

INVESTIGATIONS OF IMPROPER ACTIVITIES BY STATE AGENCIES AND EMPLOYEES

Inaccurate Attendance Records, Violation of State
Laws, and Misuse of State Resources

Report I2017-2

INVESTIGATIONS

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October 12, 2017

Investigative Report I2017-2

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

Dear Governor and Legislative Leaders:

Pursuant to the California Whistleblower Protection Act (Whistleblower Act), the California State Auditor's Office confidentially investigates allegations of improper governmental activities by state agencies and employees in connection with the performance of their duties.

This investigative report summarizes investigations concerning allegations of improper governmental activities that were completed between January 2017 and June 2017. During this time period, the office received over 662 calls or inquiries and conducted investigative work on nearly 677 cases that we opened either in previous periods or in the current period. After conducting preliminary reviews of the allegations involved, we determined that 435 of these cases lacked sufficient information for investigation and conducted work on the remaining 242, of which 50 resulted in an investigation.

This report details six substantiated allegations involving several state agencies and a university campus. Through our investigative processes, we found inaccurate reporting, waste of funds, illegal activities, and misuse of state resources. For example, a psychiatric technician at Atascadero State Hospital engaged in a pattern of attendance abuse—arriving late, leaving early, and taking long lunches—without reporting his absences. As a result, the employee received more than \$7,500 in improper overtime pay over a one-year period.

State agencies must report to my office any corrective or disciplinary action taken in response to recommendations we make. 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's Office 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 six investigations with substantiated findings that the State Auditor either completed or directed other state agencies to complete on its behalf between January 1, 2017, and June 30, 2017. The following paragraphs briefly summarize the investigations. We discuss these investigations more fully in the individual chapters of this report.

Department of State Hospitals, Atascadero State Hospital

A psychiatric technician at the Department of State Hospitals (State Hospitals), Atascadero State Hospital, engaged in a pattern of attendance abuse when he failed to account for his absences on his timesheets. This conduct allowed him to receive \$7,500 of improper overtime pay from July 2015 through June 2016. In addition, his supervisor and shift lead neglected to ensure the accuracy of the psychiatric technician's attendance records, even though they should have been aware of and taken definitive steps to address his attendance abuse.

Department of Water Resources

Two managers at the Department of Water Resources (Water Resources) neglected to ensure the accuracy of the time and attendance records of an administrative supervisor from 2008 to 2016. As a result, the administrative supervisor failed to account for partial-day absences as required by her classification as a nonexempt employee. Based on the limited data available, we calculated that the administrative supervisor undercharged her leave by as many as 149 hours for a six-month period in 2016, at an estimated cost to the State of \$5,200.

Investigative Highlights . . .

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

- » *A psychiatric technician did not account for his absences and improperly received \$7,500 of overtime pay during a one-year period.*
- » *An administrative supervisor failed to accurately report her time, which cost the State an estimated \$5,200.*
- » *A university professor improperly received travel and entertainment reimbursements totaling \$1,200 for limousine trips and additional travel expenses.*
- » *Staff at an administrative office hosted an illegal raffle for prizes that included the unauthorized sale of alcoholic beverages.*
- » *For a 14-month period, a supervisor did not ensure a subordinate was fully productive during work hours at an estimated cost to the State of \$5,400.*
- » *An analyst used her state email account to send or receive almost 400 personal emails during a 10-month period.*

¹ For more information about the State Auditor's investigations program, please refer to the Appendix, which begins on page 29.

University of California, Davis

A professor with the University of California, Davis (UC Davis), wasted University of California (UC) funds when he improperly received travel and entertainment reimbursements totaling nearly \$1,200 for three limousine trips and two additional travel expenses.

California Department of Corrections and Rehabilitation

In December 2016, staff in an administrative office within the California Department of Corrections and Rehabilitation (Corrections) hosted an illegal raffle. In addition, the raffle included the unauthorized sale of alcoholic beverages.

Department of Industrial Relations

From April 2016 through May 2017, a supervisor at the Department of Industrial Relations (Industrial Relations) failed to keep a subordinate employee fully occupied during his work hours. The supervisor's neglect of duty resulted in the employee frequently having hours of unproductive work time (downtime), some of which he spent on personal activities. We estimated that during the 14-month period, the employee had 328 hours of downtime, for which the State paid him \$5,400.

California Department of Social Services

An analyst at the California Department of Social Services (Social Services) misused state resources when she used her state email account to send or receive almost 400 personal emails from August 2015 through May 2016.

Table 1 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/UNIVERSITY	ISSUE	COST TO THE STATE AS OF JUNE 30, 2017*	STATUS OF RECOMMENDATIONS		
				FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING
1	Atascadero State Hospital	Failure to account for absences, improper overtime pay	\$7,540			✓
2	Water Resources	Failure to keep accurate time and attendance records	5,176		✓	
3	UC Davis	Waste of university funds	1,193			✓
4	Corrections	Illegal raffle, unauthorized sale of alcoholic beverages	NA			✓
5	Industrial Relations	Neglect of duty	5,411	✓		
6	Social Services	Misuse of state resources	NA	✓		

Source: California State Auditor.

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

* In the individual chapters of this report, we explain the methods we used to estimate the costs to the State.

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Chapter 1

DEPARTMENT OF STATE HOSPITALS, ATASCADERO STATE HOSPITAL: A PSYCHIATRIC TECHNICIAN FAILED TO ACCOUNT FOR HIS ABSENCES AND RECEIVED IMPROPER OVERTIME PAY CASE I2015-0959

Results in Brief

A psychiatric technician at Atascadero State Hospital engaged in a pattern of attendance abuse—regularly arriving late, leaving early, and taking long lunches—without accounting for his absences on his timesheets. This conduct allowed him to receive \$7,540 in improper overtime pay from July 2015 through June 2016. The psychiatric technician’s supervisor and shift lead neglected their duties when they failed to ensure the accuracy of his attendance records. They should have been aware of the problem and taken definitive steps to address it.

Background

State law requires that state agencies keep accurate records of their employees’ attendance. In support of this responsibility, State Hospitals has established policies and procedures requiring its employees to complete monthly timesheets. State Hospitals also requires its clinical staff, such as nurses and psychiatric technicians, to accurately record their arrival and departure times on sign-in sheets within their assigned units of the hospital. When unit supervisors approve timesheets, they must verify that employees’ hours match those on the sign-in sheets. The supervisors rely on shift leads to help ensure the accuracy of the sign-in sheets.

State Hospitals has two types of electronic data that come from sources unrelated to timekeeping and yet provide useful records of employees’ daily whereabouts. Specifically, State Hospitals uses a Personal Duress Alarm System that requires employees to wear an alarm device they can activate during emergencies. The system tracks employees’ physical locations on the hospital campuses. Also, before entering and exiting each hospital’s secured areas, employees must scan their ID badges. Because patient care units—where psychiatric technicians spend the vast majority of their

About the Department

State Hospitals employs more than 2,800 psychiatric technicians who provide a basic level of general behavioral and psychiatric nursing care for patients. It oversees five hospitals and serves mentally ill patients whom criminal or civil court judges commit for treatment.

Relevant Criteria

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

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

The various causes for disciplining state employees are found in Government Code section 19572.

work hours—are located within the secured areas, the ID badge scan data provide valuable information about employees' arrival and departure times.

In response to an allegation we received that employees at State Hospitals were improperly receiving overtime pay, we initiated an investigation.

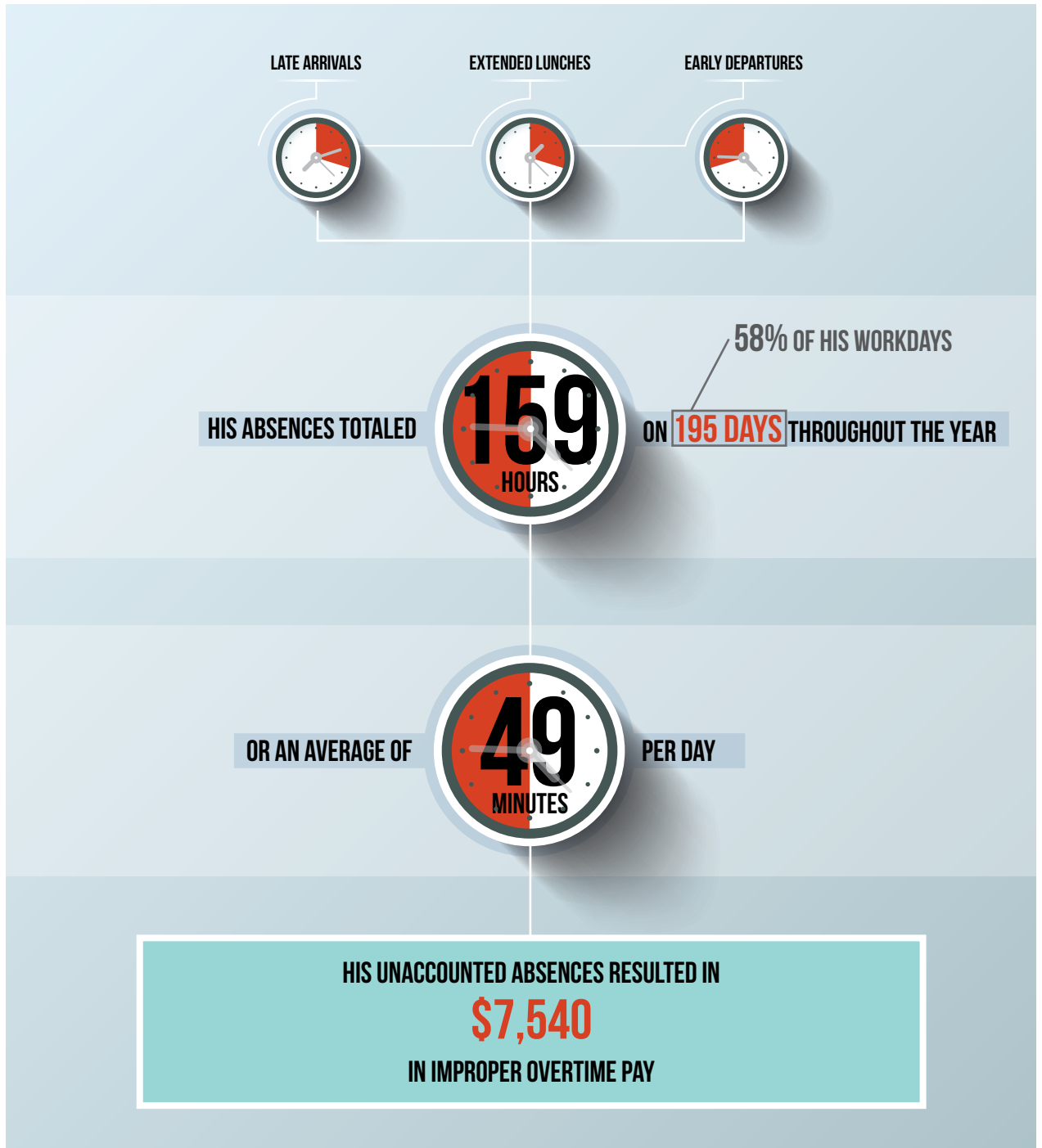
A Psychiatric Technician Did Not Account for Days on Which He Arrived Late, Left Early, and Took Long Lunches, Which Resulted in His Receipt of \$7,540 in Improper Overtime Pay

From July 2015 through June 2016, a psychiatric technician engaged in a pattern of time and attendance abuse by regularly arriving late, leaving early, and taking long lunches. The records we obtained show that his late arrivals and early departures ranged from 10 minutes to more than an hour. He also frequently took lunches that exceeded his allotted lunch break by 10 to 40 minutes.

When the employee recorded his arrival and departure times on sign-in sheets in the hospital units where he worked and when he completed his timesheets, he failed to account for his absences. The psychiatric technician signed up for many hours of voluntary overtime, often working five to six extra shifts per week, and his time abuse occurred in both his regular and overtime shifts. On the sign-in sheets and timesheets we reviewed, the psychiatric technician almost always indicated that he had worked his full shifts, regularly claiming to have worked 15.5 hours per day. However, as Figure 1 illustrates, the data we reviewed indicate that he had unrecorded absences on 58 percent of his workdays during the one-year period. On those 195 days, his absences totaled 159 hours, or an average of 49 minutes per day.

As Figure 1 shows, these unrecorded absences resulted in the psychiatric technician receiving \$7,540 in improper overtime pay. Although the psychiatric technician's time and attendance abuse occurred during both his regular and overtime shifts, his overtime pay was based on the number of work hours he claimed on his timesheets that exceeded the standard 40-hour workweek, and the hours he actually worked always greatly exceeded that threshold. Therefore, had he accounted for his absences, his overtime hours and pay would have been reduced by 159 hours and \$7,540, respectively.

Figure 1
The Psychiatric Technician's Unrecorded Absences Allowed Him to Receive \$7,540 in Improper Overtime Pay



Sources: California State Auditor analyses of electronic data and timesheets from State Hospitals and pay records from the State Controller's Office.

When interviewed, the psychiatric technician was unable to justify his attendance issues and ultimately acknowledged he had not accounted for his absences. He admitted that he sometimes arrived late but blamed it on delays he encountered while passing through the security gates. Nevertheless, both he and his shift lead agreed that State Hospitals requires that employees allow enough time to pass through the security gates so that they can arrive at their work locations at the start of their shifts. The psychiatric technician also said that his shift lead was always aware of instances when he left early even though he was not sure if his shift lead approved of those instances. When presented with the hospital's data showing his absences, the psychiatric technician did not refute the data and stated that he had no reason to believe they were inaccurate. When comparing the data to the hours he claimed on his timesheets, he recognized that he did not work enough hours on some days to account for the hours he claimed to have worked.

The shift lead and supervisor should have been aware of the psychiatric technician's attendance problems and promptly addressed them. The shift lead initially stated that he was not aware of any attendance problems and that the psychiatric technician was an exemplary employee. However, the shift lead later acknowledged that he had noted the psychiatric technician taking long lunches and had spoken to him about the issue. The shift lead ultimately took responsibility for not properly monitoring the psychiatric technician's attendance and acknowledged that he did not always ensure the times on sign-in sheets were accurate. The psychiatric technician's supervisor said that he was unaware of the time abuse and that he relied heavily on shift leads to monitor his subordinates' attendance and to ensure the accuracy of the sign-in sheets. After we presented the evidence we discuss above, both the shift lead and the supervisor agreed that the psychiatric technician's attendance behavior was not acceptable.

Recommendations

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

- Take appropriate disciplinary action against the psychiatric technician.
- Take steps to recoup the \$7,540 of overtime pay from the psychiatric technician.
- Take appropriate corrective actions to address the failures of the shift lead and the supervisor and to ensure they fulfill their responsibilities for recognizing and addressing attendance abuse.

Agency Response

State Hospitals reported in August 2017 that it agrees with our findings and will implement the recommendations. State Hospitals stated that its executive team will consult with its legal, labor relations, and human resources departments regarding the appropriate actions to take against the psychiatric technician, shift lead, and supervisor. It will discuss with these departments the steps necessary to recover the improper overtime pay the psychiatric technician received.

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Chapter 2

DEPARTMENT OF WATER RESOURCES: AN ADMINISTRATIVE SUPERVISOR AND TWO MANAGERS FAILED TO KEEP ACCURATE TIME AND ATTENDANCE RECORDS CASE I2016-0604

Results in Brief

From 2008 to 2016, two managers at Water Resources neglected their duties when they failed to ensure the accuracy of the time and attendance records of an administrative supervisor. As a result, the administrative supervisor—a nonexempt employee—did not account for her partial-day absences by logging those hours as either vacation or another category of leave, as her classification required. Based on the limited data available, we calculated that the administrative supervisor undercharged her leave by as many as 149 hours over a six-month period, at an estimated cost to the State of \$5,176.

Background

The manner in which state employees are required to charge time for absences from work is dependent on whether they are exempt or nonexempt from the Fair Labor Standards Act of 1938 (FLSA). The job duties and pay of a position determine an employee's status as exempt or nonexempt. State employees who are exempt typically have flexibility in their work hours and do not have to use vacation hours or other types of leave for partial-day absences, but they also are not entitled to overtime pay if they work more than 40 hours in a workweek. Nonexempt employees must account for every hour worked, must use vacation or another type of leave for absences of any duration, and earn overtime pay when they work more than 40 hours in a workweek.

In response to an allegation we received that an administrative supervisor in a nonexempt position was failing to account for her partial-day absences as required, we initiated an investigation and requested the assistance of Water Resources to conduct the investigation.

About the Department

Water Resources protects, conserves, develops, and manages much of California's water supply including the State Water Project, which provides water for 25 million residents, farms, and businesses. In addition, it works to prevent and respond to floods, droughts, and catastrophic events that threaten public safety, water resources and management systems, the environment, and property.

Relevant Criteria

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

The Fair Labor Standards Act of 1938 codified in title 29 of the United States Code, section 201 et seq., establishes overtime pay, record keeping, and other labor standards affecting workers in the private and public sector. The wage and overtime pay provisions of the Fair Labor Standards Act of 1938 apply to most, but not all, state employees.

Two Managers Failed to Ensure the Accuracy of the Administrative Supervisor's Time and Attendance Records

The administrative supervisor's position required her to fully account for all partial-day absences; however, she believed that she was exempt from FLSA timekeeping rules and was not required to charge leave for less than a full eight-hour absence. The administrative supervisor told investigators that she had not charged leave for partial-day absences since her hire date in April 2008 because her initial manager had directed her not to, and after that manager retired in 2016, her current manager gave her the same instructions. When interviewed, the current manager was surprised to learn that the administrative supervisor was nonexempt and should have been charging leave for partial-day absences. In addition, an email from the current manager to the administrative supervisor illustrates that he gave inaccurate instructions to her about how to account for her absences. Although Water Resources did not interview the former manager, witness statements support the administrative supervisor's account that the manager had provided inaccurate guidance to her.

The administrative supervisor engaged in a pattern of working fewer than 40 hours a week and only accounting for full-day absences.

Likely due to the unwarranted flexibility these managers provided to her, the administrative supervisor engaged in a pattern of working fewer than 40 hours a week and only accounting for full-day absences. Specifically, the administrative supervisor stated in an interview that she sometimes worked partial days, either because she arrived after 8 a.m. or left before 5 p.m. In addition, witnesses corroborated the administrative supervisor's lack of full-day attendance. One witness estimated that the administrative supervisor typically worked partial days as often as three times a week. Other witnesses stated that the administrative supervisor was regularly unavailable to staff because she was out of the office so often. Evidence suggests that her low attendance also led to the administrative supervisor neglecting her duties, including failing to respond to requests for information from other Water Resources divisions in a timely manner. The issues became so prevalent that before our investigation, the division chief personally directed the administrative supervisor's managers to ensure that she was being held accountable for her time worked.

Although Water Resources was unable to definitively quantify the administrative supervisor's partial absences, we estimated the number of hours the administrative supervisor undercharged her vacation or other leave categories based on information a witness provided to us after tracking the administrative supervisor's attendance for a six-month period in 2016. Specifically, we compared the witness's records with the administrative supervisor's official attendance record for this period and found that the administrative supervisor's timesheets should have accounted for an

additional 149 hours of leave, costing the State an estimated \$5,176. However, based on the administrative supervisor's pattern of attendance and her failure to charge leave for partial-day absences during her nearly eight years of state employment, the actual cost to the State was likely much greater.

Although the administrative supervisor had a duty to accurately record the number of hours she worked daily, her managers were responsible for providing proper guidance and ensuring the accuracy of her timesheets. Their assumptions that the administrative supervisor was exempt from FLSA timekeeping rules were negligent and resulted in a significant cost to the State.

Recommendations

To remedy the effects of the improper governmental activity substantiated in this report and to prevent it from recurring, Water Resources should take the following actions:

- Ensure the supervisor starts accounting for partial-day absences in accordance with her classification as a nonexempt employee.
- Ensure Water Resources management is knowledgeable about individual staff classifications and their time-reporting requirements.

Agency Response

In August 2017, Water Resources reported that it generally agreed with the findings of our investigation. However, Water Resources stated that we lacked evidence for our assertion that the potential cost to the State could be much greater than the \$5,176 we reported. We calculated the loss to the State based on a six-month period for which records were available. In stating that the loss to the State could be higher, we noted that the administrative supervisor and witnesses all indicated that the administrative supervisor frequently worked partial days from 2008 to 2016 and did not account for these absences. Therefore, the total cost to the State for the administrative supervisor's failure to account for partial-day absences is likely much greater than the amount we calculated for the six-month period.

Water Resources also reported that it took action to implement our recommendations. Specifically, it directed the administrative supervisor to begin accounting for her partial-day absences and informed her managers of this requirement. In addition, it reiterated work expectations to the administrative supervisor and

will monitor her performance. Finally, Water Resources reported that it will inform all managers and supervisors that all nonexempt employees must charge time for their partial-day absences and will include this requirement in its managers' and supervisors' training.

Chapter 3

UNIVERSITY OF CALIFORNIA, DAVIS: A PROFESSOR WASTED UNIVERSITY FUNDS ON IMPROPER LIMOUSINE TRIPS AND ADDITIONAL EXPENSES CASE I2016-0244

Results in Brief

A professor with UC Davis wasted UC funds when he improperly received travel and entertainment reimbursements for three limousine trips totaling \$996 and two additional travel expenses totaling \$197.

Background

As an employee of the UC Davis Department of Mechanical and Aerospace Engineering, the professor is subject to UC's travel and entertainment policies. He is involved in education and research activities, and he frequently travels internationally to attend technical conferences and research collaboration meetings with representatives of private industry. As a result of the professor's efforts, UC Davis receives donations that are specifically earmarked to support his education and research activities. However, the professor still is required to abide by UC travel and entertainment policies.

In response to an allegation we received that the professor improperly received reimbursements for travel and entertainment expenses, we initiated an investigation and requested the assistance of UC Davis to conduct the investigation.

The Professor Improperly Requested and Received Reimbursements for Limousine Services and Two Other Inappropriate Expenses

The UC Davis investigators determined that on three separate occasions in April and May 2015, the professor used limousine services as a mode of transportation. As justification for his reimbursement claims, the professor stated that he used each limousine trip to discuss business matters with visitors from outside organizations. However, when UC Davis investigators reviewed the reimbursement claims for the limousine trips and requested further justification from the professor, he was unable to

About the University

UC Davis is one of 10 UC campuses. Its Department of Mechanical and Aerospace Engineering has several research laboratories that receive donations from domestic and foreign organizations.

Relevant Criteria

Government Code section 8547.2, subdivision (c), states that any activity by a state agency or employee that is economically wasteful is an improper governmental activity.

UC travel policy requires that all employees traveling on official business must observe normally accepted standards of propriety in the type and manner of expenses they incur. In addition, the policy states that UC will reimburse only the most economical mode of transportation.

UC entertainment policy prohibits entertainment expenses that are lavish or extravagant under the circumstances.

provide documentation or other evidence supporting his previous justification. Instead, the professor admitted he should have used his own vehicle. In April 2017, following the investigation, he voluntarily repaid UC Davis \$996 for the three limousine trips.

In the process of aiding in the investigation concerning the limousine charges, UC Davis found two additional travel expense claims that it had erroneously processed and reimbursed to the professor in 2014 and 2015. These expenses totaled \$197. One claim did not qualify for reimbursement under UC travel policy, and the other exceeded the allowable reimbursement limit. After learning about the errors, the professor also reimbursed UC Davis for these expenses. In response to these expense claim errors, UC Davis provided training to the professor's staff, who regularly assist him in processing travel and entertainment reimbursement requests.

Recommendation

To address the improper travel expenses identified in this investigation and to prevent similar activities from occurring, UC Davis should require the professor to undergo travel reimbursement training that should focus specifically on appropriate and allowable expenses.

Agency Response

In August 2017, UC Davis stated that it agreed with our findings and that it intended to implement our recommendation. Specifically, it plans to provide travel reimbursement training to the professor and will provide proof of the training upon completion.

Chapter 4

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION: STAFF IN AN ADMINISTRATIVE OFFICE HELD AN ILLEGAL RAFFLE AND ILLEGALLY SOLD ALCOHOLIC BEVERAGES CASE I2016-1360

Results in Brief

In December 2016, staff in an administrative office within Corrections hosted an illegal raffle. As part of the raffle, it illegally sold alcoholic beverages.

Background

The practice of hosting holiday raffles is common in the workplace; however, California's Constitution strictly prohibits unauthorized raffles, regardless of what they are called. In limited circumstances, state law allows tax-exempt, nonprofit organizations to hold raffles, but only with preapproval from the California Department of Justice (Justice). Conducting an illegal raffle, even at an office holiday party, is impermissible.

A raffle is a form of lottery, in which the elements of a prize, consideration, and chance are present. Under state law, a raffle is illegal if held by an unauthorized group and meets three elements:

A prize—anything of perceived value, such as money, property, or a trip.

Consideration—commonly thought of as *payment*. For example, paying money to purchase a raffle ticket for a chance to win a prize is consideration.

The distribution of a prize by chance—the random selection of winners and prizes. A raffle includes distribution by chance because the winning ticket is blindly pulled from the ticket pool. On the other hand, a silent auction does not involve distribution by chance because participants place bids on specific prizes and the prizes go to the highest bidders.

About the Department

Corrections has many administrative offices throughout the State supporting the 35 adult correctional facilities it manages. Corrections' mission is to enhance public safety through the safe and secure incarceration of offenders.

Relevant Criteria

California Constitution, article IV, section 19, prohibits the unauthorized sale of raffle tickets in the State.

Penal Code section 319 defines a raffle as a scheme for the distribution of property by chance among persons who exchange anything of value for the chance of obtaining such property, regardless of what the scheme is called.

Penal Code section 320 states that every person who contrives, prepares, sets up, proposes, or draws an illegal raffle is guilty of a misdemeanor.

Business and Professions Code section 23300 states that no person is permitted to exercise the privilege that a licensee may exercise under the authority of a liquor license unless that person or entity is duly licensed.

Business and Professions Code section 23025 specifies that a sale of alcohol occurs when the ownership of alcohol transfers from one party to another for any consideration.

Additionally, California law prohibits the unauthorized sale of alcohol. If the ownership of alcohol transfers from one party to another in exchange for any kind of consideration, including buying a raffle ticket for a chance to win it, that transfer meets the legal definition of a *sale*. Only entities properly licensed by the Department of Alcoholic Beverage Control are permitted to sell alcohol.

In response to an allegation we received that an office within Corrections had raffled off alcohol at a holiday party, we initiated an investigation.

Staff in One of Corrections' Administrative Offices Violated Two Separate State Laws When They Held a Raffle and Offered Alcoholic Beverages as Prizes

In December 2016, the staff in an administrative office within Corrections held a raffle at the office's annual holiday party. The raffle prizes consisted of six baskets, four of which contained either hard alcohol or beer. Figure 2 shows the six baskets sold in the raffle, and Figure 3 on page 20 presents examples of the alcoholic beverages included in the raffle prizes. One basket also included 50 cartridges of ammunition, the selling of which required no special license at the time of the raffle. Starting in 2018, however, selling ammunition will require a license from Justice.

Staff in the administrative office sold raffle tickets at a cost of about \$1 per ticket and awarded all six baskets to winning ticket holders. The raffle ultimately raised \$571 from ticket sales, which Corrections subsequently donated to a local charity. However, the California Constitution's limited exception to the ban on raffles only permits nonprofit, tax-exempt charities that are preauthorized by Justice to conduct this type of raffle. Even though Corrections donated the proceeds of the raffle to a charity, the raffle was still illegal.

According to the employees we interviewed who were responsible for organizing holiday parties, the office has held raffles each December for at least the past seven years. Employees from the office volunteer annually to serve on the holiday party committee, which decides the location of the holiday party, the food that will be served, and the employee activities that will be included. According to the former committee chair, the holiday party committee makes all the decisions related to the party. The employees we spoke to were not aware of any Corrections policy or guideline addressing inappropriate holiday party activities.

Figure 2
Baskets Sold at Corrections' Holiday Raffle



Source: Corrections' photographs of raffle prizes.

Recommendation

To prevent these improper governmental activities from recurring, Corrections should issue a memo to all staff no later than November 2017, and annually thereafter, regarding the prohibition of raffles and the unauthorized sale of alcohol and ammunition.

Figure 3
Examples of Alcoholic Beverages Included in the Holiday Raffle Prizes



Source: California State Auditor's observation of Corrections' raffle prizes.

Agency Response

In August 2017, Corrections stated that it agreed with our findings related to the illegal raffle and that it intended to educate its staff regarding the problems associated with holding the type of raffle discussed in this report. It plans to issue guidance to employees by November 2017 about the appropriate ways to hold workplace events involving prizes, donations, or fundraising.

However, Corrections did not agree that an illegal sale of alcohol occurred. Corrections asserted that a true sale, as a matter of law, would not include an element of chance. We disagree with Corrections' assertion and reaffirm that Business and Professions Code section 23025 specifies that a sale of alcohol occurs every time the ownership of alcohol transfers from one party to another for any consideration. Since participants purchased tickets to participate in the raffle, consideration was given that resulted in the illegal sale of alcohol each time the alcohol transferred ownership to the respective winner.

Chapter 5

DEPARTMENT OF INDUSTRIAL RELATIONS: A SUPERVISOR NEGLECTED HER DUTY WHEN SHE FAILED TO MANAGE AN EMPLOYEE WHO HAD AN INSUFFICIENT WORKLOAD CASE I2016-1059

Results in Brief

From April 2016 through May 2017, a supervisor within the Division of Labor Standards Enforcement (division) at Industrial Relations failed to keep a subordinate employee fully occupied during his work hours. Although the employee was proficient in his work, the supervisor's neglect of duty resulted in the employee frequently having hours of downtime, some of which he used for personal endeavors. We estimate that during the 14-month period, the employee had 328 hours of downtime, for which the State paid him \$5,411.

Background

The supervisor has been employed in her current job classification with Industrial Relations for more than eight years. In this capacity, she is responsible for directly supervising several office staff members, participating in the selection and training of staff, assigning caseload to staff, and evaluating staff performance and taking appropriate action as necessary.

Since April 2016, the employee has worked in his job classification and has reported directly to the supervisor. His duties include providing clerical support to the division, processing mail, photocopying, faxing, stocking supplies, maintaining files, answering telephone inquiries, and assisting the public.

In response to an allegation we received that the employee was failing to devote his full time and attention to the duties required of his position, we initiated an investigation and requested the assistance of Industrial Relations to conduct the investigation.

About the Department

Industrial Relations strives to improve working conditions for California's wage earners and to advance opportunities for profitable employment in California. The division works to ensure a just day's pay in every workplace in the State.

Relevant Criteria

Government Code section 19572, subdivision (d), specifies that inexcusable neglect of duty constitutes cause for discipline of an employee.

Government Code section 8314 prohibits state employees from using public resources, including state-compensated time, for personal or other purposes not authorized by law, except for incidental and minimal use, such as an occasional telephone call.

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

The Supervisor Failed to Ensure the Employee Had Sufficient Work to Perform, Resulting in an Estimated Cost of \$5,411 to the State

Industrial Relations determined that the supervisor had neglected her duty to ensure that the employee had sufficient work to perform since he began working at Industrial Relations. In the course of its investigation, Industrial Relations interviewed numerous employees, and all of the witnesses reported having seen the employee read, scroll, or text on his personal cell phone. Witnesses further reported seeing the employee use his state computer for activities unrelated to his work and hearing the employee snoring while asleep at his desk. One witness provided the Industrial Relations investigators nearly 20 photos and a video that showed the employee wasting time in various ways, including looking at his cell phone, leaning back in his office chair with his feet up on his desk, and sleeping at his desk.

Industrial Relations asked the supervisor if she had observed the employee engaged in any of the activities the witnesses reported. She admitted she was aware that the employee often ran out of work and acknowledged that she had seen the employee using his personal cell phone at his desk on a couple of occasions. However, the supervisor asserted she had never seen the employee with his feet up on his desk or using his work computer for personal activity. The supervisor defended her inaction by stating that the employee works quickly and has exceptional computer skills; thus, she found it a challenge to keep him busy. Although the supervisor said that she expected the employee to check with other staff for tasks when he ran out of work, she admitted she had not provided the employee with specific instruction in this regard.

When interviewed by Industrial Relations investigators in May 2017, the employee stated that he had experienced downtime during his workdays since he started working at Industrial Relations in 2016 and admitted to all of the allegations. The employee told investigators that his workload depends on other employees, including his supervisor, giving him work to perform. Specifically, the employee has four in-boxes into which other staff drop off work that he then processes. When the in-boxes are empty, his work is complete, and he waits at his desk until more work arrives.

The employee stated that on several occasions, he asked his supervisor for work but she was unable to provide any to him.

The employee stated that on several occasions, he asked his supervisor for work but she was unable to provide any to him. He also asked other employees within the division for work and occasionally received some. When an opportunity arose for the employee to take on additional duties, he volunteered to do so; he began those duties in May 2017. The employee estimated that he did not have any work to perform on 10 percent of his workdays during most months since his hire, and he experienced up to 60 percent

downtime in late March and April 2017. Based on his statements, we estimate that from April 2016 through May 2017, he was without sufficient work to perform for 328 hours, for which the State paid him \$5,411.

Following its investigation, Industrial Relations issued the supervisor a memorandum addressing her neglect of duty. The memorandum criticizes her failure to adhere to core business hours and the subsequent effect on her ability to supervise her subordinates. The memorandum requires the supervisor to ensure the employee adheres to his work schedule, takes scheduled breaks and lunches, remains productive at all times, and refrains from activities unrelated to work during business hours. It also requires the supervisor to ensure that all of her other staff are fully productive during business hours. Additionally, Industrial Relations reported to us that it will direct the supervisor to provide timely performance feedback to all of her staff through probationary reports and performance appraisals.

In June 2017, Industrial Relations also issued the employee a memorandum concerning his conduct and directed him to cease all activities unrelated to his work during business hours. The memorandum requires the employee to adhere to work hours, take his lunch hour and breaks at set times each day, and restrict the use of his personal cell phone to those times. In addition, it requires the employee to notify his supervisor immediately if he is without work.

Recommendation

Industrial Relations has fully addressed the improper governmental activities identified in this report; thus, we have made no recommendations.

Agency Response

Because Industrial Relations has taken corrective action, no response is needed.

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Chapter 6

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES: AN ANALYST MISUSED STATE RESOURCES FOR PERSONAL REASONS CASE I2016-0435

Results in Brief

An analyst at Social Services misused state resources when she used her state email account to conduct personal business. The analyst sent or received 398 personal emails from August 2015 through May 2016.

Background

In addition to the state laws that govern the proper use of state resources, Social Services has its own policies regarding email use that provide its employees with guidelines for using, accessing, and exchanging information using any computer system. Social Services' policies specify that its employees may use their state email accounts for work-related activities only and that "incidental and very minimal" personal use of the state email is permitted from time to time. Social Services employees with state email access are further required to complete training on its policies when they are hired and annually thereafter. Records show that the analyst participated in this annual training in 2012 and 2013 only.

In response to an allegation we received that the analyst was using her state email account excessively to send emails to her child's school and teachers, we initiated an investigation and requested the assistance of Social Services to conduct the investigation.

The Analyst Misused Her State Email Account to Send and Receive an Excessive Number of Personal Emails

As part of this investigation, Social Services performed an evaluation of the analyst's state email account from August 2015 through May 2016 and found it contained many emails with personal content. We reviewed the emails and determined that the

About the Department

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 8314 prohibits state employees from using state resources, including state computers and state email accounts, for personal purposes, except for incidental and minimal use, such as an occasional telephone call.

Government Code section 19990 prohibits state employees from engaging in activities that are clearly inconsistent or incompatible with their duties as state employees, as further defined by each department. Prohibited activities specifically include using state equipment for private advantage.

Government Code section 19572, subdivision (p), specifies that misuse of state resources constitutes cause for discipline of state employees.

analyst's use of her state email account for personal reasons violated state laws and Social Services' policies governing the use of state resources. Our review of the emails provided the following results:

- The analyst sent or received 398 personal emails, which far exceeds incidental or minimal use of state resources.
- The personal emails primarily consisted of communication to and from her child's school and teachers.
- The analyst also sent and received emails regarding her medical appointments, mortgage finances, and religious affiliation.

During her interview with the Social Services investigator, the analyst admitted that she used her state email account to communicate with her child's school and teachers. Furthermore, the analyst acknowledged that she used her state email account as a form of contact for receiving personal communications, and the evidence we reviewed supports that she provided her state email address to entities and individuals unrelated to her state employment.

Although many of the emails were lengthy and likely took significant time to compose and read, the analyst claimed to have exchanged the personal emails during her work breaks or lunch times. We did not find evidence to dispute her claim; therefore, we were unable to substantiate that she misused state-paid time to send and receive the personal emails.

In January 2017, as a result of its investigation, Social Services provided the analyst with a formal counseling memorandum that addressed her misuse of state resources. The analyst left Social Services in February 2017 to work for another state agency.

Recommendation

Because Social Services already formally counseled the analyst for this improper governmental activity, we have no additional recommendation.

Agency Response

Because Social Services already counseled the analyst, no response is necessary.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: October 12, 2017

Investigative Staff: Dorothy Le, Chief of Investigations
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Appendix

THE CALIFORNIA WHISTLEBLOWER PROTECTION ACT

The Critical Role of Whistleblowers

Whistleblowers are critical to ensuring government accountability and public safety. Under state law, anyone who reports an improper governmental activity is a whistleblower and is protected from retaliation.² An improper governmental activity is any action by a state agency or by a state employee performing official duties that does the following:

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

Ways That Whistleblowers Can Report Improper Governmental Activities

Reports can be made by calling the toll-free Whistleblower Hotline (hotline) at (800) 952-5665, by mail, or through the State Auditor's 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. The State Auditor may conduct an investigation independently, or it may elect to have another state agency perform the confidential investigation under its supervision.

² The Whistleblower Act can be found in its entirety in Government Code sections 8547 through 8548.5. It is available online at <http://leginfo.legislature.ca.gov>.

Actions That May Be Taken When the State Auditor Finds Improper Governmental Activities

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

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

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

The Protection of Whistleblowers

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

Improper Governmental Activities the State Auditor Has Identified

Since 1993, when the State Auditor activated the hotline, it has identified improper governmental activities that have cost the State a total of \$576.6 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, failures to perform mandated duties, and abuses of authority.

Corrective Actions Taken in Response to Investigations

The chapters of this report describe the corrective actions that state agencies implemented on individual cases for which the State Auditor completed investigations from January 2017 through June 2017. Table A summarizes all corrective actions that state agencies took in response to investigations from the time that the State Auditor opened the hotline in July 1993 until June 2017. In addition to the corrective actions listed, these investigations have resulted in many state agencies modifying or reiterating their policies and procedures to prevent future improper activities.

Table A
Corrective Actions
July 1993 Through June 2017

TYPE OF CORRECTIVE ACTION	TOTALS
Convictions	12
Demotions	22
Job terminations	87
Resignations or retirements while under investigation	21*
Pay reductions	57
Reprimands	337
Suspensions without pay	28
Total	564

Source: California State Auditor.

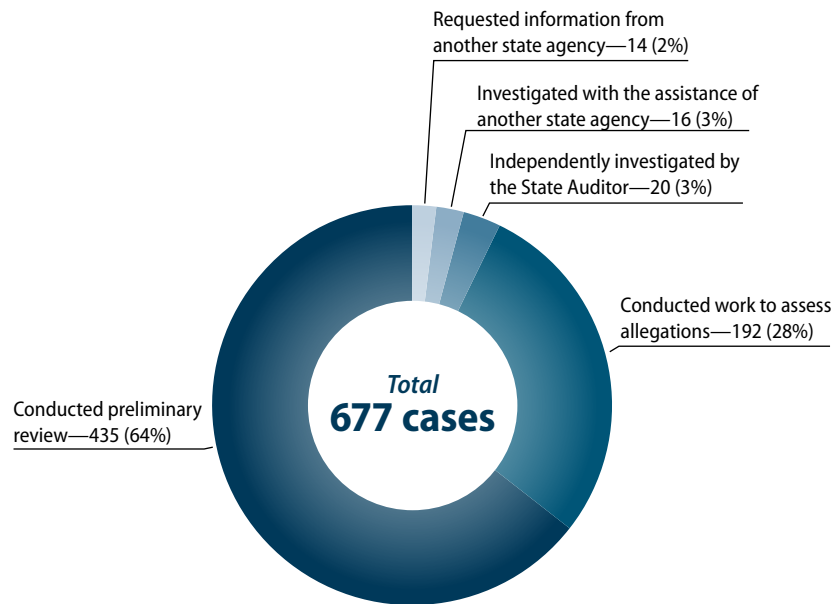
* The State Auditor began tracking resignations and retirements in 2007, so this number includes only those that occurred during investigations since that time.

The State Auditor’s Investigative Work From January 2017 Through June 2017

The State Auditor receives allegations of improper governmental activities in several ways. From January 1, 2017, through June 30, 2017, the State Auditor received 662 calls or inquiries. Of these, 378 came through the State Auditor’s website, 161 through the mail, 84 through the hotline, 34 via facsimile, three through individuals who visited the State Auditor’s Office, and two 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 677 cases that it opened either in previous periods or in the current period. As Figure A shows, after conducting preliminary reviews of the allegations involved, the State Auditor's investigative staff determined that 435 of the 677 cases lacked sufficient information for investigation. For another 192 cases, the staff conducted work—such as analyzing available evidence and contacting witnesses—to assess the allegations. In addition, the staff requested that state agencies gather information for 14 cases to assist in assessing the validity of the allegations. The State Auditor's staff independently investigated 20 cases and investigated another 16 cases with assistance from other state agencies.

Figure A
Status of Cases
January 2017 Through June 2017



Source: California State Auditor.

The State Auditor substantiated improper governmental activities in two of the 20 cases it independently investigated during the period and conducted follow-up work for nine cases it had publicly reported previously. In addition, the State Auditor analyzed the 16 investigations that state agencies conducted under its direction, and it substantiated improper governmental activities in four of those cases. It also conducted follow-up work for six cases that state agencies had investigated and that it had publicly reported previously. The results of six investigations with substantiated improper governmental activities appear in this report.

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DEPARTMENT/UNIVERSITY	CASE NUMBER	ALLEGATION	PAGE NUMBER
Corrections and Rehabilitation, California Department of	I2016-1360	Illegal raffle, unauthorized sale of alcoholic beverages	17
Industrial Relations, Department of	I2016-1059	Neglect of duty	21
Social Services, California Department of	I2016-0435	Misuse of state resources	25
State Hospitals, Department of, Atascadero State Hospital	I2015-0959	Failure to account for absences, improper overtime pay	5
University of California, Davis	I2016-0244	Waste of university funds	15
Water Resources, Department of	I2016-0604	Failure to keep accurate time and attendance records	11