Investigations of Improper Activities by State Agencies and Employees

Wasteful Decisions, Poor Contract Oversight, Overpayments, Misuse of State Resources, and Attendance Abuse

May 2023

INVESTIGATIVE REPORT I2023-1

CALIFORNIA STATE AUDITOR
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May 18, 2023
Investigative Report I2023-1

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

Dear Governor and Legislative Leaders:

As authorized by the California Whistleblower Protection Act, my office presents this report summarizing some of the investigations of alleged improper governmental activities that my office completed between January 2022 and December 2022. This report details seven substantiated allegations involving several state agencies. Our investigations found wasteful decisions, poor contract oversight, unreported leave resulting in overpayments, misuse of state resources, and attendance abuse. In total, we identified nearly $280,000 of inappropriate expenditures.

In one case, an agency's decision to continue an analyst's Administrative Time Off for nearly two years resulted in paying the analyst $114,000 in salary to stay home and perform no work during the COVID-19 pandemic. In another case, human resources staff at a correctional facility did not account for 600 hours of a nurse's time absent from work, which represented $38,000. Similarly, a psychiatric technician at the Department of State Hospitals did not account for 400 hours of absences worth $12,500.

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

Respectfully submitted,

GRANT PARKS
California State Auditor

Selected Abbreviations Used in This Report

ATO	Administrative Time Off
CalHR	California Department of Human Resources
CDCR	California Department of Corrections and Rehabilitation
CDFA	California Department of Food and Agriculture
Correctional Health Care	California Correctional Health Care Services
DAA	district agricultural association
DIR	Department of Industrial Relations
DSH	Department of State Hospitals
Fair organizations	state and local fairs
HR	human resources
SCM	State Contracting Manual
SCO	State Controller's Office
State Parks	Department of Parks and Recreation

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Summary

Results in Brief

Under the authority of the California Whistleblower Protection Act, the California State Auditor conducted investigative work from January 1, 2022, through December 31, 2022, on 1,269 allegations of improper governmental activity. These investigations substantiated numerous improper activities, including wasteful decisions regarding paid leave, poor contract oversight, overpayments to an employee, misuse of state resources, and attendance abuse. In this report, we provide information on a selection of these cases as a deterrent for state agencies and state employees so that they avoid similar improper governmental activities.

Unnamed State Agency

Officials at a state agency wasted nearly $114,000 in public funds when they placed and kept an analyst on Administrative Time Off for approximately 20 months when she could have continued working during much of that time. We are not naming the agency that is the subject of this report because doing so may identify or lead to the identification of the individuals mentioned in the report, which would violate Government Code section 8547.7, subdivision (c).

California Department of Food and Agriculture

An executive at a district agricultural association (DAA) did not ensure that the DAA had written contracts with two contractors who provided the DAA with finance-related services. In addition, one of these contractors violated state conflict-of-interest law by returning to the DAA as a contractor within 12 months of leaving the DAA. We are not identifying the DAA because doing so may identify or may lead to the identification of the individuals mentioned in the report, which would violate Government Code section 8547.7, subdivision (c).

California Correctional Health Care Services

Human resources staff for a psychiatric program at a facility under the authority of the California Correctional Health Care Services did not account for a supervising registered nurse II's absences totaling 600 hours between October 2019 and November 2021. The unaccounted-for hours represent an overpayment of more than $38,000.

Department of State Hospitals

A psychiatric technician at the Department of State Hospitals did not account for absences totaling nearly 400 hours from October 2018 through August 2021, resulting in a cost to the State of about $12,500.

Department of Industrial Relations

A supervisor who oversaw and controlled access to several state vehicles for the Department of Industrial Relations repeatedly misused one of the state vehicles for his daily commute over a period of three years, causing the State to incur nearly $11,000 in vehicle costs.

California Department of Corrections and Rehabilitation

A water and sewage plant supervisor with the California Department of Corrections and Rehabilitation misused state resources, including a state-owned backflow testing kit, for his private business and used state computers to regularly shop online during work hours.

Department of Parks and Recreation

A supervisor at the Department of Parks and Recreation (State Parks) used a public boat dock to store his personal boat for more than six years, causing State Parks to lose up to $36,000 in potential revenue from members of the public. In addition, State Parks did not report as a part of the supervisor's taxable income approximately $67,000 in housing benefits that resulted from his living in state-owned housing.

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 any of the following:

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

Whistleblowers are critical to ensuring government accountability and public safety. The California State Auditor's Office (State Auditor) protects the identities of whistleblowers and witnesses to the maximum extent required 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 1,075 calls and inquiries from January 1, 2022, through December 31, 2022. Of these, 659 came through our website, 263 through the mail, 141 through the hotline, 11 through fax, and one through internal sources. 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 independently, or we may request assistance from other state agencies to perform confidential investigations under our supervision. In determining whether we will conduct an investigation independently or enlist the help of a state agency,

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

we carefully consider a variety of factors, including the nature of the allegation, the level of the employee(s) involved, the agency's experience in conducting such investigations, the security features of the state facility, and our ability to maintain confidentiality. Over 30 years, our investigative work has identified and made recommendations to remediate a total of nearly $585 million in state spending resulting from improper governmental activities such as inefficiency, theft of state property, conflicts of interest, and personal use of state resources.

During the one-year period covered by this report, we conducted investigative work on 1,269 cases that we opened either in previous periods or in the current period. As Figure 1 shows, 855 of the 1,269 cases lacked sufficient information for investigation or were pending preliminary review. For another 361 cases, we conducted work or will conduct additional work—such as analyzing available evidence, contacting witnesses, and requesting information from state agencies—to assess the allegations. We referred another 25 cases to the respective agencies so they could investigate the matters further, and we independently investigated or performed follow-up work on implementing recommendations for another 28 cases.

Figure 1
Status of 1,269 Cases, January 2022 Through December 2022

Source: State Auditor.

For information about the corrective actions taken in response to our investigations program, please refer to the Appendix, starting on page 41.

Chapter 1

WASTEFUL DECISIONS AND POOR OVERSIGHT

State law requires the State Auditor to investigate whistleblowers' allegations of improper governmental activities. Although some substantiated allegations may not involve significant individual losses to the State, the State Auditor's finding and reporting of numerous similar improprieties can identify weaknesses in the State's system of internal controls and can serve as a deterrent to state employees who might otherwise attempt to engage in such improprieties. Specifically, state law requires state employees to be wise stewards of the State's limited financial resources, to minimize waste and inefficiency, and to adhere to state contracting laws. This chapter includes the results of investigations that involved wasteful decisions by agency officials and poor oversight related to contracts.

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UNNAMED STATE AGENCY

Officials Wasted Nearly $114,000 in Public Funds by Placing an Employee on Paid Leave for Almost Two Years

CASE I2021-1875

Results in Brief

Relevant Criteria

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

The California Constitution, article XVI, section 6, prohibits giving any gift of public money or anything of value to any individual for private purposes.

Government Code section 19991.10 requires that where there exists no statutory authority to grant a paid leave of absence, no paid leave of absence shall exceed five working days without prior approval of CalHR.

Officials at a state agency wasted nearly $114,000 in public funds when they placed and kept an analyst on Administrative Time Off (ATO), a form of paid leave for California state employees, for approximately 20 months when she could have continued working during much of that time. In response to the emerging COVID-19 pandemic in mid-March 2020, the agency placed many of its employees on ATO and directed them—especially those at the greatest risk of illness, such as this analyst—to leave the office and to remain at home. However, when the agency established a way to allow most employees to resume their duties, it did not provide the analyst with the necessary equipment that would have enabled her to work from home. Instead, it left her on ATO, and it did not comply with a California Department of Human Resources (CalHR) directive to report the analyst's ATO status to CalHR, which may have been able to redirect the analyst to work elsewhere rather than remain on ATO.

Background

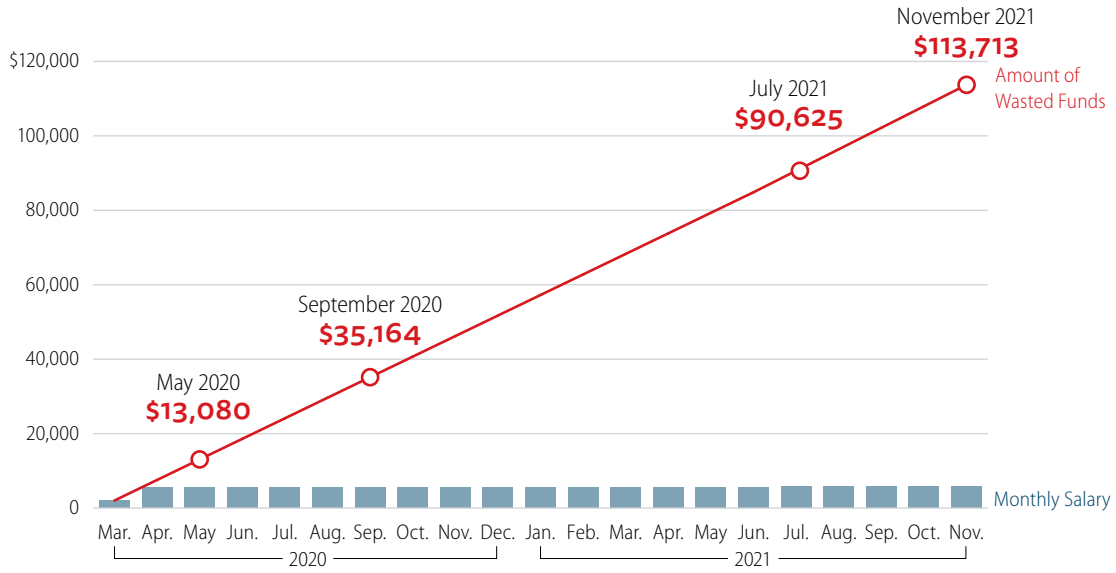
In March 2020, CalHR provided guidance to human resources (HR) departments at state agencies for addressing situations involving employees who were at the greatest risk of illness during the COVID-19 pandemic. The guidance noted that agencies should consider all viable options for telework and that ATO would be provided as a last resort for anyone not eligible for telework. CalHR defines *ATO* as a form of paid administrative leave that state agencies most often use when an employee cannot come to work because of a pending investigation or a fitness-for-duty evaluation, or when work facilities are unavailable. Before the COVID-19 pandemic, state law required agencies to obtain approval from CalHR if ATO exceeded five working days, and CalHR delegated authority to state agencies to approve ATO for up to 30 days. During the initial phases of the pandemic, CalHR did not require agencies to seek pre-approval for COVID-19-related ATO, but it directed that agencies should report to CalHR all staff on pandemic-related ATO so that the State could possibly redirect those staff resources to appropriate work in other departments or functions.

Instead of Enabling Her to Work From Home, the Agency Left the Analyst on Paid Leave for Approximately 20 Months

As a result of CalHR's COVID-related guidance, the agency in question placed the analyst's relatively small unit on ATO. It deemed the unit's work to be *nonessential*, and staff were not able to immediately telework because the unit's work primarily related to in-person events that had been temporarily suspended. Even after the unit's work resumed and the last of the analyst's colleagues resumed their duties remotely, the agency did not supply equipment necessary for the analyst to telework; instead, she received full pay on ATO until November 2021—a full 20 months after the initial circumstance arose. When interviewed, the analyst reported that she did not understand why the agency did not allow her to take her office equipment home so that she could work, and she asserted that she did not refuse to telework. Although the COVID-19 pandemic was unexpected and agencies dealt with many COVID-related issues in March 2020, the agency could have either taken reasonable steps to enable the employee to telework or redirected her at some point during the nearly two years she was on ATO.

As Figure 2 shows, had the agency taken some action at various points in time to enable the analyst to resume her duties via telework, it could have minimized the amount of waste. In May 2020, the first of the analyst's colleagues began to work remotely, and in September 2020, the last of the analyst's colleagues were able to resume their duties via telework. In July 2021, CalHR issued guidance that ATO was no longer allowed for those unable to telework. However, the agency did not take any action to enable the analyst to return to work, and it left her on paid ATO for another four months.

Figure 2
The Agency Wasted More Funds as Time Passed



Source: Review of the analyst's payment records.

When the analyst's colleagues began to resume their duties remotely a few months after the beginning of the pandemic, the analyst informed her supervisor that she did not have the necessary equipment, such as a computer, to enable her to work from home. The supervisor also reported that the analyst did not have an internet connection. The supervisor then communicated those concerns through her management chain of command, which consisted of a second-line manager and an executive, and she subsequently informed the analyst that the agency could not provide the necessary equipment for her. When we asked the executive why the agency did not supply the analyst with such equipment, the executive said that the agency had too few laptops to provide to staff and that he did not recall conversations about purchasing additional laptops. When we asked an administrative official to explain what prevented the agency from purchasing additional laptops for staff, the administrative official informed us that the agency was trying to be prudent with how it spent its limited financial resources. However, the cost to procure the equipment and internet connection to allow the analyst to work from home would have been substantially less than paying the analyst's full salary for 20 months while she performed no work. Similarly, when we asked why employees were not allowed to take their existing office equipment home for telework purposes, the administrative official informed us that employees would need that equipment once they returned back to the office, and the agency needed to be in a state of readiness.

The administrative official admitted that, in retrospect, the agency could have done things differently but that it did the best it could at the time, given the many different issues it was dealing with during the pandemic. The executive also said that throughout 2021, the agency was trying to err on the side of caution with employees at high risk of illness from COVID-19.

CalHR's pandemic-related ATO guidance also advised agencies to report all staff placed on ATO so that CalHR could possibly redirect such employees to other work or duties that might benefit the State during the pandemic emergency. The executive said that the administrative official and the HR official would have been the ones responsible for reporting ATO use to CalHR. However, the administrative official believed that the agency did not report ATO status to CalHR because having its staff members redirected to work elsewhere would prevent the agency from fulfilling its own mission. The administrative official also remarked that CalHR guidance said that agencies *should* report ATO usage to CalHR, but it did not *require* agencies to do so. However, the employees on ATO were not helping the agency fulfill its mission while they were on ATO, and by not reporting this information to CalHR, the agency prevented CalHR from fulfilling its oversight duties, which included preventing circumstances like those we see in this situation: the misuse of state resources or a gift of public funds. Although our investigation focused on the long ATO status of this particular analyst because the complaint cited it specifically, we also observed that the analyst's colleagues were also on ATO for two to six months, and that the agency did not report any of that ATO to CalHR, either. Had the agency followed CalHR's guidance to report the employees' ATO status, these staff members could have been available for work elsewhere in state service.

Furthermore, the agency left the analyst on ATO for another four months even after CalHR's July 30, 2021 notification that ATO was no longer authorized for employees who were unable to telework or to be reassigned elsewhere in state service. An HR official was unable to provide an adequate explanation for why the agency left the analyst on ATO after July 2021, during which time the analyst received more than $23,000 in salary. In November 2021, the analyst's supervisor informed a newly appointed executive that the analyst was still on ATO. After the executive worked with HR in an attempt to bring the analyst back to work, either in-person or via telework, the analyst chose to retire from state service.

By allowing the analyst to receive her regular monthly salary from March 2020 through November 2021, agency officials made a gift of public funds, which occurs when an agency improperly gives away a public resource for private purposes—in this case, the analyst's salary. By allowing the analyst the private benefit to receive full pay while performing no work, the agency received no value for the salary paid. In addition, the agency allowed the analyst to accrue service credit towards retirement for her time on ATO while performing no work.

The absence of clear and written communication between HR and the analyst's management contributed to the agency's failure to supply teleworking equipment to the analyst and its leaving her on ATO for nearly two years. The administrative official and the HR official reported that they believed that employees' managers were responsible for approving, or at least for overseeing, employees' ATO use. On the other hand, the analyst's supervisor and second-line managers believed that HR was responsible for approving or overseeing ATO use in the agency.

Recommendations

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

- Develop policies and procedures that identify the appropriateness and extent of ATO use, including specifying the person or position in the agency responsible for approving ATO.

- Work with CalHR to develop appropriate training for HR staff to understand their role in receiving and disseminating CalHR guidance in writing to management.

- Develop policies and procedures to ensure that the appropriate divisions are involved in providing staff with the equipment needed to perform their duties either in the office or remotely.

Agency Response

In March 2023, the state agency reported that it believes our report is generally factually accurate, but the agency wanted to include additional context. First, the agency noted that in addition to needing equipment to perform work remotely, the analyst also would have needed an internet connection and specialized equipment. However, we note that the agency could have simply allowed the analyst to take home the equipment she used in the office to enable her to perform her work duties remotely. Regarding an internet connection, the agency could have provided a mobile hotspot.

The agency also asserted that in early 2021, it began considering potential dates for its employees to return to work and that this was a significant consideration when determining whether or not to purchase equipment for the analyst to work from home because the agency did not want to expend financial resources to purchase unnecessary equipment for remote work as it anticipated reopening its offices. Although we appreciate the factors the agency had to consider, the agency's inaction over 20 months was not reasonable and wasted public funds.

The agency also contends that the entire 20 months that the analyst was on ATO were not wasteful because CalHR had authorized ATO use between March 2020 and July 2021. However, as we mentioned earlier, CalHR had authorized ATO usage during the pandemic as a last resort for anyone not eligible for telework and had directed that agencies should report to CalHR all staff on pandemic-related ATO so that it could possibly redirect those staff resources to appropriate work in other departments or functions. The agency did not report any of the analyst's ATO use to CalHR. The analyst's colleagues started working remotely in May 2020, which suggests that her position was eligible for telework and that she would have been able to telework if the agency had provided her with the necessary equipment and internet connection either through a mobile hotspot or by paying for internet service.

The agency disputed that the actions reported in this case constitute a gift of public funds because it believes a gift of public funds requires an element of intent, which the agency does not believe was present. However, intent is not an element in determining a gift of public funds, and case law holds that the primary factor is whether or not the funds were used for a public or private purpose. Because the analyst received full pay for not working—even after CalHR stopped COVID-related ATO on July 31, 2022—the State's funds were used for the analyst's private purpose.

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CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE AND A DISTRICT AGRICULTURAL ASSOCIATION

An Executive Did Not Protect the State's Interests With Written Contracts, While a Contractor Violated a Conflict-of-Interest Law

CASE I2021-1822

Results in Brief

An executive in a state district agricultural association (DAA) did not ensure that the DAA had written contracts with two contractors who were performing finance-related services for it. In addition, one of these contractors violated state law by providing services within 12 months of having left her employment with the DAA in a policymaking position.

About the Agency

The CDFA provides oversight for certain activities at the State's 52 active DAAs, the state entities that are responsible for holding local fairs, expositions, and exhibitions that highlight various industries, enterprises, resources, and products of the State. As state entities, DAAs must comply with certain state laws governing contracts.

Relevant Criteria

Government Code sections 8546.7 and 12990, among other provisions of state law, require that state contracts contain specific, written terms and conditions, including requirements that state contracts in excess of $10,000 contain a provision that the parties are subject to examination and audit, and that every state contract for services contain a nondiscrimination clause.

Public Contract Code section 10411, subdivision (b), prohibits former state employees from entering into a contract with a state agency within 12 months of separation if they were employed by that agency in a policymaking position in the same general subject area as the contract.

Background

The California Department of Food and Agriculture (CDFA) is authorized by law to provide oversight of activities that organizations carry out at state and local fairs (fair organizations), including conducting periodic compliance audits and supporting continuous improvement of the programs offered at fairs. However, state law clarifies that CDFA should allow fair organizations, including DAAs, maximum autonomy and local decision-making authority. The law allows DAAs to undertake many activities, including operating a payroll system, approving an annual budget, and contracting with other entities. DAAs are exempt from some state laws governing state contracts, such as the requirements related to acquiring IT goods and services; however, as state entities, DAAs must follow many of the laws governing state contracts.

The *State Contracting Manual* (SCM) addresses many of the contracting requirements from state law that DAAs must follow, and it also provides the policies, procedures, and guidelines for individuals involved in California's state contracting process. The SCM identifies multiple written contract provisions that various state and federal laws require entities to include in state contracts. In order for a state contract to comply with these requirements, the contract must be in writing.

Another contracting requirement that DAAs must follow relates to addressing potential conflicts of interests in the contracting process. Specifically, state law prohibits former state employees from entering into contracts with their former agencies for one year after leaving state employment if they were employed in policymaking positions in the general subject area of the contract.

In response to allegations of improper contracting decisions at a DAA, we initiated an investigation.

A DAA Executive Put the State's Interests at Risk by Not Ensuring That Two Contractors Had Written Contracts

In late 2020, an executive at a DAA sought to have two former finance unit employees return to the DAA as contractors to assist with payroll and other finance-related issues. Both former employees—whom we refer to as Contractor A and Contractor B—agreed to return to the DAA and ultimately worked as contractors for approximately six months. Both Contractors A and B had ceased working as contractors by spring 2021.

The executive explained that she ultimately requested that Contractors A and B return to work at the DAA as contractors in 2020 because many DAA staff members in the finance unit had either left or were laid off. The remaining staff was insufficient to accomplish the tasks that needed to be completed, such as processing the final payroll for employees who were laid off, and the DAA was unable to get assistance with its payroll from other entities for a variety of reasons. Accordingly, the executive contacted Contractor A in late 2020 and asked her to return to the DAA and to contact Contractor B in order for both to assist with payroll.

Although the executive asserted that she asked the DAA contracts manager to develop written contracts for both former employees, she explained that she only made this request verbally. Moreover, neither Contractor A nor Contractor B received written contracts. Contractor A told us that she should have had a contract and Contractor B explained that the DAA never provided her with a contract to sign. The executive explained that she only learned that there were no written contracts with either contractor when we requested them as a part of our investigation in 2022, approximately one year after both contractors had finished their work at the DAA.

Although there were no written contracts, the DAA's contracting policy allows the executive to approve contracts up to $50,000. The DAA ultimately paid Contractor A approximately $31,000 and Contractor B approximately $34,000 for the work that they performed.

The Lack of Written Contracts Was Improper and Left the State's Interests Insufficiently Protected

State entities are expected to develop written contracts in a manner that safeguards the State's interests, such as the State's ability to acquire goods and services at reasonable prices. The SCM sets forth the standard written general contract terms and conditions that various state laws require. For example, state contracts with values greater than $10,000

must contain a provision that the parties are subject to audit, and every state contract for services must contain a nondiscrimination clause. By not having a written contract for either contractor, the DAA did not adhere to these provisions in state law.

The lack of written contracts is problematic for other reasons. First, without a written contract, there was no written agreement that specified the necessary confidentiality requirements or data security measures that both contractors must follow. Notably, both Contractors A and B had access to confidential and personal information about DAA employees through the payroll system. Second, no written agreement existed for the payment terms for Contractors A and B or the maximum amount to be paid. Both Contractors A and B said that they set hourly rates but explained that they did not have a maximum amount they could have been paid. Thus, although the DAA ultimately paid $65,000 to the two contractors, it took on the risk that the contractors could have either charged it more than it was able to pay or charged a higher amount than the DAA anticipated. Finally, without having contracts in writing that specify the deliverables and work that each contractor would perform, the DAA was in a weak position to ensure that the contractors could be held accountable to complete their assigned work.

One Contractor Violated State Law by Returning to the DAA Too Soon After Having Left State Employment

State law prohibits a former state employee from entering into a contract with a state agency for 12 months after separation if the former employee was previously employed at that agency in a policymaking position involving the same general subject area as the contract. This requirement is one of many intended to address potential conflicts of interest. In its publication, *Conflicts of Interests*, the California Attorney General has explained that conflict-of-interest laws, such as the requirement above, are based on the concept that government officials owe loyalty to the public and that personal or private financial considerations on the part of government officials should not be allowed to enter the decision-making process.

Contractor A violated this requirement in state law when she returned to the DAA as a contractor only three months after she separated from her employment with the DAA. She had been the DAA's finance unit manager, which is a policymaking position. The work that Contractor A performed as a contractor was in the same general subject area as her previous position at the DAA. In fact, Contractor A said that the work she performed as a contractor was very similar to the work that she had performed as a DAA employee, with the addition of a few other tasks.

Although both the contractor and the DAA executive claimed to be unfamiliar with this part of the law, Contractor A nevertheless violated this requirement, which is intended to prevent conflicts of interest. When we asked Contractor A about the requirement to wait one year before returning as a contractor, she stated that she did not know about the rule and that there had been no discussion about it when she returned to the DAA as a contractor. She explained that if she had been aware of it, she would have informed the DAA that she was unable to return as a contractor.

The DAA executive similarly explained that she had not been familiar with the requirement at the time that the contractors began work, and she confirmed that there were no discussions of the requirement when the contractors returned to the DAA.

Recommendations

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

- Work with the DAA's board of directors to take appropriate corrective action against the executive for failing to ensure that the DAA had written contracts with Contractors A and B.
- Ensure that the DAA receives training on both applicable state contracting requirements and best practices related to contracts for services, including the use of written contracts, and on requirements related to preventing conflicts of interests.
- Work with the DAA to ensure that its contracting policies are sufficient to ensure that it complies with contracting requirements and conflict-of-interest prevention requirements in state law.

Agency Response

In February 2023, CDFA reported that it agreed with the findings in this report and that it would work with the DAA to implement all of our recommendations.

Chapter 2

OVERPAYMENT AND TIME AND ATTENDANCE ABUSE

State law requires state agencies to maintain complete and accurate attendance records for its employees and prohibits state employees from using state resources, including state-compensated time, for personal purposes. This chapter includes two examples of investigations in which we substantiated allegations regarding overpayments to employees as a result of incomplete or missing attendance records and the misuse of state-compensated time.

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CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES

Human Resources Staff Did Not Account for an Employee's Absences, Resulting in Overpayment of More Than $38,000

CASE I2021-0320

Results in Brief

Human resources (HR) staff at a correctional facility's psychiatric inpatient care program (psychiatric program) did not account for the absences of a supervising registered nurse II (employee) totaling 600 hours between October 2019 and November 2021. The unaccounted-for hours, representing an overpayment of more than $38,000, resulted from the HR unit's failure to account for all of the employee's timesheets and from the unit's not reporting personal leave use into the State Controller's Office (SCO) leave accounting system.

About the Agency

Correctional Health Care provides medical, dental, and mental health services to the State's incarcerated population at all 34 CDCR adult institutions. The 2017 Budget Act shifted responsibility for operations of psychiatric programs at three facilities from the Department of State Hospitals to CDCR and Correctional Health Care.

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.

Background

Prior to 2021 staff in the supervising registered nurse II classification completed their monthly timesheets by hand and submitted them physically to their supervisors. Supervisors reviewed employee timesheets and left them in a designated location at the facility for delivery to the HR unit. In 2021 the psychiatric program introduced an electronic method for submitting timesheets (DocuSign), eliminating the need for employees in this classification to submit physical timesheets to their supervisors. Supervisors can now approve timesheets through the electronic system, and HR staff retrieve electronic timesheets through the system. HR staff for the psychiatric program review the electronic timesheets and manually enter personal leave hours reported on those timesheets into the SCO leave accounting system. The electronic system provides the parties responsible for reviewing and processing timesheets with the ability to track whether an employee submitted his or her timesheet. In response to an allegation we received that the employee had not accounted for personal time off, we initiated an investigation.

HR Did Not Detect Missing Timesheets and Did Not Deduct 352 Personal Leave Hours Used by One Employee

When state employees take time off, they record those hours on their timesheets so the department's HR staff can track and update the SCO's leave accounting system. Unreported time off results in employees being fully compensated without charging leave balances. Each personnel specialist working in the psychiatric program's HR unit is assigned a roster of employees whose timesheets the specialist is responsible

for processing each month. Because a personnel specialist must process individual timesheets, the specialist should notice that an employee's timesheet is unaccounted for if the specialist routinely confirms that the employees on the roster submitted a timesheet. Despite this fact, HR was unable to provide us with seven monthly timesheets for the employee. After reviewing psychiatric program records, such as daily sign-in logs and the monthly schedule that supervisors rely on to ensure proper staffing levels and verify employee attendance, we determined that the employee was absent from work for 352 hours during six of the seven months, which represents $22,141 in salary. When we interviewed the employee, he asserted that he submitted all but three of his timesheets and that he was not present to submit those three. He added that he would have resubmitted his missing timesheets if HR had asked him. Since most of the unaccounted-for timesheets covered periods before the agency began collecting timesheets electronically, we were unable to determine whether the employee or the supervisor had failed to submit a timesheet to HR or why HR had not received the timesheets. However, if HR staff had notified the supervisor or the employee that the unit had not received the employee's timesheets, HR would have had an opportunity to resolve the matter.

However, our investigation revealed, that as the unit responsible for entering personal leave hours into the SCO leave accounting system on behalf of the psychiatric program, HR does not follow the agency's audit process to review and correct leave input errors, as required by the *State Administrative Manual*. By not following the process, HR risks reporting inaccurate information to the SCO. The HR supervisor reported that if a personnel specialist notices that an employee's timesheet is not accounted for, the personnel specialist attempts to contact the employee's supervisor. However, she added that HR does not always receive missing timesheets, despite reaching out to employees' supervisors, and that HR does not track missing timesheets. In contrast to the HR supervisor's statements, a personnel specialist acknowledged that she does not make the effort to follow up with an employee most of the time when she does not receive the employee's timesheet. When asked about this employee's missing timesheets, the HR supervisor said the employee was responsible for ensuring that his monthly timesheets are submitted. Similarly, the employee's supervisor at the time also explained that she does not keep track of which employees submit timesheets, so she may not know whether an employee failed to submit a timesheet unless HR notifies her. The supervisor said that HR was responsible for ensuring it receives all timesheets, stating that she expects HR to notify her or her employee if it does not receive one of her employee's timesheets.

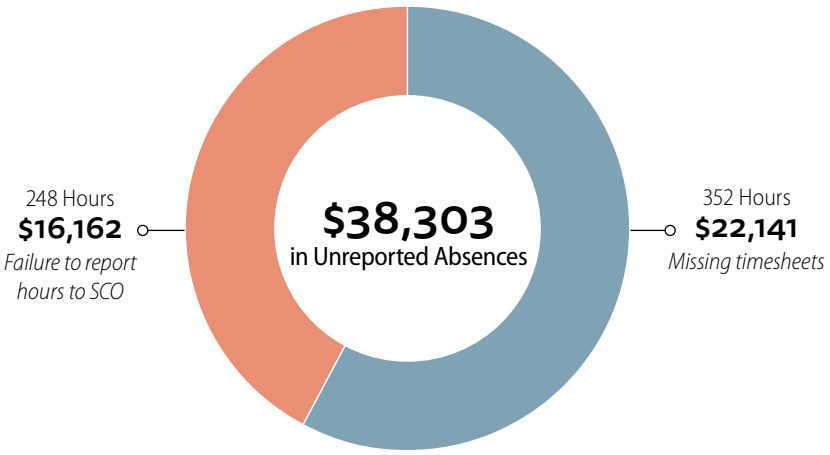
The employee said that other employees who continue to submit their timesheets physically to their supervisors have complained that their timesheets have been lost en route to HR. The supervisor similarly explained that before the psychiatric program began using the electronic system, she discovered that some of the timesheets her employees submitted that she dropped off in the designated location were not delivered to HR. The statements from the parties we interviewed illustrate their lack of understanding of each other's roles, despite each having a responsibility to ensure that the agency retains complete and accurate attendance records. In our opinion, the agency is at higher risk for not fully accounting for personal leave used

by the other approximately 50 employees who are in the same classification. Both HR and supervisory staff need to demonstrate greater accountability for time and leave reporting, consistent with the State's rules.

HR Did Not Report 248 Personal Leave Hours to SCO That the Employee Reported on His Timesheets

Of the timesheets HR was able to provide to us, 10 timesheets included 248 personal leave hours that the employee reported and the supervisor approved. However, HR staff did not enter those leave hours into the SCO leave accounting system, and those unreported leave hours are valued at $16,162, as Figure 3 illustrates. HR staff speculated that the staff may have failed to account for the personal leave due to human error, but it nevertheless resulted in an overpayment to the employee in the form of unreported leave hours.

Figure 3
Total Value of One Employee's Unreported Leave



Source: Analysis of psychiatric program attendance records.

Recommendations

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

- To the extent the law allows, adjust the employee's leave balances to account for all the leave hours that he reported on submitted timesheets or would have reported on his missing timesheets based on other corroborating records.

- Create internal procedures to ensure that HR tracks missing timesheets and notifies the appropriate staff of missing timesheets each month.

- Determine whether other employees in the supervising registered nurse II classification have any missing timesheets for the period from January 2020 through December 2021, and review available attendance records to identify and account for absences. If other employees' timesheets do not align with the data that HR staff entered into the SCO leave accounting system, correct the leave balances to the extent possible.

- Assess HR staffing levels and determine whether the department needs more personnel specialists to accurately record employee leave use, and follow up with supervisors when timesheets are missing.

Agency Response

Correctional Health Care agreed with our recommendations. In January 2023, it reported that it adjusted the employee's leave balances and will initiate accounts receivable to track the leave that HR did not enter into the SCO leave accounting system, and that it requested from the employee copies of his missing timesheets. Correctional Health Care also responded that it has an internal monthly audit process to review and correct leave input errors, providing HR staff with an opportunity to detect missing timesheets, but that the HR staff in the psychiatric program was not following this process. It added that HR staff should have known about this process because the process is detailed in the agency's personnel operations manual. Correctional Health Care reported that HR staff in the psychiatric program will receive ongoing training on payroll and leave accounting, including training on its monthly audit process. Correctional Health Care also said that it is reviewing the timesheets of the other employees in the supervising registered nurse II classification and that it will correct any overpayment errors in accordance with state law. Finally, Correctional Health Care said that it continues to recruit and fill personnel specialist vacancies, and in January 2023, reported that it had filled four of five personnel specialist positions in the HR unit.

DEPARTMENT OF STATE HOSPITALS

A Psychiatric Technician Did Not Account for Nearly 400 Hours of Absences Valued at About $12,500

CASE I2020-1306

Investigative Results

In response to an allegation that a psychiatric technician (technician) was misusing state time by arriving to work late, leaving early, and taking extended lunch breaks, we asked Department of State Hospitals (DSH) to conduct an investigation under our authority and supervision. The investigation confirmed that from October 2018 through August 2021, the technician failed to account for absences totaling nearly 400 hours, resulting in a cost to the State of about $12,500 in lost productive time.

About the Agency

DSH manages five hospitals that provide mental health services to patients who have committed or have been accused of committing crimes linked to their mental illness. Individuals are admitted to a DSH hospital's care through the criminal court system. DSH employs more than 2,800 psychiatric technicians to serve its patient population.

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 resources, including state-compensated time, for personal purposes.

Government Code section 19572 specifies that inexcusable neglect of duty and misuse of state property are causes 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.

The Technician Regularly Arrived to Work Late and Left Work Early for Almost Three Years

As an hourly employee, the technician was expected to work a typical eight-hour shift each day. However, electronic records from the hospital's security checkpoint showed that the technician regularly came to work late and left early, often missing more than an hour of her scheduled work time. When DSH investigators interviewed the technician, she admitted that the allegations were possibly true and that she frequently forgot to sign in and out of work at the designated area. DSH calculated the time that she claimed to have worked but did not actually work to be nearly 400 hours, or approximately $12,500 that she received in overpayment.

The technician in question spent four of her five workdays each week performing the duties of a *team recorder*. Instead of providing direct care to patients, a team recorder's duties include creating patient treatment plans, coordinating treatment team plans, scheduling group therapies, and assigning patients to groups. Team recorders thus have a high degree of autonomy and assist various different units throughout the facility. The technician confirmed with investigators that she typically worked independently because of her team recorder duties and rarely had to check in with anyone on her daily tasks.

The technician's supervisor and the technician's current lead, who help oversee the technician's daily work, told investigators that the technician's attendance was hard to track because of her team recorder duties. The supervisor also told investigators he had no concerns about the technician's attendance but that he would not be aware of any issues unless someone raised the concern to him. One of the technician's former leads told investigators that the technician regularly arrived to work 15 to 45 minutes late and that the technician was hard to track, but he later clarified that he did not know the technician's work schedule while he worked with her.

Further, DSH's investigation indicates that the technician may have failed to account for much more than the nearly 400 hours it calculated: DSH implemented COVID-19 health and safety protocols that moved many employees, including the technician, outside of the main security fence from late April 2020 to mid-February 2021. As a result, the technician did not have to scan a keycard at the security checkpoint for approximately 10 months. Because DSH did not have electronic records for the technician's attendance for these 10 months, it could not verify when she arrived and departed from work during that time period. Given the pattern of abuse that DSH's investigation uncovered, the technician may have failed to account for even more time during the 10 months when DSH did not have these records.

Had the Supervisor Followed DSH Policy, DSH May Have Discovered the Technician's Time Abuse Sooner

Information uncovered by DSH investigators indicates that the supervisor did not follow DSH policy. In conformity with state laws and regulations, DSH policy states that "all supervisors are responsible for the efficient utilization of staff hours worked" and that "monitoring and auditing sign-in logs is required." Although the supervisor told investigators that he was unaware of any attendance abuse, he also said that he knew that the technician failed to consistently sign in and out at work. Nevertheless, the technician told DSH investigators that no one had ever spoken to her about either the sign-in process or her arrival and departure times. If the supervisor had followed internal policy and taken steps to ensure that his subordinate was signing in and out of work as required, DSH may have discovered the problem sooner and thereby prevented a substantial portion of the technician's time abuse.

Recommendations

To remedy the effects of the improper governmental activities this investigation identified and to prevent those activities from recurring, DSH should do the following:

- Take appropriate corrective or disciplinary action against the technician, including, but not limited to, initiating the recovery process for any overpayments made to the technician.

- Take appropriate corrective action against the supervisor and provide the supervisor with relevant training to ensure that he fully understands his supervisorial responsibilities to ensure accurate timekeeping and to take appropriate corrective action.

- Either implement additional internal controls to ensure that the technician's attendance is monitored while she works independently or make changes to the rotation of staff who perform team recorder duties to minimize opportunities for avoiding accountability for time and attendance.

Agency Response

DSH informed us that the technician had separated from DSH in early 2022 and that it is in the process of reviewing relevant documentation to establish an accounts receivable by April 2023. DSH also informed us that the supervisor went on an extended leave of absence from his position in 2022 and does not have a planned return date. It stated that, if the supervisor returns to work, it will determine and take appropriate corrective action, including training the supervisor to ensure that he understands his responsibility to ensure time records are accurate and to take corrective action when necessary.

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Chapter 3

MISUSE OF STATE RESOURCES

State law prohibits state employees from using state resources for personal purposes. This chapter includes examples of investigations in which we substantiated allegations regarding the misuse of a state vehicle, state-owned equipment, and a public boat dock. In each instance, more adequate oversight or supervision could have helped prevent the misuse from occurring.

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DEPARTMENT OF INDUSTRIAL RELATIONS

A Supervisor Misused a State Vehicle for His Personal Commute, Costing the State Nearly $11,000

CASE I2020-0593

Investigative Results

We received an allegation that a supervisor was improperly using a state-owned vehicle (state vehicle) to commute from his personal residence to work, and we requested that the Department of Industrial Relations (DIR) investigate on our behalf. The investigation determined that the supervisor, who oversaw and controlled access to several state vehicles, repeatedly misused one of the state vehicles for his daily commute over a period of three years.

Although the supervisor initially denied to investigators any misuse, he eventually admitted during his interviews that he used the state vehicle to commute on an almost-daily basis. The supervisor told investigators that he only used his personal vehicle to commute when the state vehicle was unavailable, such as when it was receiving regularly scheduled maintenance. DIR provided us with three estimates of the cost of the supervisor's state-vehicle use. After review, we concluded that the supervisor's building access records and mileage logs were most consistent with the supervisor's statements about the frequency of commuting in the state vehicle and most representative of the supervisor's vehicle use. We estimate that the supervisor drove the state vehicle approximately 19,600 miles for personal, non-state-related reasons over three years, incurring nearly $11,000 in vehicle costs at the State's expense.

The supervisor's misuse was also at odds with his assigned duties. The supervisor's primary duty is to oversee multiple staff who spend much of their time performing fieldwork, including executing surveillance, inspecting worksites, and conducting investigations. Consequently, the supervisor oversees a pool of four state vehicles and assigns these state vehicles—except for the one vehicle he reserved for his exclusive use—among his staff for them to perform fieldwork. The supervisor's

About the Agency

DIR is responsible for the administration of multiple industry-related programs throughout California. Among the activities it performs to improve working conditions and advance opportunities for profitable employment in the State, DIR enforces labor standards through onsite inspections at workplaces. To achieve these responsibilities, DIR makes state vehicles available to DIR employees who conduct such inspections and work from more than 20 district offices throughout the State.

Relevant Criteria

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

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

California Code of Regulations, title 2, section 599.802, specifies that misuse of a state-owned vehicle includes use by an employee to commute between work and the employee's home, unless a specified exception applies.

California Code of Regulations, title 2, section 599.803, makes state employees liable to the State for the actual costs attributable to their misuse of a state vehicle, including the operating expenses computed on a mileage basis for the distance traveled.

Government Code section 19990 prohibits state employees from engaging in activities that are clearly inconsistent or incompatible with their duties as state employees. One such incompatible activity is using state equipment for private gain.

Government Code section 19572 specifies as causes for discipline of state employees the misuse of state property, dishonesty, or other failure of good behavior that causes discredit to an appointing authority.

duties also include ensuring that his staff use state vehicles for work purposes only. He noted that he personally reviews his staff's written justifications for state vehicle use to ensure that the justifications are appropriate, typically requires his staff to request access to a state vehicle in writing and in advance, and collects the mileage logs for the state vehicles monthly. Despite demonstrating a clear understanding of the standards dictating appropriate state vehicle use and his responsibility to enforce these standards with his staff, he failed to adhere to the standards himself.

Among the other rules governing legitimate use of state vehicles that the supervisor demonstrated he understood but did not follow were the requirements to obtain specific permission to store a vehicle at one's home and to maintain accurate vehicle logs. Although the supervisor claimed to have submitted most of the necessary additional paperwork to keep the state vehicle at his home overnight, investigators were unable to verify that he did so during the three years he misused the state vehicle. The supervisor also told investigators that he did not keep accurate mileage logs and admitted that he would often backfill the logs at the end of the month without differentiating between legitimate use and his commute miles. The supervisor eventually explained his misuse by claiming that a former manager told him when he interviewed for his current position that he could use a state vehicle to commute once he was hired. However, investigators could not reach the former manager, who had previously retired, and were unable to find any documentary evidence to verify this claim.

In addition, the supervisor did not appear credible during his interviews. The supervisor contradicted himself when speaking with investigators, repeatedly admitting to using the state vehicle for his commute, while at the same time declaring that he did not use a state vehicle for personal reasons because he knew that doing so would violate DIR policy. He also told investigators that he was not aware of any internal controls that DIR had to measure legitimate use of state vehicles and that DIR instead operated based on the "honor system." Finally, when investigators asked the supervisor whether he monopolized use of the state vehicle to the detriment of his staff's fieldwork duties, the supervisor denied that he had done so and claimed that he would have allowed his staff to use the state vehicle during the workday if no other vehicles were available. However, multiple witnesses said that the supervisor did not let them use the vehicle for work purposes, and vehicle logs showed that the supervisor was the only person to ever use the state vehicle during the three-year period.

Recommendations

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

- In accordance with applicable law and regulations, calculate the cost of the vehicle misuse and pursue reimbursement from the supervisor.

- Take appropriate corrective or disciplinary action against the supervisor for his misuse of the vehicle.

Agency Response

DIR reported in December 2022 that it recognizes the seriousness of our report and has already taken steps to address the reported issues. First, it reported that it served the supervisor with a counseling memorandum in October 2022. DIR also told us that it issued an invoice to the supervisor in December 2022 for $4,200, representing the most conservative of the three estimates, for the supervisor's use of the state vehicle. In addition, DIR told us that it issued a memorandum to all of its employees clarifying the rules on commuting in a state vehicle. Finally, DIR notified us that it is working with the Department of General Services to install GPS location tracking systems in its vehicle fleet to prevent future vehicle misuse.

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CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

An Employee Misused State Resources

CASE I2020-1845

Investigative Results

We received an allegation that a water and sewage plant supervisor (employee) with the California Department of Corrections and Rehabilitation (CDCR) misused state property for his private business and to regularly shop online. After we reviewed the allegations, we requested CDCR's assistance to investigate due to the secure nature of CDCR facilities. CDCR told us that it had already begun an inquiry into the employee's alleged misuse related to his private business. However, we requested that CDCR take additional investigative steps related to the alleged misuse and investigate the allegations of abuse of state time as well. CDCR reported its investigative findings to us in early February 2023.

About the Agency

CDCR has a mission to facilitate the successful reintegration of individuals in its care back to their communities. It is responsible for providing education, treatment, rehabilitative, and restorative justice programs in a safe and humane environment. It employs 85 water and sewage plant supervisors who contribute to ensuring its 34 Adult Institutions have functional water and sewage systems.

Relevant Criteria

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

Government Code section 19572 specifies as causes for discipline of state employees the misuse of state property, dishonesty, or other failure of good behavior that cause discredit to an appointing authority.

Government Code section 19990 prohibits state employees from engaging in activities that conflict with their state duties, including using state time, facilities, equipment, or supplies for private gain and failing to devote their full time, attention, and efforts to their state employment during their hours of duty as state employees.

The Employee Regularly Used His State Computer and State Time for Personal Purposes

Our office determined that during a sampled four-month period, the employee visited more than 3,600 webpages unrelated to his duties on 52 separate workdays, averaging about 70 webpage visits per day on those workdays. Approximately 55 percent of the webpages he visited were associated with online shopping sites, such as Craigslist, Wayfair, eBay, and Costco. Specifically, the employee regularly visited online classified listings for comic books and shopped on other websites for designer clothing and a variety of other products. When interviewed, the employee admitted that he accessed websites unrelated to his duties but that, other than YouTube and Yahoo News, he could not remember what specific sites he visited. Although we cannot quantify the exact amount of time the employee spent accessing websites unrelated to his duties, records indicate that he used state resources for periods of time that exceeded minimal and incidental use.

The Employee Misused State-Owned Equipment

The investigation also revealed that in 2020, the employee misused a state-owned backflow testing kit (backflow kit), which is described in the text box, for personal purposes. The employee admitted that he had removed the backflow kit from his work site without the permission or knowledge of his manager and had used it to take a certification exam (exam), which he needed for his private business. He then stored the backflow kit in his personal vehicle or at his home for several weeks, from at least mid-November 2020 through late December 2020. Shortly thereafter, he returned the backflow kit when his manager called him to inquire about its location.

Backflow Kit Description

A backflow kit is used to assess the functionality of a backflow prevention valve with the goal of protecting drinking water from contamination.

Source: State Water Resources Control Board.

Although the employee claimed he only used the backflow kit to take the exam, CDCR investigators uncovered evidence that the employee used it more extensively for his private business. Upon confiscating the backflow kit, they found documents associated with the employee's private business inside the kit's carrying case, including two documents dated November 16, 2020, that related to testing of a backflow prevention assembly for a private client. The employee confirmed that these documents were all associated with his private business, and he could not provide a credible explanation for the documents' presence in the carrying case. Further, our office confirmed that the employee took certification exams in July 2020 and June 2021, which were not during the confirmed time period in late 2020 when he had the backflow kit in his personal possession, leading us to conclude the employee was dishonest about the extent of his misuse.

Finally, CDCR investigators found evidence of further misconduct, including corroboration that the employee slept during work hours and regularly arrived late to work. CDCR has informed us that it is in the process of pursuing appropriate disciplinary action regarding its findings.

Recommendations

To remedy the effects of the improper governmental activities that this investigation identified, determine whether additional improper acts occurred, and prevent those activities from recurring, CDCR should take the following actions:

- Proceed with appropriate disciplinary action against the employee for his misuse of state resources and his dishonesty, including gathering additional evidence as necessary to support the action.

Agency Response

CDCR reported in March 2023 that it would provide a detailed response in its 60-day corrective action plan.

DEPARTMENT OF PARKS AND RECREATION

A Supervisor Used a Boat Dock for Personal Purposes, and the Department Did Not Report Certain Taxable Income for the Supervisor

CASE I2021-0603

Results in Brief

A supervisor at the Department of Parks and Recreation (State Parks) used a public boat dock in a state park to store his personal boat for more than six years. Due to the supervisor's misuse of the dock, State Parks lost up to $36,000 in potential revenue from members of the public who would have had to pay to use the dock. In addition, State Parks failed to report approximately $67,000 in housing benefits as a part of the supervisor's taxable income that resulted from his living in state-owned housing that was neither where he performed his job duties nor was a requirement for his position.

Background

State Parks is headquartered in Sacramento and organized into multiple geographic districts covering the State. The districts consist of parks, recreation areas, and other facilities that are available for the public's use. Some of the locations that State Parks operates contain amenities for public use, like boat launches or campgrounds.

State Parks provides housing to employees in and around certain state parks for various reasons, such as ensuring public safety or maintaining facilities after hours. State agencies are not required to charge employees the fair market value of a property as the monthly rent for state-provided housing. However, if a department charges an employee less than fair market value for rent, the difference between fair market value and rent should be included in the employee's income as a *housing benefit*.

About the Agency

State Parks helps preserve the State's biological diversity, protects valued natural and cultural resources, and creates opportunities for outdoor recreation. As a part of accomplishing this mission, State Parks operates more than 270 park units, which include beaches, recreation areas, museums, and natural reserves. State Parks additionally manages more than 400 properties statewide in which its employees live.

Relevant Criteria

Government Code section 8314 prohibits state employees from using public resources, including state-owned facilities, for personal purposes that exceed minimal and incidental use.

Government Code section 19572 identifies misuse of state property as a cause for employee discipline.

Government Code section 19822 establishes that department directors are responsible for compliance with all rules associated with lodging furnished by the State and that the CalHR director shall provide instruction for the administration of all lodging furnished by the State to its employees.

CalHR's *Human Resources Manual* section 2301 includes rules departments must follow related to state-owned housing, including reporting requirements for certain types of taxable benefits.

United States Code, title 26, section 119, provides that an employer shall exclude the value of lodging it furnishes to an employee from the employee's gross income if it is provided on the business premises of the employer, provided for the convenience of the employer, and accepting the lodging is a condition of employment.

After we received a complaint about a supervisor's using a public dock to store his personal boat, we initiated an investigation. As a part of the investigation, we reviewed documentation related to the supervisor's state housing and subsequently found that State Parks had not reported taxable housing benefits for the supervisor for several years.

A Supervisor Occupied a Boat Dock Intended for Public Use for More Than Six Years

In 2015 a State Parks supervisor moved out of state housing in a state park and into state housing in another location approximately 30 miles away. However, he continued to keep his personal boat at a public dock in the state park that he no longer lived in for approximately six and a half years. Members of the public can use the dock for a daily fee, but the supervisor did not pay to keep his boat at the dock. Although there are multiple boat slips at this dock, the supervisor's use prevented the public from using this space for an extended period of time. In addition, we were told that the boat was the subject of public complaints.

The supervisor did not have written permission to store his boat at the public dock. The supervisor explained to us that he had received verbal permission to store his boat at the public dock from his former supervisor before 2010 and that he never needed to renew this permission with the superintendent. State Parks' policy allows employees to store private vessels, such as boats, on State Parks' property if the district superintendent gives *written* permission for employees to do so. However, State Parks was unable to locate any written authorizations for the supervisor to have stored his boat at the public dock. The current district superintendent, who has been in her position since 2018, did not grant permission for the supervisor to store his boat, but she stated that she assumed a prior district superintendent had provided approval.

Although the supervisor's duties after his move in 2015 involved the state park to some extent, he was neither required to live on-site nor required to store his personal boat at the state park. In fact, he told us that he had not used his boat after he moved out of the state park. When asked why he kept his boat at the state park following his move, the supervisor could not provide a specific reason. He said that "he just did." When questioned about her knowledge of the supervisor's boat, the district superintendent reported that she did not know why the supervisor was able to store his boat at the state park after he no longer lived there.

From our review of dock space in other locations near the state park, we calculated that it could have cost the supervisor up to $29,500 to have stored his boat for six and a half years at a dock outside of the state park. Additionally, because the supervisor stored his boat at a dock space intended for use by the public who visit the state park, State Parks lost potential revenue from members of the public who may have paid to use the space. Had members of the public paid the daily use fee for that space, State Parks could have collected up to $36,000 between 2015 and 2022.

After we informed State Parks of our investigation, State Parks told us that it had already communicated with the supervisor and that the supervisor had agreed to move the boat. The supervisor removed the boat from the state park in early 2022.

State Parks Did Not Include Housing Benefits in the Supervisor's Taxable Income for Multiple Years

As a part of our investigation of the supervisor's use of public resources, we also reviewed state housing documentation related to the state-owned housing that the supervisor occupied. Our review determined that State Parks did not include housing benefits in the supervisor's taxable income for four years because it relied on outdated documentation.

State Parks Did Not Include Approximately $67,000 in Housing Benefits in the Supervisor's Income Over Four Years

State law requires state departments to comply with all rules associated with state housing. The California Department of Human Resources (CalHR) state-owned housing policy requires state departments to report the difference between a property's fair market value and the actual monthly rent an employee pays as a part of an employee's income. This is referred to as a *housing benefit*. In alignment with federal law, CalHR's policy identifies specific and limited circumstances in which a department is not required to report housing benefits in an employee's income. Specifically, if an employee's housing meets the three-part test described in the text box, a department is not required to include housing benefits as part of the employee's taxable income.

The Three-Part Test to Exclude Housing Benefits From Gross Income

State departments shall exclude housing benefits from an employee's income if those benefits meet all three of the following conditions:

1. The housing is provided on the business premises of the employer.
2. The housing is provided for the convenience of the employer.
3. The employee is required to accept the housing as a condition of employment.

Source: United States Code, title 26, section 119 and CalHR's state-owned housing policy.

CalHR's policy provides some important clarifications for the three-part test. Specifically, the policy explains that meeting the first test—that the housing is on business premises—means that the housing must be at the location where the employee performs a significant portion of his or her duties. The policy additionally clarifies that in order to meet the third test—that residing in the housing is a condition of employment—an employee must live in the housing because the housing is indispensable to the proper discharge of his or her duties. Essentially, the third test requires the department to show that the employee could not perform his or her duties unless the employee lived in the housing.

Our investigation identified that State Parks did not include any housing benefits in the supervisor's income between 2018 and 2021, even though the supervisor did not meet two parts of the three-part test from CalHR's policy during those years. First, the supervisor was not required to accept the housing as a condition of his employment. The supervisor's duty statement covering 2018 through mid-2020 demonstrated that state housing was not required for his position, meaning that the supervisor's housing was not necessary for him to perform his job duties. Second, after the supervisor was appointed to a new position in 2020, his updated duty statement specified that his new reporting location was approximately 60 miles from

his assigned housing and that he was responsible for three parks that were between 30 and 60 miles from his housing. Thus, the supervisor's housing was not located where he performed a significant portion of his duties.

Therefore, because the supervisor did not meet all conditions of the three-part test between 2018 and 2021, State Parks should have included approximately $67,000 in housing benefits in the supervisor's income. Because State Parks failed to do so, federal tax authorities were likely unaware of the potential tax liability associated with the housing benefits that should have been included in the supervisor's income.

State Parks Relied on Outdated Information When It Failed to Report the Supervisor's Housing Benefits in His Taxable Income

State Parks believes that the supervisor did meet the three-part test to exclude housing benefits from his income, in part because the duty statement on file at the housing division at State Parks' headquarters showed that the supervisor was required to have housing as a condition of employment. However, this duty statement is both unsigned and outdated. At the latest, the duty statement that the housing division kept on file could have been submitted in late 2016 or early 2017. As Table 1 shows, the supervisor signed a subsequent duty statement in 2017 that did not require housing as a condition of employment and signed a duty statement in 2020 that identified the supervisor's reporting location as 60 miles from his state housing.

Table 1
The Supervisor's Duty Statements Demonstrate That He Did Not Meet the Three-Part Test To Exclude Housing Benefits From His Income

	UNDATED DUTY STATEMENT ON FILE WITH HOUSING DIVISION	2017 SIGNED DUTY STATEMENT	2020 SIGNED DUTY STATEMENT
Housing required?	Yes	No	Yes
Distance from assigned housing to reporting location.	No identified reporting location	35 miles	60 miles

Source: State Parks' duty statements and housing records.

When we asked State Parks about the discrepancies between the supervisor's signed duty statements in 2017 and 2020 and earlier the duty statement that the housing division had on file, State Parks was not certain why these differences existed.

However, information from the supervisor, the superintendent, and an executive at the district strongly suggests that the supervisor was not required to live on-site to perform his duties. The supervisor stated that he was not required to live in his assigned state housing location in order to perform his job duties. The district superintendent reported that the supervisor does not have assigned duties at his housing location. Finally, an executive who oversees the district where the supervisor

works noted that, although the supervisor has assisted with tasks in the vicinity of his assigned housing, the supervisor does not have assigned duties in that location. Thus, the supervisor neither required the housing to perform his job duties nor performed a significant portion of his duties near his housing location.

Our review of housing documents in relation to this supervisor identified another issue that suggests the department does not exercise due diligence related to housing benefits decisions. We found that the district superintendent had housing benefits that were excluded from her taxable income for three years and that likely met the three-part test to receive tax-free housing benefits. However, her housing paperwork on file lacked the reasons why her housing benefits should be excluded from her taxable income. If State Parks does not ensure that its housing division at headquarters has accurate and complete information when determining appropriate tax reporting for housing benefits, it risks failing to properly include housing benefits in employees' incomes. This risk has significant financial implications because State Parks manages more than 400 properties statewide that house employees; these properties could have produced as much as $18.2 million in housing benefits that could have been included in employees' incomes between 2018 and 2021.

Recommendations

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

- Take appropriate corrective or disciplinary action against the supervisor for misusing the boat dock for personal purposes.
- Correct the supervisor's reportable housing benefits to comply with state policy and to ensure compliance with federal tax law.
- Require that districts provide the housing division with complete, accurate, and updated information regarding employees' duties, positions, and locations so that State Parks can comply with state policy and federal law related to reporting housing benefits.
- Review the associated documentation for all employees in the supervisor's district who have housing benefits that are excluded from their incomes to determine whether the unreported housing benefits comply with state policy, and subsequently take actions, including working with CalHR and the State Controller's Office if necessary, to correct any deficiencies it identifies in its review.

Agency Response

State Parks reported in January 2023 that it intends to undertake training and corrective or disciplinary action against the supervisor to ensure that inappropriate personal use of public resources does not occur in the future and that it had taken

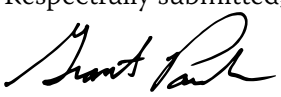
action once it became aware of the supervisor's personal use of the boat dock. State Parks also said that it will incorporate into its update of its state-owned housing policy our recommendations that districts provide updated information to the housing division and review housing documentation in the supervisor's district.

Regarding our recommendation to correct the supervisor's reportable housing benefits, State Parks asserted that it believes the supervisor meets the three-part test to have housing benefits excluded from his income. However, we do not believe that State Parks' position is supported by the evidence that we gathered during our investigation. CalHR's policy governing state-owned housing identifies the three conditions an employee's housing must meet in order to be excluded from the employee's income: the housing is provided on the business premises of the employer, the housing is provided for the convenience of the employer, and the employee is required to accept the housing as a condition of employment. In its response, State Parks identified that the paperwork it has on file, including the supervisor's most recent duty statement, demonstrates that the supervisor accepted the housing as a condition of employment. Although we agree that the supervisor's most current duty statement specifies that housing is required for his position, we note that CalHR's policy also clarifies that requiring an employee to live on premises is insufficient; rather, the department must also demonstrate and document that the employee is required to be available for duty at all times or that the employee could not perform the required services unless furnished with on-site housing. As we note in Table 1, the supervisor's reporting location was 60 miles from his assigned housing.

Further, the district superintendent reported that the supervisor had no assigned required duties at his housing location. A State Parks executive told us that the supervisor had only assisted with tasks in the vicinity of his assigned housing and did not have assigned tasks there. But most compelling of all, the supervisor told us that he was not required to live in his current housing location in order to perform his job duties.

Despite its assertion regarding the supervisor's housing benefits, State Parks nevertheless stated that it intends to take the following actions to address our recommendation: ensure that the supervisor's duty statement reflects his position's expectations and requirements, review expectations with the district superintendent and supervisor, and provide training to district leadership and administrative staff on records management and the requirements for housing forms and duty statements.

Respectfully submitted,



GRANT PARKS
California State Auditor

May 18, 2023

Appendix

CORRECTIVE ACTIONS TAKEN IN RESPONSE TO INVESTIGATIONS

Under the Whistleblower Act, the 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. Similar to public 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 2022 through December 2022. 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 2022. 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 From July 1993 Through December 2022

TYPE OF CORRECTIVE ACTION	TOTALS
Convictions	12
Demotions	28
Job terminations	104
Resignations or retirements while under investigation	48*
Pay reductions	64
Reprimands	372
Suspensions without pay	38
Total	**666**

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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DEPARTMENT/AGENCY	CASE NUMBER	ALLEGATION	PAGE NUMBER
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