she inform her own immediate supervisor of any concerns about the employee. Social Services employees, like other employees of the State, are required to exercise due diligence in performing their official duties. Inexcusable neglect of duty by a state employee is prohibited conduct that constitutes grounds for discipline. In addition, inefficiency in state government reduces its ability to adequately address vital public needs.

Following its investigation, Social Services reported that it had issued the supervisor two memos. In July 2016, Social Services issued the supervisor an informal memo outlining her responsibilities when handling an employee who is not performing to the standard of his or her job classification. In November 2016, Social Services issued the supervisor a formal counseling memo, identified as a corrective memorandum, which described the supervisor's responsibilities, including monitoring staff and their assigned work as well as the progressive discipline procedures the supervisor failed to initiate for this employee. This second memo specified that any similar conduct in the future could result in further adverse action taken against the supervisor.

Staff had reported to the supervisor ongoing issues regarding the employee's work habits over the years.

Recommendations

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

- Continue to monitor the supervisor's duties related to addressing the work performance of her subordinate employees and continue to take appropriate corrective or disciplinary action when necessary.
- Require that the supervisor undergo supervisory training, specifically about managing employee performance and appropriately applying the steps of progressive discipline.

Agency Response

Social Services reported that after the supervisor received the memos about her responsibilities when handling an employee who is not performing to the standard of his or her classification, the supervisor took steps to actively monitor her subordinates and to involve management to prepare appropriate responses as needed. In addition, Social Services stated that the supervisor is scheduled to attend training in February 2017 and March 2017 related to supervising employees and in May 2017 related to progressive discipline.

Chapter 10

CALIFORNIA STATE UNIVERSITY, FRESNO: A LIBRARY EMPLOYEE MISUSED UNIVERSITY RESOURCES CASE I2016-0276

Results in Brief

We received a complaint alleging that a full-time employee in the library at the California State University, Fresno (Fresno State), was using his university computer to watch videos and play games online during work hours. We asked Fresno State to investigate this complaint on our behalf and report its findings to us.

Fresno State determined that the library employee visited more than 48,300 webpages largely related to online videos and games from May 2015 through May 2016 and that not being assigned adequate duties by his supervisors contributed to these non-work activities. Thus, we concluded that the library employee misused a university resource. In addition, for a representative one-month period, we calculated that the library employee may have misused as many as 85 hours of university time. Over the course of the 13 months reviewed, we estimated that this misused time may have cost the university as much as \$22,208.

Background

The employee works primarily daytime hours in the Fresno State library, and his primary duties include supervising student assistants, training staff, shelving library materials, and supporting building security. The library employee occasionally performs daytime customer service activities, during which he may have some “downtime” while he waits to assist library patrons. He also occasionally works nighttime hours when his duties may be lighter because during that time he is required to remain stationed at the library’s front desk and function as the only employee available to assist library patrons.

About the University

California State University, Fresno (Fresno State) is one of 23 campuses of the California State University, one of the largest systems of higher education in the world. Fresno State’s Henry Madden Library is the largest academic library in California between Los Angeles and San Francisco.

Relevant Criteria

Government Code section 19990 prohibits any state employee from engaging in any activity that is inconsistent, incompatible, in conflict with, or inimical to his or her duties, including using state time and equipment for private gain or advantage, or for any purpose other than the performance of official university business, or for failing to devote his or her full time, attention, and efforts to his or her duties.

Government Code section 8314 prohibits the use of state resources for non-state purposes that exceed minimal and incidental use.

Government Code section 8547.2, subdivision (c), defines an improper governmental activity to include activities by the California State University or its employees that are economically wasteful or inefficient.

The library employee reports to a library services manager whose office is located on a different floor than the library employee. A lead staff member, who works on the same floor with the library employee, assigns him various duties every day.

The Library Employee Misused His University Computer to Watch Videos and Play Online Games During Work Hours

During his interview with Fresno State's investigator, the library employee admitted that he watched videos on YouTube or played online games for periods of time when he had "downtime" or during his night shift closing schedule. The library employee also indicated that he would "surf the Internet" or play a video game on the Internet after completing his job duties early. Additionally, witnesses observed the library employee watching videos and playing games on his university computer during work hours, lunch, or break times.

As part of the investigation, Fresno State performed an evaluation of the library employee's university computer for Internet use from May 1, 2015, through May 31, 2016. Fresno State identified the following:

- The library employee's computer contained more than 56,300 webpage visits, of which more than 48,300 webpage visits were not work-related.
- The library employee accessed numerous video-sharing and game websites during his work hours from May 1, 2015, to May 31, 2016, including YouTube and gamebox.com. The library employee frequently visited other websites that were clearly not work-related, including visits to drudgereport.com, siriusxm.com, and reddit.com.

Based on our review of Fresno State's analysis, we determined that the employee frequently used his university computer for purposes not related to his work. To estimate the employee's average time spent on non-work-related activities, we chose a representative month of his overall work and web activity—May 2015—and used Fresno State's data that provides a date and time stamp of each non-work-related webpage he accessed. Since these data did not provide session durations for each webpage, we devised an analysis that took into account times that the employee might have been on an approved break or away from his computer assisting patrons.

The analysis determined that he could have misused his work computer for as many as 85 work hours during that one month. Over the course of the 13-month period under review, the average misuse could have cost the university as much as \$22,208.

A Lack of Supervision Resulted in the Library Employee Receiving Inadequate Work Assignments

As mentioned in the Background section, the library employee reports to a library manager and receives daily assignments from a lead staff member. The library employee's manager and lead staff member stated that prior to this investigation, they were unaware that the library employee watched videos or played online games during work hours, and they did not know that he sometimes finished his assigned work early or had extra time to potentially complete additional work. Further, the investigation did not reveal any evidence that the library employee had ever requested additional work.

At the conclusion of Fresno State's investigation, it recommended that the library employee's supervisor and lead staff member take the following actions:

- Identify alternative work that the library employee can complete while he is serving as the official library resource.
- Instruct the library employee to limit his Internet use on his work computer during both breaks and lunch.
- Identify online work-related trainings and career development training for the library employee to access during work time if he has completed all of his assigned work for that shift or has other available time during work hours.
- Provide more direct supervision of the library employee to ensure that he uses his work time to benefit the needs of the library.

Recommendation

To address the improper governmental activities identified in this report, Fresno State should continue to implement the recommendations it made regarding the investigation.

Agency Response

Fresno State reported in February 2017 that it is continuing to follow upon the recommendations it made to the library supervisor and lead staff regarding the investigation. In addition, it stated that personnel from its administration office met with the library employee and his supervisors to present the findings and recommendations. Further, Fresno State provided the employee with a formal notice outlining the recommendations. Lastly, Fresno State is working to implement the recommendations based on the notification and the discussion from its meeting.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: March 2, 2017

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For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

Appendix

THE WHISTLEBLOWER PROTECTION ACT

What is a Whistleblower?

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.⁵ Improper governmental activity includes any action by a state agency or by a state employee performing official duties that does the following:

- Breaks state or federal law.
- Is economically wasteful.
- Involves gross misconduct, incompetence, or inefficiency.
- Does not comply with the *State Administrative Manual* or the *State Contracting Manual*.

How Does a Whistleblower Report Improper Governmental Activity?

Reports can be made by calling the toll-free Whistleblower Hotline (hotline) at (800) 952-5665, by mail, or through the California State Auditor's (State Auditor) website at www.auditor.ca.gov/contactus/complaint.

Investigation of Reports

The State Auditor confidentially investigates reports of improper governmental activity by state agencies and state employees. An investigation may be conducted independently by the State Auditor's Office, or we may elect to have another state agency perform the confidential investigation under the State Auditor's supervision.

⁵ The 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>.

What Happens If an Improper Governmental Activity is Found?

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

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 the action concludes.

Whistleblowers Are Protected

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 by a state employer against a state employee who files a report is unlawful and may result in monetary penalties and imprisonment.

Improper Governmental Activities Identified by the State Auditor

Since 1993, when the State Auditor activated the hotline, it has identified improper governmental activities totaling \$576.2 million. These improper activities include gross inefficiency, theft of state property, conflicts of interest, and personal use of state resources. For example, the State Auditor reported in March 2014 that the Employment Development Department failed to participate in a key aspect of a federal program that would have allowed it to collect an estimated \$516 million owed to the State in unemployment benefit overpayments between February 2011 and September 2014. The investigations have also substantiated improper activities that cannot be quantified in dollars but that have had negative social impacts. Examples include violations of fiduciary trust, failure to perform mandated duties, and abuse of authority.

Corrective Actions Taken in Response to Investigations

The chapters of this report describe the corrective actions that departments implemented on individual cases that the State Auditor completed from July 2016 through December 2016. Table A summarizes all corrective actions that departments took in response to investigations between the time that the State Auditor opened the hotline in July 1993 until December 2016. In addition to the corrective actions listed, these investigations have resulted in many departments' modifying or reiterating their policies and procedures to prevent future improper activities.

Table A
Corrective Actions
July 1993 Through December 2016

TYPE OF CORRECTIVE ACTION	TOTALS
Convictions	12
Demotions	22
Job terminations	87
Resignations or retirements while under investigation	21*
Pay reductions	57
Reprimands	334
Suspensions without pay	28
Total	561

Source: California State Auditor.

* The number of resignations or retirements consists of those that occurred during investigations that the State Auditor has completed since 2007.

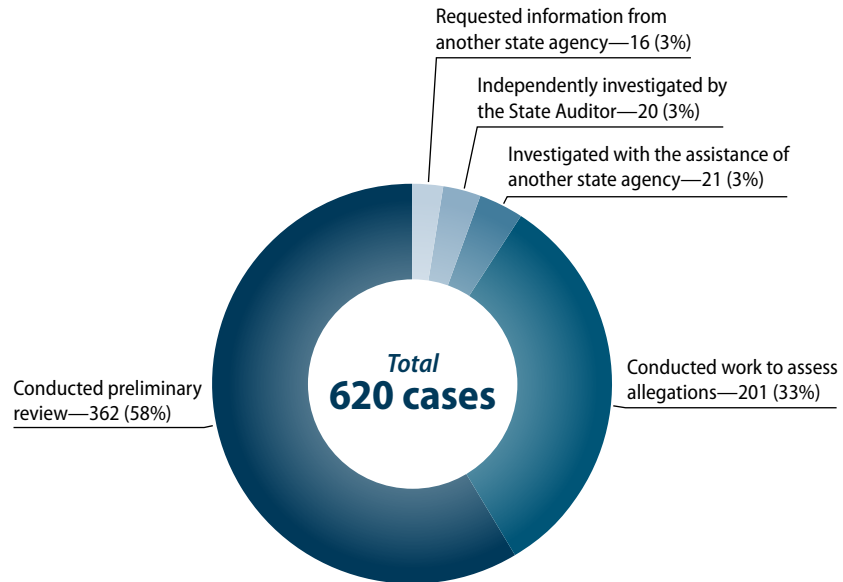
The State Auditor's Investigative Work From July 2016 Through December 2016

The State Auditor receives allegations of improper governmental activities in several ways. From July 1, 2016, through December 31, 2016, the State Auditor received 595 calls or inquiries. Of these, 291 came through the State Auditor's website, 187 through the mail, 72 through the hotline, 39 via facsimile, one through individuals who visited the State Auditor's office, and five through internal sources. When the State Auditor determined that allegations were outside its jurisdiction, it referred the callers and inquirers to the appropriate federal, local, or state agencies, when possible.

During this six-month period, the State Auditor conducted investigative work on 620 cases that it opened either in previous periods or in the current period. As Figure A on the following page shows, after conducting a preliminary review of these allegations, the

State Auditor’s investigative staff determined that 362 of the 620 cases lacked sufficient information for investigation. For another 201 cases, the staff conducted work—such as analyzing available evidence and contacting witnesses—to assess the allegations. In addition, the staff requested that state departments gather information for 16 cases to assist in assessing the validity of the allegations. The State Auditor’s staff independently investigated 20 cases and investigated another 21 cases with assistance from other state agencies.

Figure A
Status of Cases
July 2016 Through December 2016



Source: California State Auditor.

The State Auditor substantiated improper governmental activities in 3 of the 20 investigations it independently investigated during the period and conducted follow-up work for 10 cases it had publicly reported previously. In addition, the State Auditor analyzed the 21 investigations that state agencies conducted under its direction and substantiated improper governmental activities in 7 of those cases. It also conducted follow-up work for 3 cases that state agencies had investigated and that it had publicly reported previously. The results of 10 investigations with substantiated improper governmental activities appear in this report.

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DEPARTMENT/AGENCY	CASE NUMBER	ALLEGATION	PAGE NUMBER
California State University, Fresno	I2016-0276	Misuse of state resources	53
Corrections and Rehabilitation, California Department of	I2016-0112	Misuse of state vehicle, failure to obtain a home storage permit, failure to submit monthly reports indicating taxable personal use of a state vehicle	5
Corrections and Rehabilitation, California Department of, California Institution for Women	I2016-0015	Improper payment for inmate supervision	29
Equalization, State Board of	I2015-0686	Disclosure of confidential information	25
Health Care Services, Department of	I2015-0003	Misuse of state resources	37
	I2015-1088	Improper hiring practices	41
Social Services, California Department of	I2015-1146	Neglect of duty to supervise, dishonesty	49
San Diego State University	I2016-0195	Overpayment to a maintenance employee	45
State Hospitals, Department of	I2015-0576	Failure to keep accurate time and attendance records	19
Transportation, California Department of	I2015-0736	Misuse of state time	15