

OFFICE OF AUDITS & ADVISORY SERVICES



PUBLIC EMPLOYEES' PENSION REFORM ACT (PEPRA) COMPLIANCE AUDIT

FINAL REPORT

Chief of Audits: Juan R. Perez
Audit Manager: Laura R. Flores, CIA, CFE, CGAP
Auditor II: Michelle R. Ludwick, CGAP

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County of San Diego

TRACY M. SANDOVAL
DEPUTY CHIEF ADMINISTRATIVE OFFICER/
AUDITOR AND CONTROLLER

AUDITOR AND CONTROLLER
OFFICE OF AUDITS & ADVISORY SERVICES
5530 OVERLAND AVENUE, SUITE 330, SAN DIEGO, CA 92123-1261
Phone: (858) 495-5991

JUAN R. PEREZ
CHIEF OF AUDITS

March 30, 2015

TO: Bonnie Dumanis, District Attorney
District Attorney's Office

FROM: Juan R. Perez
Chief of Audits

FINAL REPORT: CALIFORNIA PUBLIC EMPLOYEES' PENSION REFORM ACT COMPLIANCE

Enclosed is our report on the California Public Employees' Pension Reform Act Compliance. We have reviewed your response to our recommendations and have attached them to the audit report. The actions taken, in general, are responsive to the recommendations in the report.

Thank you for the courteousness and cooperation extended to the Office of Audits & Advisory Services during the course of the audit.

If you have any questions, please contact me at (858) 495-5661.

JUAN R. PEREZ
Chief of Audits

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Enclosure

c: Ronald Lane, Deputy Chief Administrative Officer, Public Safety Group
Tracy M. Sandoval, Deputy Chief Administrative Officer/Auditor and Controller
Susan Brazeau, Director, Department of Human Resources
Eunice Ramos, Group Finance Director, Public Safety Group
Luis Mallett, District Attorney Legal Operations Administrator, District Attorney's Office

INTRODUCTION

Audit Objective The Office of Audits & Advisory Services (OAAS) completed an audit of the County of San Diego's (County) compliance with the new California Public Employees' Reform Act (PEPRA) provisions effective January 1, 2013. The objective of the audit was to determine compliance with new reporting requirements established by PEPRA.

Background Under PEPRA,¹ public employees or elected officials forfeit certain accrued rights and benefits in a public retirement system if they are convicted of a felony in connection with their official duties or in obtaining certain benefits. Public employees are state, county, city, school district, and other public agency employees. A public employee convicted of a qualifying felony offense forfeits all retirement benefits earned or accrued from the earliest date of commission of the felony through the date of conviction.

As the prosecuting agency, PEPRA requires the District Attorney's (DA) Office to notify the employing agency about the felony conviction within 60 days of the conviction. As a public employer, the County has 90 days of the conviction to notify the San Diego County Retirement Association (SDCERA), the public retirement system for the County. The County Department of Human Resources (DHR) in coordination with County Counsel is in the process of formalizing a policy to ensure compliance with PEPRA. This policy advises that when County departments become aware an employee has been convicted of a felony, the department should immediately notify DHR.

Audit Scope & Limitations The scope of the audit focused on evaluating whether the County, specifically the DA Office and DHR, has established adequate processes to be in compliance with PEPRA reporting requirements specific to Government Code Sections 7522.72 and 7522.74. The period under review included January 1, 2013 to December 31, 2014.

This audit was conducted in conformance with the International Standards for the Professional Practice of Internal Auditing prescribed by the Institute of Internal Auditors as required by California Government Code, Section 1236.

Methodology OAAS performed the audit using the following methods:

- Reviewed California Government Code, Chapter 21, Public Pension and Retirement Plan, Section 7500-7522.74.
- Interviewed DA, DHR, County Counsel, and SDCERA staff regarding PEPRA requirements.

¹ Refer to the Public Employee's Pension Reform Act of 2013 and Government Code §7522.72 and §7522.74. Government Code §7522.72 applies to public employees hired on or before January 1, 2013. Government Code §7522.74 applies to public employees hired on or after January 1, 2013.

- Established whether the DA's Office has developed procedures to:
 - Identify public employees convicted of felonies.
 - Determine whether the felony meets criteria set forth in PEPRA.
 - Report public employee felony convictions to public employers in a timely manner.
- Identified DHR procedures related to compliance with PEPRA.
- Obtained and reviewed documentation of County employees convicted of a qualifying felony to determine whether notification of employee convictions was processed in accordance with PEPRA provisions.

AUDIT RESULTS

Summary

Within the scope of the audit, the County is generally in compliance with the new PEPRA reporting requirements. However, OAAS found that while the County notified SDCERA of qualifying felony convictions, the notification was not processed within the required timeframe. Specifically, the following exception was noted:

Finding I:

The District Attorney's Office Should Improve Its Process for Notifying Employers of Public Employee Felony Convictions

The Special Operations Division (Special Ops) within the DA is responsible for monitoring and maintaining documentation related to public employees' conviction of a felony offense that fits within the PEPRA provisions. The prosecutor attorney is responsible for notification to the public employer who employed the public employee at the time of the commission of the felony.

As of May 2014, there were five public employees convicted of a qualifying felony offense under PEPRA provisions, specifically:

**Public Employees Convicted of Qualifying Felonies
(From January 2013 to May 2014)**

Public Employer	Date of Felony Conviction
California Department of Transportation	11/19/13
California State Donovan Prison	4/15/14
County of San Diego, Department of Child Support Services	3/19/13
County of San Diego, Recorder's Office	12/9/13
County of San Diego - Retiree	8/5/13

OAAS determined that the prosecutor attorney did not notify the public employers of these felony convictions. Further, the Special Ops Division was not aware of the conviction of the County retiree.

OAAS also found that the DA's Office did not have formalized policies and procedures to identify, report, and track public employee's felony convictions. In January 2014, the Special Ops Division issued a notice to inform staff about PEPRA requirements. They also provided a draft notification form to assist the prosecutor attorney. The notice

inaccurately stated that the DA's Office has 90 days to notify public employers of qualifying felony convictions, instead of 60 days as required by law.

According to Government Code, Sections 7522.72 and 7522.74:

- The prosecuting agency shall notify the public employer at the time of the commission of the felony within 60 days of the date of the conviction and the date of the first known commission of the felony.
- The public employer shall notify the public retirement system in which the public employee is a member of the employee's conviction within 90 days of the conviction.
- The public retirement system may assess the public employer a reasonable amount to reimburse the cost to audit, adjust, or correct, if it determines that the public employer failed to report a public employee's felony conviction within 90 days.

Failure to report public employees' qualifying felony convictions to public employers results in non-compliance with the Government Code Section 7522.72 and 7522.74.

Since notification of the two felony convictions of County employees was not processed by the prosecuting agency:

- The County was unable to fulfill its statutory obligations to report the employees' felony convictions to SDCERA within 90 days of the employee's conviction.
- There is an increased risk that DHR and County Counsel are unable to file for reimbursement of restitution at the time that SDCERA refunds the employee's contributions.

Recommendation:

To ensure timely notification of public employees' felony convictions, the DA's Office should formalize and further develop policies and procedures to identify, report, and track employees convicted of a qualifying felony offense. Specifically:

1. Ensure policies and related forms reflect correct information in accordance with the law.
2. Ensure that the policy clearly addresses staff's roles and responsibilities.

Office of Audits & Advisory Services

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DEPARTMENT'S RESPONSE



OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

INTRA-DEPARTMENTAL CORRESPONDENCE

March 19, 2015

TO: Juan R. Perez
Chief of Audits

FROM: Fiona Khalil
Assistant Chief
Special Operations Division
District Attorney's Office

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OFFICE OF AUDITS &
ADVISORY SERVICES

DEPARTMENT RESPONSE TO AUDIT RECOMMENDATIONS: CALIFORNIA PUBLIC EMPLOYEES' PENSION REFORM ACT COMPLIANCE

FINDING 1: The District Attorney's Office Should Improve Its Process for Notifying Employers of Public Employee Felony Convictions

OAAS Recommendation: To ensure timely notification of public employees' felony convictions, the DA's Office should formalize and further develop policies and procedures to identify, report, and track employees convicted of a qualifying felony offense. Specifically:

1. Ensure policies and related forms reflect correct information in accordance with the law.
2. Ensure that the policy clearly addresses staff's roles and responsibilities

Action Plan: Thank you for the opportunity to respond to the audit conducted on compliance with the California Public Employees' Pension Reform Act by the District Attorney's Office. Your staff has been extremely helpful in identifying procedures that will ensure future uniform and efficient compliance.

As you are aware California Government Code section 7522.72(e)(1) states "the prosecuting agency shall notify the public employer who employed the public employee at the time of the commission of the felony within 60 days of the felony conviction" and provide specified information about the conviction and underlying charge. After consultation with your staff during the audit period it was agreed that one entity within the county structure will be responsible for receiving information about convictions of county employees. Instead of sending notification to individual departments for whom the convicted employee worked, the Department of Human Resources of the County will accept notification. This will provide for a uniform procedure and make the process more streamlined. Our office is very appreciative of your staff's willingness to assist our office in formulating these procedures and agree that one central location will be the recipient of the notification.

During the audit period in 2014 our office instituted Special Directive – 37, as part of our Legal Policies Guide. Our Legal Policies Guide provides direction to our attorneys and staff about policies and procedures that must be complied with in our office. Special Directive- 37 is a comprehensive review of the requirements of Government Code section

7522.72. The Directive provides information about the background and purpose of the statute. A detailed analysis of the elements which trigger application of the section is presented in Special Directive – 37. Further, the Directive describes what pension benefits are subject to forfeiture in the event of a felony conviction by a government employee. Of significance to your audit findings, is a section of the policy that outlines a prosecutor's duty to notify. The policy emphasizes that a prosecutor must report within 60 days of the conviction. The Special Directive sets forth procedures for notification and provides a sample form upon which to make the notification. Further, our prosecutors are required to send a copy of the notification to our Special Operations Division to allow tracking of notifications.

Planned Completion Date: The actions have already been completed. Our office implemented these actions during the audit period and prior to the final draft report being issued.

Contact Information for Implementation: DDA Fiona Khalil, (619) 531-4051

Thank you for examining our procedures and working with other county departments to assist our office in formulating a plan to ensure compliance with this important statutory regulation. Ms. Laura Flores and Ms. Michelle Ludwick provided excellent ideas and worked collaboratively with our office to find a feasible plan that can be followed successfully by our staff in the future. Our office welcomes the opportunity to work again with your staff in the future.



Fiona Khalil
Assistant Chief
Special Operations Division