

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FILE
248



FROM: Executive Office

SUBMITTAL DATE:
July 3, 2013

SUBJECT: Response to the 2012-13 Grand Jury Report: Riverside County Human Resources Department – Reasonable Accommodation Non-Compliance

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve with or without modifications, the attached response to the Grand Jury's recommendations regarding Riverside County Human Resources Department – Reasonable Accommodation Non-Compliance.
- 2) Direct the Clerk of the Board to immediately forward the Board's finalized response to the Grand Jury, to the Presiding Judge, and the County Clerk-Recorder (for mandatory filing with the State).

BACKGROUND: On June 14, 2013, the Board directed staff to prepare a draft of the Board's response to the Grand Jury's report regarding Riverside County Human Resources Department – Reasonable Accommodation Non-Compliance.

Section 933 (c) of the Penal Code requires that the Board of Supervisors comment on the Grand Jury's recommendations pertaining to the matters under the control of the Board, and that a response be provided to the Presiding Judge of the Superior Court within 90 days.

90dayresponse11HRreasonable accommodationsNC07.13

FINANCIAL DATA	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:
	Current F.Y. Net County Cost:	\$	Budget Adjustment:
	Annual Net County Cost:	\$	For Fiscal Year:
SOURCE OF FUNDS:			Positions To Be Deleted Per A-30
			Requires 4/5 Vote

C.E.O. RECOMMENDATION:

APPROVE

BY:

George A. Johnson

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Benoit and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
 Nays: None
 Absent: None
 Date: July 16, 2013
 xc: EO, Grand Jury, Presiding Judge, HR, Recorder

Kecia Harper-Ihem
Clerk of the Board

By:
Deputy

Prev. Agn. Ref.: 3.9 – 05/14/13

District:

Agenda Number:

3-10

Policy X

Policy X

Consent

Consent

Dept Recomm:

Per Exec. Ofc:

2012-2013 Grand Jury Report
Riverside County Human Resources Department
Reasonable Accommodation Non-Compliance

FINDINGS:

1. *Currently HR engages in the interactive process and determines that an employee, identified as needing reasonable accommodations, has work restrictions. If these restrictions cannot be reasonably accommodated within his/her current position or by being reassigned within his/her department, HR will search for other vacancies throughout the County for positions for which the Accommodation Candidate Work Restrictions List (AR/List) candidate is qualified*

*HR's current procedures are **not in compliance** with federal statutes in that they do not provide reasonable accommodation for a disabled employee when accommodations cannot be accomplished within the disabled employee's current position or department. The current practice is that HR places the disabled employee on an AR/List. The employee is then referred to the hiring department and interviewed, thus "competing", for vacant positions in other departments. The employee remains on this list until placed in a vacant position, or until a specified time period has elapsed, generally 90-days, depending on whether or not he/she is vested in a retirement plan.*

Any type of meeting between an AR/List individual and a hiring official, whether cloaked as a "skills verification meeting" or a similar meeting constitutes an interview; an interview constitutes competition, thus is a violation of the ADA.

The EEOC Enforcement Guidance document was originated by the ADA Division, Office of Legal Counsel Number 915.002 and examines reassignment as a form of reasonable accommodation and specifies who is entitled to reassignment and the extent to which an employer is required to search for a vacant position.

Under the subsection entitled "Types of Reasonable Accommodation as Related to Job Performance, discussion item Number 29 asks:

Does reassignment mean that the employee is permitted to compete for a vacant position?

No. Reassignment means that the employee gets the vacant position if she/he is qualified for it. Otherwise, reassignment would be of little value and would not be implemented as Congress intended.

References

42 U.S.C. § 12111(9)(b) 29 C.F.R. pt. 1630 app. §1630.2(c)(1997). See Senate Report, supra note 6, at 31 ("If an employee, because of disability, can no longer perform the essential functions of the job that he or she has held, a transfer to another vacant job for which the person is qualified may prevent the employee

from being out of work and the employer from losing a valuable worker.”) See Wood v. County of Alameda, 5 AD Cas. (BNA) 173, 184 (N.D. Cal. 1995) (when employee can no longer perform job because of disability, she was entitled to reassignment to a vacant position, not simply an opportunity to “compete”); cf. Aka v. Washington Hosp. Ctr., 156 F. 3d 1284, 1304-05, 8 AD Cas. (BNA) 1093, 1110-11 (D.C. Cir. 1998) (the court, in interpreting a collective bargaining agreement provision authorizing reassignment of disabled employees, states that “[a]n employee who is allowed to compete for job precisely like any other applicant has not been “reassigned”); Unites States v. Denver, 943 F. Supp. 1304, 1310-11, 6AD Cas. (BNA) 245, 250 (D. Colo. 1996) (the ADA requires employers to move beyond traditional analysis and consider reassignment as a method of enabling a disabled worker to do a job).

The Grand Jury investigation revealed that AR/List individuals are currently being referred by HR personnel for interview by department personnel, contrary to EEOC guidance.

HR refers to an AR/List employee interview as a “skills verification interview” and is relying on the interviewing official to make the final qualification determinations.

RESPONSE:

Respondent disagrees partially with the finding.

In compliance with the federal Americans with Disabilities Act (ADA) and California’s Fair Employment and Housing Act (FEHA), if an employee who is a qualified individual with a disability is limited in performing the essential functions of his/her position, it is true that the Human Resources (HR) Department conducts the Interactive Process to determine if a reasonable accommodation can be made. This process typically involves the following elements:

- 1. Conducting a formal job analysis (in collaboration with the department) to determine the essential functions of the job;**
- 2. Meeting with the employee to discuss his/her functional limitations and gain insight as to possible ways he/she can be reasonably accommodated;**
- 3. Exploring various accommodation options with the employee and the department and assessing the effectiveness of these options; and**
- 4. Selecting and implementing the reasonable accommodation and memorializing the agreement in writing.**

If the employee has work restrictions that cannot be reasonably accommodated within the employee’s current position using the above process, it is true that, in compliance with ADA and FEHA, HR then searches for other County vacancies in an effort to reassign the employee to an alternative position for which the employee qualifies.

The Human Resources Department disagrees that reasonable accommodation is not provided for disabled employees when an accommodation cannot be achieved within that employee’s current position or department. As part of the good faith Interactive Process (IP), it is HR’s practice to search for other positions in which the employee’s work restrictions may be able

to be reasonably accommodated. However, there are two important conditions that must be met in this situation prior to actual reassignment: 1) the employee must meet the position's qualifications, and 2) the new position must be able to reasonably accommodate the employee's work restrictions.

As one of the first steps in assessing the employee's qualifications, HR reviews the employee's resume and determines whether the employee meets the position-specific required qualifications for the job on paper. This is not a competitive assessment of the employee's skills as compared to other candidates but a review of whether the employee meets the position's specific requirements. Once this is completed, Human Resources refers the employee for a skills verification meeting with the hiring authority/Subject Matter Expert (SME) in the department, for further assessment of the employee's job-specific qualifications. At this point in time, the employee on the AR List is the only person who is being referred for this assessment meeting; thus, there is clearly no competition involved.

The purpose of the skills verification meeting is to allow the hiring authority/Subject Matter Expert to more specifically assess the employee's qualifications in order to determine whether the employee possesses the necessary knowledge and skills for that particular position. In many cases, there may be qualifications and/or specifically required expertise that go beyond the qualification guidelines as listed in the class specification. In such instances, HR has historically relied upon the use of SMEs to provide input into qualification determinations, and continues to do so through the skills verification meeting. An example of this type of situation is provided below:

The Registered Nurse III-RCRMC classification specification contains the following Recruiting Guidelines:

Education: Successful completion of the coursework required to obtain a valid license to practice as a Registered Nurse in the State of California. A Bachelor's degree from an accredited college or university in Nursing or National Certification in a nursing specialty may be considered in lieu of one year of experience. A Master's degree in Nursing may be considered in lieu of two years of experience.

Experience: Four years of full time experience as a Registered Nurse in an acute care facility or community health agency with references and evaluations to show appropriate skill level.

Knowledge of: Current principles, techniques and procedures used in professional nursing; medical terminology and patient care routine appropriate to clinical setting; medical instruments and equipment; the uses and effects of medicines and narcotics; community resources available to provide patient care and follow-up; federal, State and local laws and regulations governing professional aspects of nursing; identification of potential discharge needs; payor source documentation requirements and governmental regulations affecting reimbursement.

Ability to: Perform the full range of nursing duties and responsibilities in a patient care setting; plan and organize nursing plans for patients; prepare and maintain concise and complete records and reports; establish and maintain effective working relationships with physicians, patients and fellow employees; secure the cooperation of employees to work effectively together; assist in the instruction of entry-level nurses and ancillary personnel; keep abreast of developments in area of nursing specialization; evaluate the medical records of hospital admissions; make recommendations regarding continued stay necessity; identify discharge needs.

Although the Registered Nurse III-RCRMC position requires the basic knowledge, skills, and abilities (KSA's) shown above, a specific RN-III-RCRMC position may also require experience in the Neonatal Intensive Care Unit, or require candidates to have experience in a particular specialty area of nursing such as Sexual Assault Response or Palliative Care. This type of position-specific information is what is verified through the skills verification meeting with the SME.

The above example helps to illustrate the purpose of the skills verification meeting. It should be noted that this meeting is not competitive in nature, nor is it designed to "cloak" a competitive interview process. If the employee is determined to be qualified for the position via the skills verification meeting portion of the qualification process, the IP then resumes in order to determine if the employee's work restrictions can be reasonably accommodated in that position. If the result of the IP is that the employee can be reasonably accommodated, he/she is reassigned into that job.

The HR Department is familiar with the EEOC Guidance cited in the Grand Jury's findings, which states, "Reassignment means that the employee gets the vacant position *if she/he is qualified for it.*" (emphasis added) Since the purpose of any skills verification meeting is to ensure that the employee is qualified for a particular vacant position, the HR Department disagrees with the finding that by referring an AR List employee for a skills verification meeting, HR is acting contrary to this guidance. In fact, the HR Department has an affirmative obligation to ensure that individuals on the AR List do in fact meet the qualifications of the particular position under consideration (which may at times be an entirely different job classification from the employee's current classification), whether this is accomplished by means of a skills verification meeting with an SME or other accepted human resources methods (e.g., testing).

It should also be noted that although input is sought from the SME, this is part of the process by which HR ensures that the employee meets the position's qualifications, and a final qualification determination is not made by the department. In fact, HR retains authority to determine when to seek SME input and to make all final qualification decisions. If the department believes an AR List employee is not qualified for the position, they must document the areas in which the employee's qualifications are insufficient and submit that for review by Human Resources.

2. Recruitment Personnel

The Grand Jury investigation revealed that many of the HR recruiting personnel responsible for filling vacant positions do not have the skills, experience, or training to perform qualification determinations for verifying if an AR/List employee has the requisite skills to perform the duties of a vacant position. In addition, the HR recruiting personnel are relying on the hiring department personnel to perform the qualification determinations for AR/List employees who are awaiting placement to a vacant position. For qualification determination, the HR recruiting personnel are not using their own qualifications criteria entitled "recruiting guidelines" for qualification determination. Examples may be seen on <http://agency.governmentjobs.com/riverside/default.cfm?action/agencyspecs>

RESPONSE:

Respondent wholly disagrees with the finding.

It is not true that HR recruiting personnel do not have the skills, experience or training to perform qualification determinations for verifying if an AR List employee has the requisite skills to perform the duties of a vacant position. In fact, Human Resources Department staff members performing recruiting functions receive extensive training on how to conduct recruitments. This training includes how to interpret the classification specification while conducting recruitment processes. Staff conducting recruitments is also guided by a lead or senior analyst who oversees the recruitment process for each recruitment being conducted, where each recruitment receives a sign off by a reviewer. Recruiters are also managed by a Human Resources Services Manager who oversees their work and ensures they are adequately trained to perform the work they are assigned. Additionally, the Human Resources Department employs staff specializing in classification work, who are continuously available to and sought by recruiters who need clarification on their understanding of any classification specification.

It is not true that the HR Recruiting personnel are relying on hiring department personnel to perform qualification determinations for AR List employees. In fact, qualifications are assessed by Human Resources staff performing recruiting, who are charged with reviewing candidate qualifications. These HR staff members hold the authority to refer as eligible for hire, any candidate who has demonstrated to them that they possess the knowledge, skills, and abilities to perform the job. Recruiters then refer AR List candidates to hiring managers/Subject Matter Experts to perform final confirmation of candidate skills during a "skills verification meeting."

The Human Resources Department wholly disagrees that recruiting personnel are not using qualification criteria specified in recruiting guidelines. Human Resources recruiters utilize the classification specification to identify the minimum requirement of candidates who would be eligible to be hired into a classification during recruitment for a job vacancy. However, the County of Riverside's selection procedures allow that each vacancy may "raise the bar" from the minimum Recruiting Guideline requirements to also require position-specific qualifications.

Using the Registered Nurse III-RCRMC example, as previously discussed in response to Finding #1, this classification specification contains Recruiting Guidelines that include certain amounts of education and experience, as well as particular knowledge, skills, and abilities. However, as previously discussed, recruitment for a particular vacant RN-III-RCRMC position may also require experience in the Neonatal Intensive Care Unit, or require candidates to have experience in a particular specialty area of nursing such as Sexual Assault Response or Palliative Care. This position-specific information is gathered when recruiters conduct a Position Evaluation prior to conducting the recruitment of candidates. A Position Evaluation is a detailed discussion with the hiring managers and/or subject matter experts to identify the hiring criteria needed in candidates sought for a particular vacancy. It is not practical or efficient to consider all candidates who meet the minimum hiring criteria for each vacancy as Classification specifications contain a generic description of work of all incumbents across the County performing work in a particular

classification. Recruitment qualification reviews take into consideration both the general requirements listed in the classification specification as well as additional position-specific requirements of the particular vacancy under consideration.

3. Multiple AR List Employees

HR's policies and procedures do not address a procedure for when there are two or more AR/List qualified employees for a vacant position.

RESPONSE:

Respondent agrees with the finding.

While it is true that previously HR's guidelines did not specify what would be done in cases where more than one disabled employee is referred to a skills verification meeting, it is also true that the number of employees on the AR List is very small (generally around four to five employees total) and thus this situation is unlikely to occur. In the absence of a procedure that specifically addresses this situation, given that the County operates on merit principles, it would generally be presumed that if there is more than one qualified AR List candidate available, the hiring authority can then make the actual hiring decision based upon merit. Nonetheless, for the purposes of clarity, the Human Resources Department has revised its Reasonable Accommodation Guidelines to specifically address this possibility.

RECOMMENDATIONS:

1. *HR recruiters shall reassign a qualified AR/List employee to a vacant position without any department interview. HR Procedures shall be amended to comply with the ADA requirements.*

RESPONSE:

The recommendation will not be implemented because it is not warranted.

HR procedures currently comply with ADA requirements. The Human Resources Department does not consider the "skills verification meeting" the same as a competitive interview. Furthermore, neither ADA nor FEHA prohibits the County from assessing the qualifications of a reassignment candidate via a meeting with the hiring authority/Subject Matter Expert, prior to making the reassignment.

2. *Only fully-trained and experienced HR recruiting personnel shall reassign a qualified AR/List individual after ascertaining his/her qualifications for the vacant position. It shall be the responsibility of the HR recruiter's supervisor to determine whether or not an HR recruiter is fully trained and/or experienced to make qualification determinations. In addition, all HR personnel shall be fully trained in ADA laws.*

RESPONSE:

Respondent agrees with the finding.

Regarding the recommendation that only fully trained and experienced HR recruiting personnel shall be responsible for ascertaining an AR List employee's qualifications for a vacant position prior to reassignment, the HR Department agrees with this recommendation, as it has always been part of our regular business practice. Additionally, as discussed previously in HR's response to Finding #2, *Recruitment Personnel*, staff conducting recruitments are also guided by a lead or senior analyst who is responsible for overseeing the recruitment process for each recruitment being conducted, as well as reviewing and signing off on the recruitment prior to completion. Related to the recommendation that it shall be the responsibility of the HR recruiters' supervisor to determine whether or not an HR recruiter is fully trained and/or experienced to make qualification determinations, this recommendation has always been part of standard business practice in the Human Resources Department.

Related to the recommendation that recruiters shall apply the qualifications criteria as outlined in the Riverside County's job descriptions and recruiting guidelines, this recommendation is a part of standard business practice. The Human Resources Department recruiters require that all candidates meet classification specification recruiting guidelines as minimum criteria in order to be considered for any recruitment. However, additional criteria gathered from a Position Evaluation may also be applied in order to identify position-specific requirements for a particular vacancy. Allowing for position-specific requirements allows recruiting to be performed more efficiently as it identifies all the knowledge, skills and abilities necessary for a successful candidate, rather than the minimum requirements for members of a particular classification. Without allowing for position-specific requirements, the County's classification system would need to provide a Classification Specification for each job that differs from the Specification. Classification Specifications are intended to be the broadest description of all incumbents performing the jobs across the County and are not "job descriptions." As such, it is more efficient to identify position-specific requirements that are more defined than the general classification specification requirements, and this will continue to be practiced.

As for the recommendation that all HR staff be fully trained in ADA laws, the Human Resources Department is committed to regular, ongoing education in these complex regulations. Congruent with this commitment, HR has developed ongoing training and has established the expectation that all staff attend the training. The Human Resources Department will continue to review training records for compliance with this expectation and is committed to ensuring that all staff members are trained.

More specifically, for the past several years, the County has required all HR staff to attend formal training classes on ADA laws offered via the Center for Government Excellence and facilitated by HR's Disability Access Office (DAO). In addition to this formal training, the DAO provides ample and frequent informal training on ADA and FEHA to HR staff who are

involved in the Interactive Process for the various departments. This training includes, but is not limited to, the following:

- Regular consultations with HR Service Team staff members on their IP cases;
- Frequent case law updates on ADA, FEHA, and other related legislation, provided via email to HR staff members (usually once/twice a month);
- Formal monthly or bi-monthly meetings with HR Services Teams to discuss their cases and provide advice, as needed; and
- Quarterly update meetings involving all HR staff who handle the Interactive Process. These meetings always include case examples and a training component.

The Human Resources Department thanks the Grand Jury for its review and input into our accommodation procedures.