Investigation of Improper Activities by State Agencies and Employees

Waste of State Funds, Misuse of Bereavement Leave, Misuse of State Resources, Dishonesty, and Supervisory Neglect of Duty

April 2020

INVESTIGATIVE REPORT I2020-1

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April 2, 2020
Investigative Report I2020-1

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

Dear Governor and Legislative Leaders:

The California State Auditor, as authorized by the California Whistleblower Protection Act, presents this report summarizing some of the investigations of alleged improper governmental activities that my office completed between January 2019 and December 2019. This report details 11 substantiated allegations involving several state agencies. Our investigations found waste of state funds, misuse of bereavement leave, misuse of state resources, employee dishonesty, and supervisory neglect of duty. In total, we identified about $618,000 of inappropriate expenditures.

For example, the California Department of Fish and Wildlife (Fish and Wildlife) wasted more than a half million dollars of state and federal funds when it purchased a custom-built research boat in June 2017 that has remained largely unused. The original specifications and subsequent changes were inadequate to ensure that Fish and Wildlife could use the research boat as it intended.

In another case, a veterans long-term care home (veterans home) administrator at the California Department of Veterans Affairs wasted nearly $38,000 of state funds by failing to ensure that veterans home staff followed state procedures to inspect a bedbug treatment oven upon delivery in 2015. Staff then left it outdoors and unprotected from the elements for four years, rendering it inoperable.

Further, we found that during a two-year period, seven employees at five state agencies improperly claimed a total of more than 320 hours of bereavement leave valued at almost $10,000. The supervisors for these employees also failed to adequately review staff timesheets to ensure that the employees charged bereavement leave in accordance with permissible limits.

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

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
California State Auditor

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Under the authority of the California Whistleblower Protection Act (Whistleblower Act), the California State Auditor (State Auditor) conducted investigative work from January 1, 2019, through December 31, 2019, on 1,645 allegations of improper governmental activity. These investigations substantiated numerous improper activities, including the waste of state funds, misuse of bereavement leave, misuse of various state resources, dishonesty, and supervisory neglect of duty. Within this report, we provide information on a selection of these cases.

California Department of Fish and Wildlife

The California Department of Fish and Wildlife (Fish and Wildlife) wasted more than a half million dollars of state and federal funds when it purchased a custom-built boat in June 2017 that it cannot use for research surveys as it intended. Weaknesses in Fish and Wildlife's procurement process enabled this wasteful purchase. In particular, it relied on a now-retired environmental program manager (program manager) to write a technical scope of work for construction of the research boat. However, the program manager lacked the necessary skills and did not seek help from appropriate experts. In addition, the program manager did not inform Fish and Wildlife when he verbally agreed to significant changes to the contract that he should have documented. To compound matters, Fish and Wildlife's regional manager approved final payment to the contractor for services and equipment that it did not receive. Ultimately, the original specifications and subsequent changes were inadequate to ensure that Fish and Wildlife could use the research boat as it intended. As a result, the research boat has been largely unused for more than two years.

California Department of Veterans Affairs

A veterans long-term care home (veterans home) administrator at the California Department of Veterans Affairs wasted nearly $38,000 in state funds by failing to ensure that veterans home staff followed state procedures to inspect a bedbug treatment oven (equipment) upon delivery. The equipment has been inoperable since its delivery in 2015 and has deteriorated because staff left it outdoors and unprotected from the elements for more than four years.

Investigative Highlights . . .

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

- *A state agency purchased a custom-built research boat for more than a half million dollars almost three years ago that has remained largely unused.*
- *A state agency left equipment it purchased inoperable because its staff did not follow proper procedures to inspect it upon delivery in 2015, and the equipment deteriorated because staff left it outdoors and unprotected for four years.*
- *A supervisor at an agency improperly distributed paid parking permits to seven staff members wasting nearly $13,500.*
- *Two employees from an agency did not follow protocols for storing and using state-owned vehicles.*
- *Seven employees at five state agencies improperly claimed a total of more than 320 hours of bereavement leave valued at almost $10,000.*
- *Four state agencies wasted funds for some employees missing work time and improperly reporting attendance.*

Bereavement Leave

From July 2016 through June 2018, seven employees at five state agencies—the California Air Resources Board, the California Department of Transportation (Caltrans), the Department of General Services, the California Department of Social Services (Social Services), and the Employment Development Department—improperly claimed a total of more than 320 hours of bereavement leave with a value of almost $10,000. In all seven instances, the supervisors for the employees failed to adequately review their timesheets to ensure that employees charged bereavement leave in accordance with permissible limits.

California Energy Commission

For several years, a supervisor at the California Energy Commission (commission) violated state law when she improperly distributed commission-paid parking permits to up to seven of her staff members so that she and they could park their personal vehicles at the State's expense. Her misuse of the parking permits resulted in the employees receiving free parking at an estimated cost to the State of $13,500.

California Department of Transportation

Two Caltrans employees failed to obtain valid vehicle home storage permits for their state-owned vehicles. They also improperly used these vehicles to commute between their homes and headquarters.

Department of State Hospitals

A psychiatrist at one of the hospitals in the Department of State Hospitals (DSH) improperly used 46 hours of state-compensated continuing medical education leave to work at another job that conflicted with the psychiatrist's regularly scheduled workdays at the DSH hospital. The psychiatrist's misuse of this leave cost the State nearly $6,500.

In addition, a psychiatric technician at one of the DSH hospitals reported working nearly 50 hours that the technician did not actually work during a one-year period, resulting in a cost to the State of about $1,500.

California Department of Public Health

Two employees of the California Department of Public Health arrived to work late, took extended breaks, and left work early without accounting for their missed work time. We estimate that during the one-year period we reviewed, these employees missed nearly 300 hours of work, costing the State more than $9,300 in salary it paid for work that was not performed.

Franchise Tax Board

An administrator at the Franchise Tax Board did not work her agreed-upon work hours, and she was dishonest about the hours that she actually worked. In addition, the administrator's most recent supervisor neglected his responsibility to ensure that the administrator properly accounted for her work hours.

California Prison Industry Authority

Over a three-year period, three California Prison Industry Authority supervisors in one unit failed to ensure that the attendance records for a subordinate employee were accurate, even though they were aware that these records likely did not reflect the employee's actual attendance. In addition, the employee was dishonest during the investigation when he provided conflicting information about his attendance.

California Department of Social Services

Social Services failed to recover an overpayment to a former employee and failed to ensure that another employee used bereavement leave appropriately.

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Introduction

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

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

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

Ways That Whistleblowers Can Report Improper Governmental Activities

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

We received 1,418 calls and inquiries from January 1, 2019, through December 31, 2019. Of these, 779 came through our website, 422 through the mail, 178 through the hotline, 36 through fax, two through internal sources, and one through an individual who visited our office. In addition, our office received hundreds of allegations that fell outside of our jurisdiction; when possible, we referred those complainants to the appropriate federal, local, or state agencies.

Investigation of Whistleblower Allegations

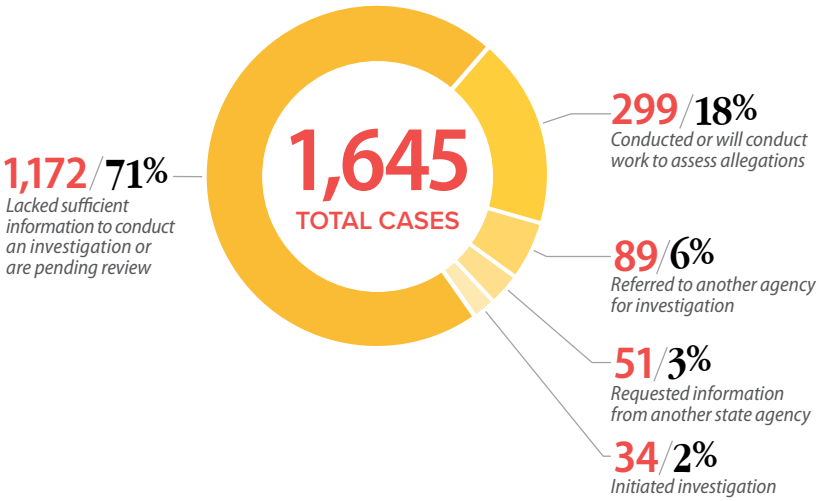
The Whistleblower Act authorizes our office, as the recipient of whistleblower allegations, to investigate and, when appropriate, report on substantiated improper governmental activity by state agencies and state employees. We may conduct investigations

[1] The Whistleblower Act can be found in its entirety in Government Code sections 8547 through 8547.15. It is available online at http://leginfo.legislature.ca.gov.

independently, or we may request assistance from or elect to have other state agencies perform confidential investigations under our supervision. Over the past 25 years, our investigative work has identified and made recommendations to remediate a total of $579.9 million in state spending resulting from improper governmental activities such as gross inefficiency, theft of state property, conflicts of interest, and personal use of state resources.

During the one-year period covered by this report, we conducted investigative work on 1,645 cases that we opened either in previous periods or in the current period. As Figure 1 shows, 1,172 of the 1,645 cases lacked sufficient information for investigation or are pending preliminary review. For another 299 cases, we conducted work or will conduct additional work—such as analyzing available evidence and contacting witnesses—to assess the allegations. We notified the respective agencies for an additional 89 cases so they could investigate the matters further, and we independently initiated investigations for another 34 cases. Further, we requested that state agencies gather information for 51 cases to assist us in assessing the validity of the allegations. Some of these cases may still be ongoing.

Figure 1
Status of 1,645 Cases, January 2019 Through December 2019



Source: State Auditor.

For information about the corrective actions taken in response to our investigations program, please refer to the Appendix, starting on page 51.

Chapter 1

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

It Wasted More Than a Half Million Dollars on a Research Boat That It Rarely Uses

CASE I2017-1372

Results in Brief

The California Department of Fish and Wildlife (Fish and Wildlife) wasted more than a half million dollars of state and federal funds when it purchased a custom-built research boat in June 2017 that cannot perform the tasks for which it was intended. This wasteful purchase resulted largely from weaknesses in Fish and Wildlife's procurement process. In particular, Fish and Wildlife relied on an environmental program manager (program manager) who has since retired to write a technical scope of work for construction of the research boat. However, the program manager neither had the expertise necessary to design a research boat for the required purposes nor did he seek help from outside contractors or consultants. Furthermore, the program manager did not inform Fish and Wildlife when he orally agreed to significant changes to the contract—including changed specifications and waived requirements—that should have been in writing. To compound matters, Fish and Wildlife's regional manager approved the final lump-sum payment to the contractor for services and equipment that Fish and Wildlife did not receive.

Ultimately, Fish and Wildlife procured the research boat to conduct research surveys but cannot use the boat for that purpose because the original specifications and subsequent changes were inadequate to ensure that the boat could be used to do so. As a result, the research boat has been mostly unused for more than two years.

About the Agency

Fish and Wildlife manages California's diverse fish, wildlife, and plant resources, as well as the habitats upon which they depend to protect their ecological value and their use and enjoyment by the public. It receives state and federal funding to help with monitoring fish and aquatic resources.

Relevant Criteria

Government Code section 8547.2 specifies that economic waste by state agencies or employees constitutes an improper governmental activity.

State Administrative Manual section 3510.4 provides that failure to meet any of the requirements contained in a purchase order is grounds for rejection of the goods.

State Contracting Manual volume 2, section 8.6.1, requires that modifications to contracts must be documented through written, signed, and approved contract amendments. In addition, section 9.A1.10 specifies that state agencies should not pay for non-information technology goods until they have documented that the goods were satisfactorily received, and section 10.1.0 specifies that the receiving process includes the inspection and acceptance of the goods to ensure that they conform to the purchase terms and conditions. Finally, section 2.C1.0 requires state agencies that purchase mobile equipment to document, or register, their purchases with the U.S. Coast Guard.

Background

Fish and Wildlife, the Department of Water Resources (Water Resources), and the U.S. Bureau of Reclamation (Reclamation) coordinate project operations in the California Central Valley. The agencies share the costs of all environmental monitoring surveys and associated special studies for certain water projects. Some of the surveys and

special studies require deployment of a variety of gear, such as nets, used to collect samples to monitor fish and invertebrate populations. As part of these shared costs, Water Resources and Reclamation equally funded the boat purchase that is the subject of this investigation.

The *State Contracting Manual* (contracting manual) sets forth the requirements for state agencies to use when making significant purchases via contract. In particular, the contracting manual requires that amendments to contracts be written, signed, and approved. In addition, it specifies that state agencies should not pay for goods until they have documented that the goods were satisfactorily received, and it further specifies that the receiving process must include inspection and acceptance of the goods to ensure that the goods conform to the purchase terms and conditions. Finally, the contracting manual requires state agencies that purchase mobile equipment, such as the research boat, to document, or register, the purchase with the U.S. Coast Guard.

The Research Boat's Specifications Contained Significant Design Flaws and Safety Issues

- The research boat is difficult to steer straight because of the way Fish and Wildlife modified the hull.
- The helm was installed on the port (left) side instead of the traditional right side, and the draft height (how high the boat sits in the water) was increased; both of these modifications by Fish and Wildlife have resulted in an obstructed view for the driver.
- The boat's square design is problematic, catching the wind and causing the boat to rock. In addition, the boat's nets catch on the hull corners.
- When the fuel tank is full, the research boat cannot reach its specified cruising speed.
- The placement and design of the fuel tank cause the boat to list (lean to one side) when the tank is full.
- The winches were installed on the back of the research boat instead of the sides, creating difficult positioning for staff operating them.
- The framed structure that supports the nets is too low and wide, creating a hazard for staff.
- The dimensions of the framed structure also make pulling the boat into the marina slip difficult.

Source: State Auditor review of Fish and Wildlife's documentation for the research boat.

Fish and Wildlife Purchased a Research Boat That Has Been Rarely Used Because It Failed to Adequately Develop Highly Technical Specifications

Fish and Wildlife relied solely on one of its program managers to develop the research boat's highly technical specifications, even though he lacked sufficient experience completing such tasks. In addition, the program manager did not consult with any outside resources or experts for assistance. Instead, he developed the plans by refining outdated specifications from 2007 for a similar research boat that the U.S. Fish and Wildlife Service had acquired. Further, the program manager received only limited feedback about the research boat's specifications from other staff within Fish and Wildlife. No one internally—either at the regional or headquarters offices—reviewed the specifications from a technical standpoint because, as the program manager aptly pointed out, Fish and Wildlife is not in the research boat designing business and none of its employees has that expertise. The end result was a boat with design flaws and safety concerns that could not meet Fish and Wildlife's needs. For instance, nets on the research boat are used to obtain survey samples from the water. However, the boat hoists

the nets onto it too slowly, which presents a safety concern when trying to avoid interference with other boats and objects. The text box lists the other problems with the research boat.

Two of these design flaws illustrate our concerns with the procurement process. First, the installation of the helm on the port side and the increase of the draft height were made with only the verbal approval of the program manager instead of using a written contract amendment; therefore, Fish and Wildlife management was not aware of these changes in design. Second, even when Fish and Wildlife determined that the speed needed to retrieve the boat's nets was too slow, it did not ask the contractor to correct the problem at no cost. Instead, it paid an additional $2,830 for a different contractor to try to replace the hydraulic pump as a way to fix the retrieval speed for the nets. However, that effort did not correct the problem.

As a result of its poor design, the research boat—costing more than $535,000—has remained mostly unused in a marina since its delivery in June 2017. Fish and Wildlife operated it only 14 times, for a total of 74 engine hours, from June 2017 through May 2019. By comparison, Fish and Wildlife typically uses its other less specialized research boats for surveys about 10 days and about 80 hours *each month*, or about 1,000 hours every year.

The research boat—costing more than $535,000—has remained mostly unused in a marina since June 2017.

Finally, Fish and Wildlife did not properly document, or register, the boat in accordance with federal law. The program manager admitted in an email that he "dropped the ball" on getting the research boat registered. After this realization, he submitted the proper documents to regional administrative staff, who sent the documents to headquarters for processing. Headquarters staff mistakenly submitted the documents to the Department of Motor Vehicles to register the research boat and did not properly document it with the U.S. Coast Guard, as required. In fact, Fish and Wildlife operated the unregistered boat in violation of state requirements until after our investigation inquiry. The research boat was correctly documented in October 2019, more than two years after its purchase.

Fish and Wildlife Did Not Inspect the Research Boat for Compliance With Its Specifications, as State Law Requires

Fish and Wildlife could have minimized its waste of resources if it had completed all inspections of the research boat to ensure that it complied with the design specifications and followed the relevant state contracting laws before paying for it. Fish and Wildlife's contract for the research boat included costs for inspections—one midway through building and one at delivery—and training after delivery that were not performed. The program manager who designed the boat waived the first inspection without consulting anyone, despite an out-of-state

travel budget for inspection totaling $2,600 that was included in the contract and authorized him or his designee to travel to the out-of-state facility where the research boat was being built to inspect it before the boat was completed. In addition, the contract included 16 hours of training for Fish and Wildlife staff by the contractor, but the program manager waived about 12 of those training hours—at a cost of $2,200—without consulting his supervisor. Thus, Fish and Wildlife ultimately paid $4,800 for inspections and trainings that were not performed.

In addition, even though Fish and Wildlife was responsible for ensuring that the contract specifications were met, neither of the Fish and Wildlife employees involved in inspecting the boat at delivery reviewed the design specifications line by line as identified in the contract and compared them to the actual boat. At the very least, these Fish and Wildlife staff should have ensured that the boat's design met the specifications identified in the contract. More importantly, if Fish and Wildlife staff had conducted the first inspection while the research boat was being built, which was planned for and included in the purchase cost, they might have identified the numerous design flaws and safety concerns that were observed months later when the staff took delivery of the research boat.

Recommendations

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

- Clearly define and train staff on procurement roles to avoid having only a few employees primarily guiding an acquisition of this magnitude.
- Train staff who administer or approve contracts on the requirement for all contracts and amendments to be in writing and to work with contractors if there are issues with modifications needed pursuant to warranty.
- Retain a professional with appropriate expertise for future procurements of a highly technical nature to develop specifications and engineered drawings and to inspect the equipment for satisfaction of contractual specifications before accepting delivery.
- Consider using progress payment schedules for contracts when procuring newly constructed, high-dollar technical equipment.
- For future acquisitions, immediately consult with its legal staff to resolve any probable or possible contract deviations.

- Create a process to ensure that any newly acquired fleet assets are registered or documented with the relevant authorities before authorizing use of the asset.

- Ensure that its legal staff assesses Fish and Wildlife's ability to recover the money paid to the contractor for any contract requirements that remain unfulfilled.

Agency Response

In February 2020, Fish and Wildlife reported that it believed our report mischaracterized its involvement in the purchase and design of the research boat. Fish and Wildlife pointed out that because the cost of this purchase exceeded its delegated purchasing authority, the Department of General Services (General Services) made the purchase on its behalf and provided engineering services with regard to the design specifications of the research boat. However, as stated in the report, the program manager developed the plans for the design specifications using outdated information and limited feedback. In addition, even with engineering assistance from General Services, Fish and Wildlife maintained ultimate responsibility to ensure that the design of the research boat met all of its requirements.

Fish and Wildlife agreed that its employees did not complete the first inspection of the research boat but stated that a General Services engineer may have inspected the boat. However, Fish and Wildlife stated that it had no evidence that a General Services engineer conducted the first inspection. More importantly, Fish and Wildlife did not contact General Services in the nearly three years since the purchase of the boat to inquire whether the General Services engineer had conducted the first inspection.

Further, Fish and Wildlife provided its planned corrective actions for the significant design flaws and safety concerns that we identified. It also stated that a new program manager will oversee its vessel operations, a qualified marine surveyor will conduct annual inspections of all research boats for safety and proper functioning, and a lead vessel operator will support operations, maintenance, and inspections of research boats to encourage timely reporting and addressing of deficiencies.

Finally, Fish and Wildlife addressed each of our recommendations. Regarding our recommendation that it clearly define and train staff about procurement, Fish and Wildlife stated that it currently trains staff on procurement roles and responsibilities. It also stated that for purchases that exceed its purchasing authority, it relies on the

guidance and expertise of General Services and stated that it will continue to train staff and work with General Services to follow prescribed procurement requirements.

With respect to our recommendation that Fish and Wildlife train staff regarding contract requirements, it stated that it trains staff who administer contracts on the requirement that all contracts and amendments must be in writing. In addition, Fish and Wildlife stated that it provides additional training and support when it learns that staff members are not following this requirement. It further stated that in this circumstance, its staff and the contractor should have been aware of the requirement and that the contractor should not have agreed to any changes unless they were in writing or approved by General Services.

Fish and Wildlife disagreed with our recommendation that it retain a professional with appropriate expertise to develop specifications and engineered drawings and to inspect equipment before accepting delivery. Fish and Wildlife stated that it must allow General Services to conduct procurements above the delegated purchasing authority and, accordingly, to provide the necessary engineering expertise. However, Fish and Wildlife could have worked with General Services to ensure that a professional with expertise in designing and building boats was involved with the purchase and delivery of this research boat.

Fish and Wildlife also disagreed that it should consider using progress payment schedules for similar purchases, as it stated that it relied on the expertise of General Services in these types of procurements, including the judgment of General Services' staff about the creation of payment schedules. It further stated that paying for the research boats in increments during construction would not have prevented the outcome. However, we contend that with the use of progress payments, Fish and Wildlife would have paid only for part of the purchase cost and could have withheld final payment pending the outcome of the issues it identified at delivery or shortly thereafter.

Fish and Wildlife agreed with our remaining recommendations about consulting immediately with its legal staff to resolve contract deviations, creating a process to ensure that any new fleet assets are registered or documented appropriately, and ensuring that Fish and Wildlife's legal staff assesses its ability to recover any money paid for any contract requirements that remain unfulfilled. Fish and Wildlife stated that it will investigate the failures identified with the boat's registration and will develop and implement procedures to ensure proper and timely registration. It also stated that its legal staff will investigate this procurement further to determine the steps that are necessary or likely to produce the recovery of money or to further enforce the terms of the contract.

Chapter 2

CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS

A Veterans Home Administrator Wasted State Funds When He Failed to Properly Store Specialized Equipment

CASE I2018-0364

Results in Brief

A veterans long-term care home (veterans home) administrator at the California Department of Veterans Affairs (CalVet) wasted nearly $38,000 in state funds by failing to ensure that veterans home staff followed state procedures to inspect a bedbug treatment oven (equipment) upon delivery. The equipment, which is approximately 7 feet by 7 feet in size, has been inoperable since delivery in 2015 and has deteriorated as a consequence of being left outdoors and unprotected from the elements for more than four years.

Background

An administrator manages and oversees the day-to-day operations of each veterans home and reports to the deputy secretary of veterans affairs at CalVet headquarters. In early 2014, the deputy secretary issued a verbal directive to all eight home administrators to purchase the specialized equipment to provide for the health and well-being of their residents and staff by preventing the spread of bedbugs. CalVet headquarters' staff provided recommendations to the homes about equipment they should acquire, but it allowed each home to decide how best to fulfill the directive. In October 2014, the administrator at one home ordered equipment that was larger than suggested by the deputy secretary because the administrator thought it would be more appropriate for the home. The home received the equipment in March 2015. Prior to its delivery, the administrator directed receiving staff to place the equipment in an outdoor, partially covered area on the veterans home property.

About the Agency

CalVet serves nearly 1.8 million California veterans and their families. It strives to ensure that veterans obtain the state and federal benefits and services they have earned, including the long-term care it provides at eight veterans homes. The homes range in size from 60 residents on a 20-acre campus to more than 1,000 residents on a 500-acre campus.

Relevant Criteria

Government Code section 8547.2 specifies that economic waste by state agencies or employees constitutes an improper governmental activity.

State Contracting Manual volume 2, chapter 10.3.1, recommends that upon receipt of purchased items, agency staff should conduct inspections for damage and operability and should verify packaging integrity. In addition, chapter 10.3.2 suggests that inspections should be completed within a reasonable amount of time or as specified in the purchase documents. If an agency knows that an inspection will not be immediate, the purchase document must specify when and how the inspection will occur.

State Administrative Manual chapter 8422.20 indicates that agency receiving staff should prepare stock-received reports or use approved purchase order documents to record receiving information when agencies receive goods.

The Administrator Failed to Ensure That Veterans Home Receiving Staff Followed Procedures and Failed to Exercise Due Diligence, Which Led to the Home Wasting Nearly $38,000

The receiving staff accepted the equipment without performing a proper inspection; therefore, no one knew whether the equipment worked upon delivery.

The administrator failed to make certain that the veterans home's receiving staff followed contracting and *State Administrative Manual* (administrative manual) requirements upon accepting the equipment before ensuring that it was complete, intact, and functioned properly. The contracting manual states that, upon receipt of goods, employees need to conduct an inspection for damage or breakage, operability, and packaging integrity. However, the veterans home's procurement and purchasing office and the administrator stated that the receiving staff accepted the equipment without performing a proper inspection; therefore, no one knew whether the equipment worked upon delivery. In addition, the receiving staff should have recorded the condition and operability of the equipment on a stock-received report or on its purchase order. Further, if staff did not have time to perform an inspection of the equipment immediately, they should have followed the administrative manual's requirement to note when the inspection would occur in the future. However, they did not.

The administrator stated that during the six months from when the equipment first arrived in March 2015 to when it was inspected in September 2015, he and his staff were addressing more urgent and immediate health and safety concerns for the residents in the home, such as issues involving the water supply, resident accommodations, and the air conditioning system. Thus, the equipment remained idle outdoors for those six months. As a result of failing to properly inspect the equipment upon its delivery, the veterans home staff did not determine whether any pre-existing damage that may have contributed to the equipment's failure to function was a possible factor in its eventual inoperability.

When the veterans home's staff finally unwrapped, inspected, and attempted to operate the equipment in the fall of 2015, the equipment would not function. Its inoperability was exacerbated by deterioration because it was not built to withstand outdoor weather conditions. The administrator stated that he was unaware that the equipment could not be kept and operated outdoors and, due to its size, he could not imagine housing it within the home. When staff determined that the equipment was inoperable, the veterans home's chief of plant operations (operations chief) contacted the manufacturer for assistance. When the manufacturer learned that the equipment had been stored outdoors, it informed the operations chief that storing the equipment outdoors had voided its warranty. In October 2015, the Department of General Services (General Services), which had facilitated the purchase of the equipment, informed the administrator that it would purchase replacement parts to help

repair the equipment, but it directed the administrator to move the equipment indoors immediately. However, the administrator did not follow the General Services-directed action because he believed that the equipment had deteriorated so much that it no longer mattered where it was housed. He made the decision to leave it outdoors while staff continued to try to make it operational.

Moreover, the administrator did not exercise his necessary due diligence before purchasing the equipment to ensure that it would operate in the outdoor location where he intended to use it. For a capital purchase of this amount, the administrator should have spoken directly with the manufacturer and sought its recommendation about the purchase based on the type of equipment needed, its intended use, and where it would be housed.

The equipment has remained outdoors since its delivery in early 2015 and remains inoperable. The administrator left state employment in 2019.

Recommendations

To address the improper governmental activity we identified in this investigation, CalVet should do the following:

- Determine the best option to recoup whatever funds it can of the nearly $38,000 it spent on the equipment, such as submitting it to General Services' state surplus property auction.
- Train receiving staff at the home on applicable contracting manual requirements for the receipt of purchased goods.
- Determine whether the home needs a bedbug oven and, if so, ensure that it is properly stored in accordance with its specifications.

Agency Response

CalVet reported in February 2020 that the veterans home has repaired the equipment and that, nearly five years after the purchase, it is finally operational. In addition, CalVet reported that the veterans home moved the equipment to a covered, fully enclosed exterior space to protect it from weather conditions. Finally, CalVet reported that during the past two years its office of procurement and contracts has provided training to all veterans homes related to contract manager training, service order requirements, and Financial Information System for California requirements related to receiving inventory.

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Chapter 3

SEVERAL STATE AGENCIES FAILED TO ENSURE EMPLOYEES' PROPER USE OF BEREAVEMENT LEAVE

CASE I2018-0428

Results in Brief

From July 2016 through June 2018, seven employees at five state agencies claimed 324 hours of leave that was improperly categorized as *bereavement leave* and valued at almost $10,000. In all instances, the supervisors for the employees failed to adequately review employee timesheets to ensure that employees charged bereavement leave in accordance with permissible limits.

About Bereavement Leave

The State of California provides paid leave for state employees when their family members or individuals living in their homes die. The State typically grants up to 24 work hours of paid bereavement leave per approved occurrence.

Relevant Criteria

The relevant bargaining agreements entitle state employees represented by labor unions to receive up to three days (24 work hours) of paid bereavement leave for the deaths of certain family members. Government Code section 19859.3 allows employees who are not represented by labor unions to claim bereavement leave for the deaths of any persons related by blood, adoption, or marriage. Both represented and unrepresented employees are entitled to bereavement leave for the deaths of any individuals residing in their immediate households at the time of death.

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

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

Background

The State's paid bereavement leave benefits apply differently depending on whether employees are represented by a union (represented employees) or are excluded from collective bargaining (unrepresented employees). Because collective bargaining agreements govern bereavement leave for represented employees, the bereavement leave benefits vary slightly depending on the bargaining agreement. Figure 2 shows these differences.

The frequency with which a represented employee may claim bereavement leave depends on whether the employee's bargaining agreement has categorized relationships as part of the *immediate* or *extended family*. As Figure 2 shows, regardless of the number of occurrences, a represented employee may claim bereavement leave for immediate family members' deaths. Each occurrence of bereavement leave for immediate family members is limited to three days (24 work hours) of paid time off. The same employee can claim only 24 hours in each fiscal year for bereavement leave for all extended family members. If paid bereavement leave is not available, an employee may use another category of accrued leave, such as vacation or annual leave credits, with supervisory approval.

More generous provisions apply for unrepresented employees. State law does not identify specific familial relationships, stating only that the deceased must be a "family member related by blood, adoption, or marriage." Although each occurrence allows for a maximum paid bereavement leave of three workdays, state law entitles unrepresented employees to an unlimited number of occurrences and requires employees to substantiate each occurrence.

Figure 2
Bereavement Leave Benefits Differ for Represented Employees and Unrepresented Employees

REPRESENTED EMPLOYEES	UNREPRESENTED EMPLOYEES
Per fiscal year, each employee may use the following:	*Per each occurrence without regard to the number of occurrences, an employee may use the following:*
■ Up to three eight-hour days (24 hours) of paid leave per occurrence for immediate family members, such as parents, children, and spouses, regardless of the number of occurrences.	■ Up to three days of paid leave for any family member related by blood, adoption, or marriage.
■ Up to 24 hours of paid leave in total for extended family members, such as aunts, uncles, nieces, or nephews, regardless of the number of occurrences.	■ Up to three days of paid leave for any person residing in the immediate household of the employee at the time of death.
Bereavement leave for cousins and friends is not permitted.	Bereavement leave for friends is not permitted.
If the supervisor requests it, an employee must provide substantiation for the requested bereavement leave.	An employee must provide substantiation for all requests for bereavement leave.

Source: Government Code section 19859.3 and analysis of the relevant bargaining agreements.

Each supervisor is responsible for reviewing and approving employees' timesheets, and each is responsible for being familiar with the statutory and bargaining agreement limitations of bereavement leave for subordinate employees. If the leave an employee takes for a specific absence does not meet the criteria for approved bereavement leave, the supervisor should direct the employee to use another category of accrued leave to account for the time off.

Upon receiving several complaints regarding the improper use of bereavement leave, we identified the 10 represented and 10 unrepresented employees in the State who claimed the most bereavement leave in fiscal years 2016–17 and 2017–18. From those 20 employee records, we selected 10 for closer review, requesting that departments provide us with the substantiation and family relationship for each bereavement leave claim. These 10 employees worked for seven state departments: the California Air Resources Board (ARB), the California Bureau of Automotive Repair (BAR) within the Department of Consumer

Affairs, the California Department of Human Resources (CalHR), the California Department of Transportation (Caltrans), the Employment Development Department (EDD), the Department of General Services (General Services), and the California Department of Social Services (Social Services).

Departments Failed to Adequately Monitor Employees' Use of Bereavement Leave

Our investigation concluded that seven of the 10 employees whose records we reviewed improperly claimed 324 hours of bereavement leave valued at nearly $10,000. We determined that the leave was improper for three reasons:

- The employee claimed bereavement leave in excess of statutory limits.
- The employee claimed bereavement leave for an impermissible individual or reason.
- The employee failed to provide any substantiation for the bereavement leave claimed.

The following examples demonstrate the three reasons that the employees improperly claimed bereavement leave.

EXAMPLE 1:

Employee A Claimed a Total of 100 Hours in Excess of His Allowed Bereavement Leave

Employee A, a represented employee working at Caltrans, claimed 108 hours of bereavement leave, or 13.5 workdays, over the span of two months for the passing of his mother. The employee's bargaining agreement only permitted a maximum of 24 work hours of paid bereavement leave, resulting in the wrongful accounting of 84 leave hours. A few months later, Employee A claimed 40 hours of bereavement leave for the passing of his mother-in-law, resulting in an additional wrongful accounting of 16 leave hours. In total, Employee A claimed 100 hours in excess of the limits established in his collective bargaining agreement, valued at an estimated $5,400. Employee A's supervisor was responsible for being familiar with the limitations of bereavement leave for Employee A and should have required him to use another category of accrued leave to account for any absences that exceeded the number of work hours permitted by his bargaining agreement.

EXAMPLE 2:

Employee B Claimed Bereavement Leave for the Death of a Friend

As an unrepresented employee of the ARB, state law permits Employee B to use bereavement leave for any family member related by blood, adoption, or marriage. However, the death of a friend is not a legitimate basis for using bereavement leave. Our investigation found that in fiscal year 2016–17, Employee B indicated on her timesheet that her bereavement leave was for the passing of a "friend." Employee B's supervisor was responsible for being familiar with the statutory limitations of bereavement leave and should have required that the employee use another category of accrued leave to account for this absence.

EXAMPLE 3:

Employee C Failed to Substantiate Her Bereavement Leave Claim

As an unrepresented employee at Social Services, Employee C must provide substantiation to support each bereavement leave claim. Our review of Employee C's timesheets found that she failed to provide substantiation for the family member for whom she claimed bereavement leave. As part of our review, we asked Social Services to contact Employee C and obtain substantiation for the claim. The employee responded to Social Services that she had erroneously claimed bereavement leave to volunteer at her child's school. Employee C's supervisor should have required the employee to provide substantiation to support her bereavement leave claim; had he done so, this claim would have been categorized correctly to another leave type.

As the departments' representatives, these employees' supervisors should have adequately monitored or tracked the employees' use of bereavement leave to avoid the improper use. When employees improperly use bereavement leave, they retain other accrued leave balances, such as annual leave, vacation, or personal holidays, all of which have value for cashing out as part of a buyback program or to be used to increase time served and retirement benefits. Bereavement leave, on the other hand, has no value to the employee if not used. Table 1 presents the total number of hours and the estimated dollar values that we deemed improper for each of the seven employees who misused bereavement leave.

Table 1
Seven Employees Claimed Nearly $10,000 of Improper Bereavement Leave in Fiscal Years 2016–17 and 2017–18

EMPLOYEE	DEPARTMENT	TYPE	CLAIMED HOURS	IMPROPER HOURS	IMPROPER AMOUNTS
Employee A	Caltrans	Represented	148	100	$5,401
Employee B	ARB	Unrepresented	128	8	308
Employee C	Social Services	Unrepresented	136	8	293
Employee D	General Services	Represented	192	40	611
Employee E	General Services	Represented	152	104	1,755
Employee F	EDD	Represented	136	56	1,168
Employee G	Caltrans	Represented	160	8	227
		Totals	**1,052**	**324**	**$9,763**

Source: Analysis of the employees' reported bereavement leave claims, timesheets, and supporting documentation.
Note: Amounts do not include the retirement value for the hours identified.

During our investigation, we also reviewed the bereavement policies for the seven departments we originally identified and observed that two departments had bereavement leave policies for unrepresented employees that are inconsistent with state law. Specifically, we found that CalHR's and EDD's policies with respect to unrepresented employees were not consistent with Government Code section 19859.3. Both departmental policies require substantiation only if requested by the supervisor. However, state law mandates that "the employee . . . shall provide substantiation to support the request" for bereavement leave.

Recommendations

To address the improper governmental activities we identified in this investigation, the five departments we identified in Table 1 should take the following actions:

- Recoup or correct all overpayments made to the seven employees we determined to have taken inappropriate bereavement leave.
- Notify all employees of bereavement leave requirements and where they can find additional information specific to bereavement leave.

- Remind supervisors of their responsibilities to ensure that employees charge leave properly, including bereavement leave, and to not allow employees to exceed the allowable limits that the bargaining agreements and state law provide.

To address inconsistent bereavement leave policies, CalHR and EDD should revise their policies to mirror the requirements of Government Code section 19859.3, which requires unrepresented employees to submit substantiation for each leave request.

To ensure that represented employees properly claim bereavement leave, CalHR should work with labor unions to change the bargaining agreements' provision to require represented employees to submit substantiation for each claim of bereavement leave as state law requires for unrepresented employees. In addition, the Legislature should require any represented employees who use bereavement leave to submit substantiation for each leave request.

To prevent future misuse of bereavement leave, CalHR should proactively issue guidance to all state entities reminding them of the bereavement leave requirements and how they differ between represented and unrepresented employees.

Agency Response

In January 2020, all involved departments reported that they agreed with our recommendations and that all of the recommendations had either been fully implemented or were pending completion, as shown in Table 2. For items pending completion, the applicable departments were expected to provide additional detail regarding their implementation by March 31, 2020.

Table 2
Status of Implementing the Recommendations

RECOMMENDATIONS	ARB	CALTRANS	SOCIAL SERVICES	EDD	GENERAL SERVICES	CALHR
Recoup or correct all overpayments made to the seven employees we determined to have taken inappropriate bereavement leave.	●	●	●	●	●	NA
Notify all employees of bereavement leave requirements and where they can find additional information specific to bereavement leave.	●	●	●	●	●	NA
Remind supervisors of their responsibilities to ensure that employees charge leave properly, including bereavement leave, and to not allow employees to exceed the allowable limits that the bargaining agreements and state law provide.	●	●	●	●	●	NA
CalHR and EDD should revise their policies to mirror the requirements of Government Code section 19859.3, which requires unrepresented employees to submit substantiation for each leave request.	NA	NA	NA	●	NA	●
CalHR should work with labor unions to change the bargaining agreements' provision to require represented employees to submit substantiation for each claim of bereavement leave as state law requires for unrepresented employees.	NA	NA	NA	NA	NA	●
CalHR should issue guidance to all state entities reminding them of the bereavement leave requirements and how they differ between represented and unrepresented employees.	NA	NA	NA	NA	NA	●

Source: Agency responses from the relevant department.
● Fully Implemented
● Pending
NA = Not applicable

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Chapter 4

MISUSE OF STATE RESOURCES, TIME, LEAVE, VEHICLES, DISHONESTY, AND SUPERVISORY NEGLECT OF DUTY

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

This chapter provides examples of eight investigations in which we substantiated several allegations. State law prohibits state employees from using state resources—including land, buildings, facilities, equipment, supplies, vehicles, leave, and state-compensated time—for personal purposes. Accordingly, some of the investigations that we highlight in this chapter focus on the misuse of state-issued parking permits, state-owned vehicles, state-compensated time, continuing medical education leave, and bereavement leave. In addition, state law identifies as causes for discipline the dishonesty of state employees and the neglect of duty by state supervisors and managers. Other investigations in this chapter focus on employees displaying dishonesty regarding their work or attendance during the investigation and on the failure of supervisors to monitor attendance and time reporting of their subordinate employees.

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CALIFORNIA ENERGY COMMISSION

A Supervisor Misused State Parking Permits to Provide Free Parking for Herself and Staff Members

CASE I2019-0010

Investigative Results

We initiated an investigation in response to an allegation we received that a supervisor at the California Energy Commission (commission) misused state parking permits. Our investigation determined that, for years, and likely since 2013, the supervisor misused and distributed commission-paid parking permits for up to seven of her staff so that she and her staff could park their personal vehicles at the State's expense, a violation of state law. As Figure 3 illustrates, the misuse resulted in the employees receiving parking valued at an estimated $13,500.

About the Commission

The commission is the State's primary energy policy and planning agency and is committed to reducing energy costs and environmental impacts of energy use while ensuring a safe, resilient, and reliable supply of energy. Headquartered in downtown Sacramento, the commission employs more than 600 employees, including five governor-appointed commissioners and 15 executives.

Relevant Criteria

Government Code section 8314 prohibits state employees from using or allowing others to use public resources for private gain or advantage. Any person who intentionally or negligently violates this law 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 requires state employees to devote their full time, attention, and efforts to state employment during work hours; they may not use state supplies for private gain or advantage.

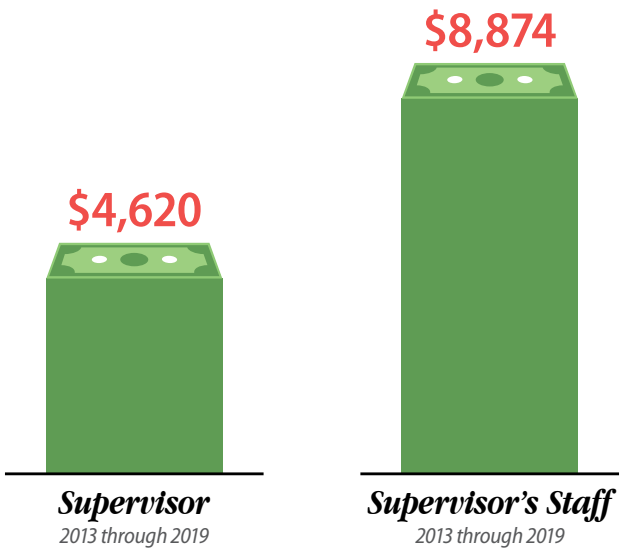
Government Code section 8547.2 specifies that economic waste by a state agency or employee constitutes an improper governmental activity.

The commission's inadequate control over its parking permits facilitated the supervisor's misuse. For several years, the commission has been paying the Department of General Services (General Services) for 25 parking permits to be used in two of General Services' nearby parking garages. These permits are primarily for use by occasional guests of the commission as well as some designated commission employees who reimburse the commission between $50 and $70 per month to use the parking permits. However, we found that the commission's procedures for issuing the permits and tracking payments are inadequate, and the supervisor confirmed that the commission has no internal policy for regulating this process. Some of the designated employees went months without making payments to the commission. When we interviewed an executive who oversaw the supervisor's division, he said that he did not know why the commission paid for the permits, how many permits the commission paid for, what criteria the commission applied in assigning permits, or what method it used to track permit assignments.

The supervisor took advantage of the commission's lack of internal controls and distributed the unassigned permits to herself and her staff. For the majority of her time at the commission, the supervisor was in charge of storing and issuing the permits to official commission guests and employees who had purchased and been assigned permits. In this position, she had direct access to the permits and was aware of how many unassigned permits were available at all times. In addition,

the supervisor confirmed that upper management seldom inquired about the issuance of permits. These conditions presented the opportunity for the supervisor to easily misuse the permits without detection. When interviewed, the supervisor acknowledged that she used the unassigned permits on a regular basis and allowed her staff to do likewise. Figure 4 illustrates the commission's intended use for parking permits and the supervisor's improper distribution to her staff.

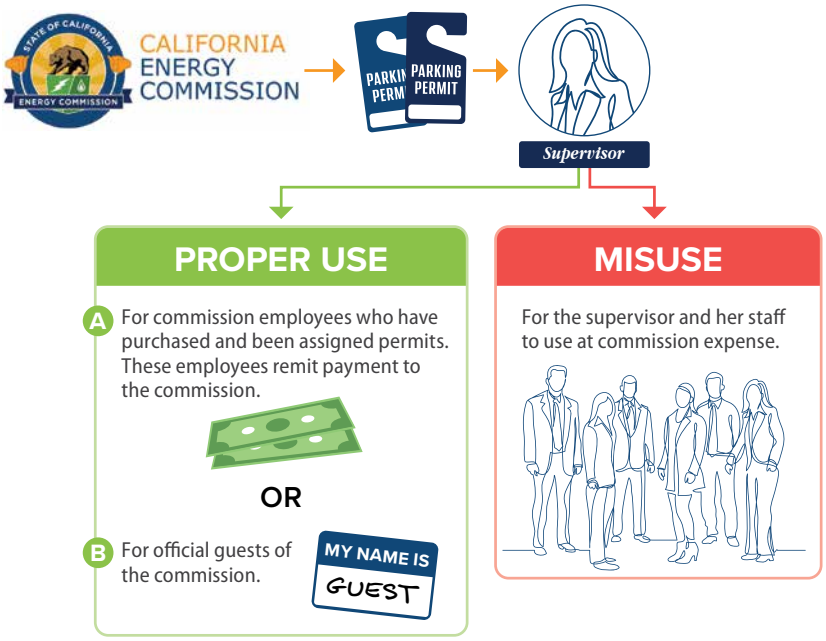
Figure 3
The Value of the Misused Parking Permits Was Nearly $13,500



Source: Analysis of commission invoices and interviews of commission staff.

Although the supervisor and some staff members initially stated that their use of the permits was primarily duty-related, their claims lacked credibility and conflicted with statements by other staff members. Specifically, the majority of the staff members interviewed admitted to regular, personal use of the permits; for one employee, such use began on the employee's first day on the job. The employee said that the supervisor told the employee not to worry about budgeting for parking because the use of the unassigned permits was a "perk" of having a supervisor in charge of the commission's parking permits. Another employee said that the supervisor offered the unassigned permits to her staff as soon as the supervisor started at the commission. A third employee acknowledged using a permit daily so the employee could park close to work. The supervisor herself stated that there was a good possibility that their use of the permits "[got] out of hand."

Figure 4
The Supervisor Misused State Parking Permits So She and Her Staff Could Park for Free



Source: Commission invoices and interviews of commission staff.

A few years ago, the supervisor's former manager discovered that the supervisor was distributing unassigned permits to her staff and removed the supervisor's responsibility to oversee the permits. Consequently, she no longer had access to the permits. Shortly thereafter, in 2017, we received a complaint alleging that the supervisor had started illegally parking her vehicle in a restricted fire lane, possibly to avoid parking fees. Our office referred the matter to the commission so it could address the situation, and the executive who oversaw the division instructed her to cease this behavior. However, after the former manager left the commission, the same executive—unaware of the supervisor's previous misuse—returned the permits to her so she could once again issue and track them.

In addition to the supervisor's misuse, the commission's lack of adequate controls over the parking permits resulted in wasted state funds because it paid for permits that it did not need. For the month of August 2019, more than half of the commission's total parking permits remained unassigned and cost the commission nearly $1,000. Although it may be practical to maintain a few extra permits for authorized guest use, the amount the commission currently pays for those that go unassigned appears excessive and

wasteful, which constitutes an improper governmental activity. This surplus of unassigned parking permits also likely contributed to the improper use by employees.

Recommendations

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

- Immediately and permanently remove the supervisor's responsibility for issuing and tracking the parking permits.
- Within 60 days, take appropriate corrective or disciplinary action against the supervisor for her misuse of state resources.
- Within 30 days, establish and disseminate to all executive staff the policies for the parking permits to minimize future misuse.
- Reevaluate the number of parking permits the commission pays for and reduce the number of permits if business need warrants a reduction.

Agency Response

In January 2020, the commission stated that it was committed to ensuring that it effectively and efficiently administers and manages public funds and programs. It stated that it eliminated 23 of the 25 agency-assigned parking permits, transferring them back to General Services for its administration. The commission retained two parking permits that are specifically assigned to two state vehicles. In February 2020, the commission reported that, after conducting its own investigation into the supervisor's misconduct, it served her with a notice of termination, and she then retired. It stated that it plans to counsel the subordinate staff.

CALIFORNIA DEPARTMENT OF TRANSPORTATION

Two Employees Failed to Obtain Home Storage Permits and Misused Their State Vehicles to Commute

CASE I2018-0675

Investigative Results

In response to an allegation we received that two regional maintenance employees at the California Department of Transportation (Caltrans) improperly commuted using their state vehicles, we initiated an investigation and requested Caltrans' assistance in conducting it. The investigation confirmed that the employees failed to obtain valid vehicle home storage permits (storage permits) and misused their state-owned vehicles to commute between their homes and headquarters.

About the Agency

Caltrans manages more than 50,000 miles of California's highway and freeway lanes, provides intercity rail services, and permits more than 400 public-use airports and special-use heliports. It assigns its maintenance employees to the care and upkeep of state highways, which conserves the public's investment in the highway system and ensures that the system continues to provide maximum benefits to the traveling public.

Relevant Criteria

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

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

California Code of Regulations, title 2, section 599.808, requires that when employees frequently store state-owned vehicles at or in the vicinity of their homes, they must obtain permits in advance from their agencies, regardless of the reason. For the purpose of enforcing this rule, frequently is defined as storing a state-owned vehicle at an employee's home or in its vicinity for more than 72 nights over a 12-month period or more than 36 nights over a three-month period.

The two maintenance employees improperly parked their state-owned vehicles in the vicinities of their homes without obtaining storage permits. As we describe in the relevant criteria, state law requires employees who park state-owned vehicles in the vicinity of their homes for more than 72 nights in a year to obtain storage permits. A review of GPS data from the two maintenance employees' vehicles revealed that in 2018 they parked their state-owned vehicles overnight at secured locations near their homes, including a fire station and a transportation office, a total of 195 and 96 times, respectively. During the investigation, the employees' supervisor explained that he had instructed them to park their state-owned vehicles at secured locations near their homes so that they could more quickly respond to overnight calls to remove debris from roads, which was part of their duties. However, Caltrans noted that, although the employees' parking near their homes was cost-beneficial, they were nonetheless required to obtain storage permits because they parked at these locations for more than 72 nights in a year.

These two employees also misused their state-owned vehicles when they used them to commute directly between their homes and headquarters. Because they were expected to park their state-owned vehicles at secured locations in the vicinity of their homes, they should have used their personal vehicles to drive between their homes and those secured locations. However, the state-owned vehicles' GPS data for 2018 showed that the employees parked the vehicles at their homes five and 39 times, respectively. On these days, they used their state vehicles to commute between their homes and headquarters.

Recommendations

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

- Take appropriate corrective actions against the two employees for failing to obtain storage permits and for misusing their state vehicles to commute between their homes and headquarters.
- Require these employees to obtain storage permits.
- Determine whether other maintenance employees who work in the same region have been allowed to park at or in the vicinity of their homes without storage permits. If so, require all applicable employees to obtain these permits.

Agency Response

In January 2020, Caltrans reported that it agreed with the information presented in our report and that it had implemented all of our recommendations. Caltrans specified that it documented verbal warnings issued to the employees regarding the improper use of state vehicles and the need to apply for storage permits. In addition, it informed us that it issued storage permits to both employees after evaluating their applications and determining that they met the requirements to receive these permits. Finally, Caltrans stated that it identified an additional maintenance employee in the region who should apply for a storage permit. It subsequently issued a storage permit to that employee after evaluating his business need.

DEPARTMENT OF STATE HOSPITALS

A Psychiatrist Improperly Used Continuing Medical Education Leave to Work a Second Job

CASE I2018-0665

Investigative Results

In response to an allegation we received that a psychiatrist employed at a state hospital misused leave to work at a second job, we initiated an investigation and requested that the Department of State Hospitals (DSH) assist us in investigating it. The investigation concluded that the psychiatrist improperly used 46 hours of state-compensated continuing medical education (CME) leave valued at $6,492 to work at another job. State law allows a state employee to work at a second job provided the employee's department determines that the additional job does not conflict with the employee's state duties or responsibilities.

About the Agency

DSH oversees five state hospitals throughout California. The hospitals provide mental health services to individuals mandated for treatment by the courts, mentally ill inmates transferred from California prisons, and certain parolees. The five hospitals employ medical staff to provide treatment to their patients.

Relevant Criteria

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

Government Code section 19990 allows state employees to engage in other employment if their employing agencies determine that the other employment does not conflict with their duties as state employees. However, employees may not use paid state time for private gain.

The bargaining unit agreement that applies to DSH psychiatrists provides them with up to 56 hours of leave per fiscal year exclusively for continuing medical education.

State employees accrue state-compensated leave, such as annual leave or vacation and sick leave, on a monthly basis and may use that leave after receiving management approval to do so. Some collective bargaining agreements establish supplementary leave categories for employees who are represented by those union bargaining units. In this case, the State's collective bargaining agreement with Bargaining Unit 16 provides its medical professionals, whose conditions of employment require state licensure, up to 56 hours of CME leave each year. This state-compensated time allows employees to attend trainings and conferences directly related to maintaining their licenses, and they must use it exclusively for courses directly related to maintaining licenses.

From January 2018 through July 2018, the psychiatrist improperly used 46 hours of CME leave valued at $6,492 to work at a second job with shifts that occurred during regularly scheduled workdays for the State. The psychiatrist used CME leave on five separate occasions during this period to account for absences from the hospital while working a second job. By improperly using CME leave to work a second job rather than using leave from another category with management approval, the psychiatrist used state-compensated time for private gain, allowing the psychiatrist to save state-compensated time, such as annual leave or vacation, for later use.

After completing our investigation, we notified DSH that the psychiatrist inappropriately used CME leave to work a second job. DSH took the following actions in response:

- It required the psychiatrist to amend time records and replace the improperly used CME leave with a different type of accrued leave.
- It provided one-on-one training regarding proper timekeeping policies and procedures to the psychiatrist.
- It provided training on proper timekeeping methods and other related policies to the hospital psychiatry staff.

DEPARTMENT OF STATE HOSPITALS
A Psychiatric Technician Claimed Time That Was Not Worked

CASE I2019-0489

Investigative Results

In response to an allegation we received that a psychiatric technician (technician) at Patton State Hospital (Patton) was inaccurately reporting the technician's time and attendance, we initiated an investigation and asked the Department of State Hospitals (DSH) to conduct it under our authority and supervision. The investigation confirmed that from May 1, 2018, through April 30, 2019, the technician reported working 48 hours that the technician did not actually work, resulting in a cost to the State of approximately $1,500.

Although the technician was an hourly employee and required to account for partial-day absences, the technician failed to account for late arrivals to work, early departures, and some sick days. The technician also reported overtime hours that were not actually worked. When interviewed, the technician, who provided direct care to patients behind a secured perimeter, claimed to maintain accurate timesheets. However, witnesses confirmed that they observed the technician arriving late and leaving early. Further, electronic data from Patton's security gates, through which the technician had to pass when arriving to and departing from the facility, confirmed 48 unaccounted hours. When informed of these findings, the technician replied that the gate data must be incorrect. DSH gave the technician more than a month to provide support that the technician worked during the unaccounted hours, but the technician was unable to provide any such support.

A lack of direct supervision contributed to the technician's misuse of state time. Although the supervisor expressed surprise about the technician's attendance pattern, the supervisor acknowledged being unable to observe the technician's arrivals and departures because they work different shifts, which means that the supervisor must rely on shift leads to monitor employees' schedules. However, the technician was a shift lead for part of the review period; thus, the technician was not always subject to observation by a supervisor.

About the Agency

DSH oversees five state hospitals throughout California. The hospitals provide mental health services to individuals mandated for treatment by the courts, mentally ill inmates transferred from California prisons, and certain parolees. The five hospitals employ medical staff to provide treatment to their patients.

Relevant Criteria

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

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

Government Code section 19990 requires state employees to devote their full time, attention, and efforts to state employment during work hours; they may not use state time for private gain.

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

Recommendations

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

- Within 60 days, take appropriate corrective or disciplinary action against the technician for improperly reporting hours worked.
- Recover overpayments made to the technician or adjust the technician's leave balances to account for the missed work time.
- Ensure that supervisory staff are present at the beginning and end of the employee's work shifts to ensure proper time reporting.

Agency Response

In January 2020, DSH reported that it agrees with our recommendations and that it intends to take corrective actions to address the improper governmental activity identified in this investigation. Specifically, DSH stated that within 60 days, it would take appropriate corrective or disciplinary action against the technician and initiate the collection process for overpayments made to the technician. In addition, DSH stated that it would develop and implement a plan to monitor the hours the technician works to ensure proper time reporting.

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

Two Employees Misused State Time, and Their Supervisor Failed to Monitor Their Attendance

CASE I2018-0756

Investigative Results

In response to an allegation we received that two employees in the Center for Health Care Quality at the California Department of Public Health (Public Health) did not account for missed work time, we initiated an investigation and requested Public Health's assistance in conducting it. The investigation confirmed that the employees arrived to work late, took extended breaks, and left work early without accounting for their missed work time. We estimated that, during a one-year period, the two employees missed a total of nearly 300 hours of work, costing the State more than $9,300 in salary paid for work not performed.

About the Agency

The Center for Health Care Quality within Public Health is responsible for monitoring infection rates and for regulatory oversight of licensed health facilities and certain health care professionals.

Relevant Criteria

Government Code section 19990 requires state employees to devote their full time, attention, and efforts to state employment during work hours; they may not use state time for private gain.

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

Government Code section 19572 specifies dishonesty as a cause for discipline of state employees.

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

An analysis of the two employees' building access records in comparison to their timesheets from March 2018 through February 2019 showed that both employees failed to account for significant amounts of their missed work hours. Specifically, Public Health's review of Employee A's building access records and timesheets revealed that she failed to account for 117 hours of missed work time on her timesheets by claiming to have worked full days despite consistently arriving to work late. We estimate that the State paid her more than $3,400 in salary for her missed work time. Similarly, Public Health's review of employee B's building access records and timesheets revealed that he failed to account for 167 hours of missed work time by claiming to have worked full days despite consistently arriving to work late, taking extended breaks, and leaving work early. We estimate that the State paid him about $5,900 in salary for his missed work time. Although both employees A and B claimed during the investigation that they had made up for any occasional missed work time, neither of them could provide any contemporaneous evidence to support their claims. Moreover, both employees were dishonest when they said during the investigation that they generally arrived to and left from work on time and that their timesheets accurately reflected the hours they worked.

The employees' supervisor failed to monitor their attendance even after being notified that they were possibly arriving to work late and taking extended breaks. When interviewed, the supervisor reported that he did not verify the accuracy of these employees' timesheets because his manager had informed him that it was not his responsibility to do so. However, the manager said during the investigation that

he never provided the supervisor with such guidance. Instead, the manager stated that on several occasions, he discussed with the supervisor the importance of handling the tardiness of staff. In fact, the manager explained that after being notified about these two employees' attendance issues, he discussed the attendance issues with the supervisor and suggested that the supervisor periodically vary his own attendance so that he could verify when the employees arrived and left.

During this investigation, we also became aware that these employees were using an outdated version of the State's standard monthly timesheet. The current version of the standard timesheet requires that a supervisor acknowledge that the facts on the timesheet are accurate and fully comply with legal requirements. The outdated version the employees were using does not include this requirement.

Recommendations

To address the improper governmental activities we identified in this investigation, Public Health should do the following:

- Take appropriate corrective or disciplinary actions against employees A and B for their misuse of state time and for their dishonesty during the investigation.
- Determine the amount of time employees A and B can be charged to account for their missed work hours, reduce their leave balances accordingly, and, if applicable, seek to recover from them any wages paid to them for time they did not work.
- Take appropriate corrective or disciplinary actions against the employees' supervisor for failing to verify that his subordinates accurately reported their attendance.
- Require that these employees, along with any other employees who may be using the outdated version, fill out the most updated version of the State's standard monthly timesheet.

Agency Response

In January 2020, Public Health reported that it agrees with our recommendations and that it plans to take appropriate corrective actions against employees A and B. In addition, Public Health stated that it will take steps to determine the specific amount of time employees A and B can be charged to account for their missed work hours and that subsequently it will take appropriate actions

to either reduce their leave balances accordingly or to recover wages paid to them for time they did not work. Public Health added that its 60-day response will include more specific information on these steps.

Furthermore, Public Health informed us that it issued to these employees' supervisor a counseling memorandum outlining his failure to hold these employees accountable for their work time and reiterating his supervisory responsibility to ensure that his subordinates accurately report their attendance. Finally, Public Health stated that it will take appropriate steps to ensure that employees use the most current version of the State's standard monthly timesheet.

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FRANCHISE TAX BOARD

An Administrator Was Dishonest About Her Work, and Her Supervisor Neglected His Duty

CASE I2018-1274

Investigative Results

In August 2019, we asked the Franchise Tax Board (FTB) to investigate an allegation that, for two years, its management had allowed an administrator to work four hours per day while she received a full paycheck. The investigation determined that during this period, the administrator's regular schedule was 9 a.m. to 2:30 p.m. to account for an approved 2.5 hours of Family Medical Leave Act (FMLA) leave she received. However, the administrator failed to ensure that she worked these agreed-upon hours, and she was dishonest with her manager about the hours that she worked. The investigation also determined that the administrator's most recent supervisor neglected his supervisory responsibility.

About the Agency

FTB helps taxpayers to file timely, accurate tax returns and to pay the correct amounts to fund services important to Californians. It accomplishes its goals by protecting taxpayer information and privacy, carrying out its fiduciary responsibilities, and operating with transparency to maintain public trust and confidence.

Relevant Criteria

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

Government Code section 19572 specifies dishonesty and inexcusable absence without leave as causes for discipline of state employees.

From August 2017 through September 2019, the administrator failed to consistently follow FTB procedures to track her FMLA leave use. FTB requires its employees to complete an FMLA leave use form each month and submit it to their supervisors for approval, along with a monthly timesheet. Although the administrator and her supervisor claimed that the administrator had completed the forms each month, FTB had approved forms on file for only 12 of the 26 months reviewed. After FTB directed the administrator to recreate the missing forms, it determined that the administrator exceeded her approved FMLA leave use in 2017 by nearly 30 hours.

In addition, the investigation concluded that, during this two-year period, the administrator regularly worked from home but did not follow FTB's procedures for telecommuting. The supervisor reported that he expected the administrator to request and receive approval before working from home. When shown the dates the administrator worked from home, the supervisor expressed surprise because he believed that she worked from home only a few times each year. The supervisor noted that some of the dates that the administrator worked from home coincided with his scheduled days off. The administrator failed to inform her supervisor that she was working from home even though she ensured that her staff knew. The administrator claimed that she was unaware that she was expected to request approval before working from home.

The administrator also failed to charge leave on three days on which she did not work; instead, she claimed that she worked from home on these days. After reviewing the administrator's calendar and email activity, FTB identified that the administrator had, in fact, taken these three days off. When questioned about them, the administrator acknowledged that she should have charged leave for those days. The investigation concluded that the administrator was dishonest in her interactions with her supervisor because she did not inform him when she worked from home and when she took these three days off.

State law requires all state agencies to keep complete and accurate time and attendance records for their employees, and FTB supervisors are responsible for ensuring the accuracy of such records for their subordinate employees. The supervisor neglected his duty to provide adequate supervision of the administrator. Although he expected the administrator to work her scheduled hours, he made little effort to ensure that this occurred. The supervisor stated that he rarely visited the administrator's work area because his office was on a different floor than the administrator's office. Thus, he was not able to verify whether she arrived on time or completed her expected work hours. The supervisor also failed to ensure that the administrator submitted the FMLA leave use form each month with her timesheets. Although the administrator and the supervisor claimed to have completed these forms, they were missing for more than half of the months reviewed.

During the investigation, FTB directed the administrator to adhere to her scheduled work hours. In late 2019, FTB served an adverse action notice to the administrator. The administrator and her supervisor retired in late 2019.

Recommendations

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

- Require the administrator to repay the State for the three days that she reported working but did not work.
- Ensure that FTB staff members who telework have an approved telework agreement on file and follow all the requirements set forth in the agreement, including pre-approval on telework days, if required.
- Ensure that managerial employees know the work schedules of their staff members and require those staff members to adhere to their expected work schedules.

Agency Response

FTB reported in February 2020 that it has taken action to address the improper activities identified in this report. In particular, FTB adjusted the administrator's leave balances to account for the three days she reported working but actually did not work. In addition, in January 2020 it added a segment on teleworking to its leadership and human resources training provided to new and existing supervisors. Similarly, FTB added a segment on teleworking to its security and disclosure training that is completed annually by all FTB employees. Further, it asked all supervisors with staff members who telework to ensure that those employees have a telework agreement on file and that the employees have received proper training on teleworking.

To further address the improper activities, FTB stated that, in January 2020, it sent an internal communication to all employees with a telework agreement reminding them that a telework form must be submitted to their supervisors annually. FTB stated that by March 2020 it also will send a communication to its staff clarifying that supervisors are expected to know their employees' work schedules and that all staff, including employees who are exempt from the Fair Labor Standards Act, are expected to adhere to their schedules and may not use leave credits, or leave the office, without notifying and receiving approval from their supervisors or designees.

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CALIFORNIA PRISON INDUSTRY AUTHORITY

Supervisors Failed to Ensure Accurate Time Reporting, and an Employee Displayed Dishonesty

CASE I2018-1820

Investigative Results

In August 2019, we asked the California Prison Industry Authority (CalPIA) to investigate an employee at one of its facilities. As a result of the investigation, we determined that three CalPIA supervisors in one unit failed to ensure that the attendance records for a subordinate employee were accurate over a three-year period, even though they all knew that these records very likely did not reflect the employee's actual attendance. In addition, at various stages of the investigation, the employee was dishonest with investigators when he provided conflicting information about his attendance.

About the Agency

CalPIA is a self-supporting agency that operates under the policy direction of the 11-member Prison Industry Board. Its mission is to reduce the operating costs of the California Department of Corrections and Rehabilitation and to offer inmates the opportunity to develop effective work habits and occupational skills.

Relevant Criteria

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

Government Code section 19572 specifies that dishonesty constitutes a cause for discipline of state employees.

Supervisors Failed to Ensure That Attendance Records Were Accurate

State law requires all state agencies to keep complete and accurate time and attendance records for their employees, and CalPIA supervisors are responsible for ensuring the accuracy of such records for their subordinate employees. According to CalPIA, it requires staff members who work in the employee's unit to manually sign in and out with their name and their arrival and departure times each day. At the end of the month, employees must also report their hours worked and absences on a timesheet that they submit to their supervisor for approval. CalPIA determined that the employee in this investigation failed to either sign in or out on numerous occasions, yet in a nearly three-year period, the employee's supervisors did not address his failure to follow the established attendance verification procedures.

Specifically, from October 2016 through August 2019, multiple supervisors approved the employee's timesheets. Supervisor 1 reported that she reviewed and signed the timesheets for the unit before September 2018 and that she relied on the sign-in and sign-out sheets when reviewing the monthly timesheets. However, had she actually compared the employee's monthly timesheets to the daily sign-in and sign-out sheets, she could have identified many instances in which the employee failed to sign in or out and that his timesheets contained errors, such as failing to charge leave when the employee reportedly signed in and out for less than his shift or when he worked overtime but failed to report it on his monthly timesheet. Supervisor 2 intermittently acted as the employee's supervisor and reported that he observed the employee leaving early and arriving late on multiple occasions. He characterized the employee's attendance behavior as "stealing time." Supervisor 2

also reported to the investigator that he believed the employee signed in that he arrived on time, even though the employee was late and Supervisor 2 knew that the employee failed to sign in or out regularly. However, Supervisor 2 did not report these failures to anyone and approved the employee's timesheets despite obvious discrepancies. Supervisor 3 took some action but still approved timesheets with apparent errors. Supervisor 3 reported to CalPIA that he relied on the information on the sign-in sheets to compare with the monthly timesheets but said he also began documenting on his own calendar when staff members called in sick or arrived late to work. Nevertheless, Supervisor 3 continued to approve timesheets with errors. Had these supervisors consistently compared the employee's monthly timesheets to the available sign-in and sign-out sheets, as the investigator did, they could have ensured that the employee corrected his timesheets and accurately accounted for his time. In addition, they should have taken action to correct the employee's behavior.

The Employee Was Dishonest When He Provided Conflicting Statements During the Investigation

When interviewed, the employee said he understood that he was expected to sign in and out when arriving for and leaving work. When the investigator asked if he ever left work early, the employee initially stated that he did not recall leaving early. He later estimated that he may have left up to eight hours early each month. He then revised his statement again to say that he only left work early one to two hours each month. The employee also claimed to the investigator that he almost always signed in or signed out. However, when presented with evidence that refuted his statements, the employee admitted that he consistently arrived to work late, left work early, and failed to sign in and sign out.

Recommendations

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

- Establish new procedures or enforce the rules whereby supervisors are responsible for ensuring the accuracy of subordinates' timesheets.

- Take appropriate corrective or disciplinary actions against the supervisors who failed to ensure that the timesheets they approved were complete and accurate.

- Take appropriate corrective or disciplinary actions against the employee for dishonesty when providing conflicting accounts of his attendance during the investigation.

- Reconcile the employee's attendance records to determine whether he owes the State any time for failing to report his actual work hours or whether the State owes him for unreported overtime during the period reviewed.

Agency Response

CalPIA reported in February 2020 that it will take appropriate actions to address the supervisory deficiencies and leave accounting inaccuracies, including recovering the funds associated with inaccurate attendance records. In addition, CalPIA reported that it will take steps to ensure that supervision and leave accounting is performed accurately.

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CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

It Failed to Recover Overpaid Salary and to Monitor Bereavement Leave Use

CASE I2018-1932

Investigative Results

In August 2019, we asked the California Department of Social Services (Social Services) to investigate two incidents of alleged improper governmental activities pertaining to its oversight. The first allegation related to Social Services' failure to recover an apparent overpayment to a former employee. The second allegation involved an employee who claimed more bereavement leave than was allowed. As a result of this investigation, Social Services has recovered salary and leave valued at $3,437.

About the Agency

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

Relevant Criteria

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

Government Code section 19859.3 allows state employees who are not represented by unions up to three paid workdays of bereavement leave for the deaths of family members.

Social Services Failed to Recover Overpaid Salary

In June 2018, an employee accepted a promotion to a managerial position at another state agency with a salary increase to $7,897 per month. Two months later, the employee exercised her right to return to her previous position at Social Services at her previous lower salary. However, the employee continued to receive the manager's salary, which represented an overpayment of $2,520. Although Social Services corrected the employee's salary for September 2018, it failed to do so for August 2018. In February 2019, a manager in the human resource services branch was made aware of the overpayment; however, Social Services failed to take any action to recover the funds until August 2019, when it issued a payroll adjustment to recoup the overpayment. Although Social Services initiated action to recover the overpayment within the time period allowed by law, it did so only after our office recommended that it take action.

Social Services Failed to Monitor Use of Bereavement Leave

Social Services also recovered 16 hours of excess bereavement leave that a manager claimed in June 2018. The manager reported on that month's timesheet 40 work hours of bereavement leave, even though state law allows for only 24 work hours for the death of a family member. The manager should have charged the 16 additional hours toward another category of her accrued leave, such as vacation. After we brought this issue to Social Services' attention, it adjusted the manager's leave balance to account for 24 work hours of bereavement leave and charged the remaining 16 work hours to another category of the manager's accrued leave.

Recommendations

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

- Determine whether corrective action is appropriate for the manager in the human resource services branch who was aware of the salary overpayment yet failed to promptly initiate action to recover the funds.
- Ensure that procedures are in place to monitor employees' use of bereavement leave so that all such claims comply with state law or union bargaining agreements.

Agency Response

Social Services reported that the manager who was aware of the salary overpayment left in July 2019 and, therefore, it lacks authority to take corrective action. In addition, Social Services reported it has established procedures to ensure that bereavement leave complies with state law or union agreements. Specifically, it stated that a personnel specialist will audit bereavement leave on employees' timesheets and will refer to an internal bereavement leave reference guide to ensure that the leave used is allowed in the relevant bargaining agreement. Finally, Social Services stated that it will audit bereavement leave from February through April 2020 and provide training in March and September 2020.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
California State Auditor

April 2, 2020

Appendix

CORRECTIVE ACTIONS TAKEN IN RESPONSE TO INVESTIGATIONS

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

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

The State Auditor performs no enforcement functions: this responsibility lies with the appropriate state agencies, which are required to regularly notify the State Auditor of any actions they take in response to the investigations, including disciplinary actions, until they complete their final actions. The chapters of this report describe the corrective actions that state agencies implemented on some of the individual cases for which the State Auditor completed investigations from January 2019 through December 2019. In addition, Table A summarizes all corrective actions that state agencies took in response to investigations from the time that the State Auditor opened the hotline in July 1993 until December 2019. These investigations have also resulted in many state agencies modifying or reiterating their policies and procedures to prevent future improper activities.

Table A
Corrective Actions
July 1993 Through December 2019

TYPE OF CORRECTIVE ACTION	TOTALS
Convictions	12
Demotions	25
Job terminations	91
Resignations or retirements while under investigation	40*
Pay reductions	59
Reprimands	345
Suspensions without pay	32
Total	**604**

Source: State Auditor.

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

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