

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



**ITEM**  
3.4  
(ID # 6914)

**MEETING DATE:**

Tuesday, May 22, 2018

**FROM :** EXECUTIVE OFFICE:

**SUBJECT:** EXECUTIVE OFFICE: Board Policy Manual Update - Repeal of Board Policies A-9, A-36, and A-69; Approval of revised Board Policies A-5, A-16, A-25, B-2, B-14, B-25, B-26; Adoption of new Board Policy B-33, All Districts. [\$0]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Repeal Board Policy A-9: Board Referral Tickler File, A-36: Budget Savings Retention Plan (BSRP), and A-69: Best Practices in Contract Management; and,
2. Approve revisions to the following Board Policies: A-5: Board of Supervisors Agenda Procedure; A-16: Official Emblem for the County of Riverside; A-25: Departmental Fund Deposits; B-2: Lawsuits Against County Employees and Officials; B-14: Policy for Cash Management to Avoid Cash Deficits in County Funds; B-25 Pension Management; and B-26: Leasing of County-Owned Real Property for Wireless Service Facilities; and
3. Adopt new Board Policies A-74: Reasonable Accommodation and Equal Access for Individuals with Disabilities and B-33: Lawsuits against the County, its Employees and Officials; Acceptance of Service of Government Claims, Summonses/Complaints and Civil Subpoenas.

**ACTION:** Policy

  
Lisa O Brandl 5/16/2018

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**MINUTES OF THE BOARD OF SUPERVISORS**

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STATE OF CALIFORNIA**

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$0	\$0	\$0	\$0
<b>NET COUNTY COST</b>	\$0	\$0	\$0	\$0
<b>SOURCE OF FUNDS: N/A</b>			<b>Budget Adjustment:</b>	<b>No</b>
			<b>For Fiscal Year:</b>	2017/18

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

The Executive Office and County Counsel are in the process of comprehensively reviewing and updating the Board of Supervisors Policy Manual. Staff has consulted with County Counsel for consistency of board policies with current laws, regulations and ordinances; and solicited input on the proposed revisions to policies from the Assistant County Executive Officers (ACEOs), Department Heads, Strategic Leadership Team, and the Chiefs of Staff of the Board of Supervisors.

For today's action, staff proposes that the Board repeal the three policies shown below:

- Board Policy A-9: Board Referral Tickler File: the Clerk of the Board now utilizes the Long Range Agenda to identify any matters that need to return to the Board of Supervisors;
- Board Policy A-36: Budget Savings Retention Plan (BSRP): staff recommended rescinding this board policy in the past; this action reaffirms the action; and,
- Board Policy A-69: Best Practices in Contract Management: This policy is redundant with Board Policies B-11: Award of Public Works Contracts Pertaining to County Facilities and Certain Other Improvements, and Board Policy H-7: Selection of Architectural, Engineering and Real Estate Related Services.

In addition, staff recommends acceptance of revisions board policies A-5, A-16, A-25, B-2, B-14, B-25, and B-26. Redline versions showing the proposed changes and proposed versions are attached for reference.

Board Policy B-25 addresses the county's activities with respect to pension management. Last updated in 2007, a revision to the policy is being submitted to the Board of Supervisors by the Pension Advisory Review Committee (PARC) to better define some of the terms. Also the revision would add two additional board members to the PARC to better serve the decision making process as it pertains to pension administration. The proposed board member additions

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include the County Auditor-Controller and a local safety member department representative. The Pension Advisory Review Committee reviewed the changed language and recommend approval.

Staff also recommends approval of the new board policy C-33: Lawsuits against the County, its Employees and Officials; Acceptance of Service of Government Claims, Summonses/Complaints and Civil Subpoenas. This policy was developed by County Counsel.

The proposed revisions shown above are part of a comprehensive update to the Board Policy Manual. As review of the current policies proceeds, staff will periodically bring forward specific revisions to the Board for approval in order to align current County operations with the Board Policy Manual.

**SUPPLEMENTAL:**

**ATTACHMENTS:**

- Board Policy A-5 Redline
- Board Policy A-5 Final
- Board Policy A-16 Redline
- Board Policy A-16 Final
- Board Policy A-25 Redline
- Board Policy A-25 Final
- Board Policy B-2 Redline
- Board Policy B-2 Final
- Board Policy B-14 Redline
- Board Policy B-14 Final
- Board Policy B-25 Redline
- Board Policy B-25 Final
- Board Policy B-26 Redline
- Board Policy B-26 Final
- Board Policy B33 Final

  
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Gregory P. Priapios, Director County Counsel      5/10/2018

**COUNTY OF RIVERSIDE, CALIFORNIA  
BOARD OF SUPERVISORS POLICY**

<b>Subject:</b>	<b><u>Number</u></b>	<b><u>Page</u></b>
<b>REASONABLE ACCOMMODATION AND EQUAL ACCESS FOR INDIVIDUALS WITH DISABILITIES</b>	<b>A-74</b>	<b>1 of 14</b>

**PURPOSE**

The purpose of this policy is to affirm the County's commitment to protect the rights of employees and members of the public from unlawful discrimination based on a known physical or mental disability, by outlining the requirements by which the County will provide equal access and/or act on requests for reasonable accommodation by customers, employees or job candidates. This policy also outlines the process by which any individual may report a complaint, concern or recommendation regarding equal access for individuals with disabilities to County programs, services or activities, or report discrimination towards qualified individuals with disabilities in the County's hiring and employment practices.

**SCOPE**

This policy applies to all County of Riverside Departments and employees.

**POLICY:**

**1. General Statement of Non-Discrimination**

The County of Riverside does not discriminate or retaliate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. The County is committed to ensuring that its programs, services, and activities are fully accessible to and usable by individuals with disabilities as required under the Americans with Disabilities Act, as amended by the ADA Amendments Act of 2008 (hereinafter collectively referred to as ADA).

Additionally, the County of Riverside is committed to ensuring that there is no unlawful discrimination or retaliation on the basis of disability in the County's hiring and employment practices, which include the terms, conditions and privileges of employment. The County is committed to engaging in the good faith Interactive Process (IP) and providing reasonable accommodations to qualified employees and job candidates with disabilities, as required under ADA and the California Fair Employment and Housing Act (FEHA).

**2. Definitions**

- A. **Disability** – Under ADA, the term “disability” is defined as a physical or mental impairment that substantially limits one or more major life activities of an individual; a record of such impairment; or being regarded as having such an impairment.<sup>1</sup> Under FEHA, “disability” is defined as a physical or mental disorder or condition that affects one or more body systems and limits (i.e., makes achievement more difficult) a major life activity; having a record of such a disability; or being perceived as having such a disability.<sup>2</sup>

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<sup>1</sup> 29 CFR § 1630.2(g)(1)

<sup>2</sup> 2 CCR § 11065(d)

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**Note:** Under both ADA and FEHA, the term “disability” does not include the following:

- 1. Compulsive gambling, kleptomania, pyromania, or psychoactive substance abuse disorders resulting from the current unlawful use of controlled substances or other drugs.**
- 2. Sexual behavior disorders such as pedophilia, exhibitionism, and voyeurism.**

*Under FEHA, mitigating measures, or devices which eliminate or reduce the limitation of a disability are not considered when determining whether a medical condition is a disability under State law, unless those mitigating measures themselves limit a major life activity<sup>3</sup>.*

- B. Major Life Activities – Under ADA and FEHA, the term “major life activities” is to be broadly construed, to include physical, mental, and social activities. A non-exhaustive list of major life activities includes caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, sleeping, communicating, learning, concentrating and working.<sup>4</sup> Note: The ADA Amendments Act further expanded the statutory definition of major life activities by including major bodily functions, such as functions of the immune system, normal cell growth, and respiratory functions.<sup>5</sup>
- C. Essential Job Functions – The term “essential job functions” is defined both by FEHA and EEOC regulations as the fundamental job duties of the employment position the individual with a disability holds or desires.<sup>6</sup> “Essential functions” does not include the marginal functions of the position.<sup>7</sup>
1. A job function may be considered essential for any of several reasons, including, but not limited to, the following:
    - a) The function may be essential because the reason the position exists is to perform that function.
    - b) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.
    - c) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform that particular function.
  2. Evidence of whether a particular function is essential includes, but is not limited to, the following:
    - a) The employer’s judgment as to which functions are essential.
    - b) An accurate, current written job description/analysis.
    - c) The amount of time spent on the job performing the function.

<sup>3</sup> CA Gov. Code § 12926 (j)(l)(A), (m)(l)(B)(i), § 12926.1(c)

<sup>4</sup> 2 CCR § 11065(l)

<sup>5</sup> 42 USC § 12102 (a)(2)(B)

<sup>6</sup> 29 CFR § 1630.2(n)(2)(l)-(iii); CA Gov. Code § 12926 (f)(l)(A)-(C)

<sup>7</sup> 2 CCR § 11065(e)(3)

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- d) The legitimate business consequences of not requiring the individual to perform the function.
- e) The work experience of past individuals in the job.
- f) The current work experience of individuals in similar jobs.
- g) Reference to the importance of the performance of the job function in prior performance reviews.
- D. Business Necessity – Under FEHA, in reference to medical or psychological examinations, the term “business necessity” means that the need for a disability inquiry or medical exam is vital to the business.<sup>8</sup>
- E. Job-Related – With regards to disability-related inquiries, medical exams and other selection criteria, tailored to assess the employee’s ability to carry out the essential functions of the job or to determine whether the employee poses a danger to the employee or others due to disability.<sup>9</sup>
- F. Qualified Individual – An applicant or employee who has the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.<sup>10</sup>
- G. Interactive Process – Timely, good faith communication between the employer and the applicant or employee or, when necessary because of the disability or other circumstances, his or her representative to explore whether or not the applicant or employee needs reasonable accommodation for his/her disability to perform the essential functions of the job, and, if so, how that individual can be reasonably accommodated.<sup>11</sup>
- H. Reasonable Accommodation – Modifications or adjustments that are:
  - 1. effective in enabling a “qualified individual” with a disability to have an equal opportunity to be considered for a desired job, or
  - 2. effective in enabling a “qualified individual” with a disability to perform the essential functions of the job the employee holds or desires, or
  - 3. effective in enabling a “qualified individual” with a disability to enjoy equivalent benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities.<sup>12</sup>
- I. Undue Hardship – An undue hardship is an action requiring significant difficulty or expense, when considered under the totality of the circumstances in light of the following factors:
  - 1. The nature and cost of the accommodation
  - 2. The overall financial resources of the County
  - 3. The overall financial resources of the facilities involved in the provision of the reasonable accommodation, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of the accommodation upon the operation of the facility, including the impact on the ability of other

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<sup>8</sup> 2 CCR § 11065(b)

<sup>9</sup> 2 CCR § 11065(k)

<sup>10</sup> 2 CCR § 11065(o)

<sup>11</sup> 2 CCR § 11065(j)

<sup>12</sup> 2 CCR § 11065(p)

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employees to perform their duties and the impact on the facility's ability to conduct business.

### **3. Pre-Employment**

As an Equal Opportunity Employer, the County of Riverside does not discriminate on the basis of disability in its hiring or employment practices. Additionally, the County is committed to ensuring that there is no discrimination on the basis of disability in any terms, conditions or privileges of employment.

#### **A. Employment Applications and Disability-Related Inquiries**

1. The County will consider and accept employment applications from applicants without regard to disability, medical condition, genetic information, or any other non-job-related factor.<sup>13</sup>
2. County staff is prohibited from inquiring whether the applicant has a disability and from asking questions likely to elicit information about a disability in a job application, pre-employment questionnaire or at any time before a job offer is made.<sup>14</sup>
3. It is permissible for County staff to inquire whether the candidate can perform the essential functions of the job, with or without reasonable accommodation.<sup>15</sup>
4. When an applicant for a County position requests a reasonable accommodation, or when an applicant has an obvious disability and the County has a reasonable belief that the candidate needs a reasonable accommodation, the County may make limited inquiries regarding such reasonable accommodation. For example, although it is unlawful to ask general questions about a disability or questions likely to elicit information about a disability before a job offer is made, it is permissible to inquire whether an applicant can perform the essential functions of the job for which they have applied, with or without reasonable accommodation.<sup>16</sup>

#### **B. Qualification Standards, Tests, and other Selection Criteria**

In accordance with ADA, the County is prohibited from using *qualification standards*, *employment tests* or other *selection criteria* that screen out or tend to screen out an applicant or employee with a disability or a class of individuals with disabilities, on the basis of disability, unless these items are shown to be job-related for the position in question and are consistent with business necessity.<sup>17</sup> Additionally, the County is prohibited from using any *testing criterion* that discriminates against applicants or employees with disabilities, unless the test score or other selection criterion used is shown to be job-related for the position in question, and an alternative job-related test or criterion that does not discriminate against applicants or employees with disabilities is unavailable or would impose an undue hardship on the County.<sup>18</sup>

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<sup>13</sup> 2 CCR § 11070(a)

<sup>14</sup> 2 CCR § 11070(b)(2)

<sup>15</sup> 2 CCR § 11070(b)(3)

<sup>16</sup> *Ibid.*

<sup>17</sup> 2 CCR § 11072(b)(1)

<sup>18</sup> 2 CCR § 11072(b)(3)

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**C. Interviews**

Upon reasonable notice, the County shall make reasonable accommodation to the needs of applicants with disabilities in interviewing situations (e.g., providing sign language interpreters for individuals with significant hearing impairments, or scheduling the interview in a room accessible to individuals in wheelchairs). These reasonable accommodations must be provided at no cost to the applicant.

In interviews, County staff is prohibited from asking general questions regarding the candidate's disabilities or medical conditions at any time before a job offer is made. Examples of prohibited inquiries include, but are not limited to, the following:

- 1) "Do you have any particular disabilities?"
- 2) "Have you ever had a job-related injury or medical condition?"
- 3) "Have you ever left a job because of any physical or mental limitations?"
- 4) "How much medical leave did you take last year?"

It is permissible in interviews for County staff to inquire whether the candidate can perform the essential functions of the job, with or without reasonable accommodation. If this question is asked, it must be asked of all applicants being interviewed.

**D. Medical and Psychological Exams and Inquiries**

1. Pre-Offer: Under ADA and FEHA, the County is prohibited from conducting a medical or psychological examination or inquiry of an applicant before an offer of employment is extended to that applicant. **Note: Under ADA and FEHA, a test for illegal drug use is not generally considered to be a medical or psychological examination.**<sup>1920</sup>
2. Post-Offer: The County may condition a bona fide offer of employment on the results of a medical or psychological examination or inquiry conducted prior to the applicant's first day on duty in order to determine fitness for the job in question. For a job offer to be bona fide, the County must have either completed all non-medical components of its application process or be able to demonstrate that it could not have reasonably done so before issuing the offer; this narrowly tailored exception is primarily applicable to the hiring and selection of peace officers<sup>21</sup>
3. Withdrawal of Offer: The County may withdraw an offer of employment based on the results of a medical or psychological exam or inquiry only if it is determined that the applicant is unable to perform the essential functions of the job with or without reasonable accommodation, or that the applicant with or without reasonable accommodation would endanger the health or safety of the applicant or others. **Note: Any withdrawal of a job offer for medical reasons must be reviewed by the Human Resources Department prior to issuance.**
4. Medical History Inquiries: Once a conditional job offer has been made, the County may make limited inquiries into the applicant's medical history, provided that the information requested is job-related, consistent with business necessity,

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<sup>19</sup> 2 CCR § 11071(a)

<sup>20</sup> 29 CFR § 1630.16(c)

<sup>21</sup> CA Gov. Code § 1031.2

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and requested of all new employees entering the same job class.<sup>22</sup> When reviewing this information for the purposes of determining an applicant's medical qualification and ability to perform the essential functions of the job (with or without reasonable accommodation) without endangering the health or safety of the applicant or others, this analysis should be based on a reasonable medical judgment that relies on the most current medical knowledge and/or the best available objective evidence.<sup>23</sup>

#### **4. Employment**

The County is required to engage in a timely, good faith Interactive Process and provide reasonable accommodation to "qualified individuals" with disabilities. In the County, it is the responsibility of the Human Resources Department to guide and facilitate this process, in partnership with the various County departments. The Interactive Process is required under any of the following circumstances:

- A. When an applicant or employee with a known physical or mental disability or medical condition requests reasonable accommodations.<sup>24</sup>
  - 1. In general, it is the responsibility of the individual to notify the County of the need for a reasonable accommodation.
  - 2. The request does not have to be in writing or take any particular form.
  - 3. The individual does not have to use "trigger" terms such as "ADA/FEHA" or "reasonable accommodation."
  - 4. The individual only has to use "plain language" and provide enough information to alert the County to the fact that he/she needs an adjustment or change at work because of a medical condition.
  
- B. When the County otherwise becomes aware of the possible need for an accommodation through a third party or by observation.<sup>25</sup> In these circumstances, the County has the affirmative duty to offer the Interactive Process. Examples of these types of situations are listed below:
  - 1. Work restrictions specified by a County medical professional as a result of a post-offer, pre-employment medical exam.
  - 2. Work restrictions prescribed by a Workers' Compensation doctor as a result of a medical exam related to an industrial injury/illness.
  - 3. When an employee exhausts his/her protected leave time under the Family and Medical Leave Act/California Family Rights Act (FMLA/CFRA) and/or the Pregnancy Disability Leave (PDL) provisions of FEHA, and requires additional medical leave due to his/her medical condition.<sup>26</sup>
  - 4. Work restrictions specified by a medical professional as a result of a Fitness-for-Duty exam.

<sup>22</sup> 2 CCR § 11071(d)(1), CA Gov. Code § 12940 (e)(3)

<sup>23</sup> 2 CCR § 11067(e)

<sup>24</sup> 2 CCR § 11069(b)(1)

<sup>25</sup> 2 CCR § 11069(b)(2)

<sup>26</sup> 2 CCR § 11069(b)(3)

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Additionally, the County may be required to initiate the Interactive Process when an employee demonstrates observable, significant behavioral changes and/or deteriorating work not attributable to other causes. Supervisors and managers are encouraged to consult with their Human Resources Services Teams in such circumstances.

**It is essential to note that it is unlawful to discriminate or retaliate against a person for requesting reasonable accommodation based on a mental or physical disability, regardless of whether the employer grants the particular request<sup>27</sup>**

**The Interactive Process**

Under ADA and FEHA, a good faith Interactive Process (IP) is required, which is designed to be a timely, flexible, and interactive exchange of information between the individual and the employer. The purpose of the IP is to determine the precise limitations resulting from the individual's disability and identify potential reasonable accommodations that could overcome those limitations. Under ADA/FEHA, the IP requires an individualized assessment based on the specific needs of the employee, the essential functions of his/her job, and the employer's ability to reasonably accommodate the particular request.

Employers and employees have a reciprocal obligation to participate in the Interactive Process in good faith. Additionally, FEHA regulations specify that both the employer and the employee have the obligation to exchange essential information without delay or obstruction in the process.<sup>28</sup>

In the County, the Interactive Process is guided and facilitated by Human Resources staff members, in partnership with County Departments. The IP includes the following steps:

- A. Analyze the particular job involved and determine its purpose and essential functions. This analysis, which forms the foundation upon which accommodation decisions are made, is completed by Human Resources staff in partnership with Department Subject Matter Experts.
- B. Consult with the individual to determine the precise job-related limitations imposed by the disability, and how the limitations could be overcome with a reasonable accommodation.
  1. When meeting with the individual, the purpose is to identify potential accommodations, and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position.
  2. When the disability or need for reasonable accommodation is not obvious, the County may require the applicant or employee to provide reasonable medical documentation confirming the existence of the disability and the need for reasonable accommodation.
- C. Taking into account the employee's preference, select and implement the accommodation that is most appropriate for the County and the employee.
- D. Once it has been determined that a reasonable accommodation is available, memorialize the accommodation in writing.

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<sup>27</sup> 2 CCR § 11068(k)

<sup>28</sup> 2 CCR §11069(a)

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The Interactive Process may involve meeting with the employee several times and may involve a number of stakeholders including Human Resources staff, Department supervisory/managerial staff, and others as applicable. Regulations require that medical information and/or records obtained during the Interactive Process be maintained on separate forms, and in medical files separate from the employee's personnel file, and that this information be kept confidential, subject to certain exceptions in the law.<sup>29</sup>

It is important to note that under FEHA, employers are specifically prohibited from retaliating against employees for requesting a reasonable accommodation. Also under FEHA, the failure to engage in an Interactive Process to determine effective reasonable accommodations with a qualified individual with a disability can be a separate and distinct basis for a finding of unlawful discrimination.<sup>30</sup>

Once the accommodation has been agreed upon and implemented, the Interactive Process can still be reopened if needed (e.g., if it appears that the accommodation is not effective or that circumstances have changed, warranting a review of the accommodation).

**Reasonable Accommodation**

A reasonable accommodation is a modification or adjustment to a job, the work environment, and/or the way things are usually done, that enables a qualified individual with a disability to perform the essential functions of the job at the required level. Some basic principles of reasonable accommodation include the following:

- A. The accommodation must be effective. An effective accommodation must provide an opportunity for the individual with a disability to perform the essential functions of the job, and in doing so, achieve the same level of performance or enjoy equal benefits or privileges of employment, as an average, similarly situated, person without a disability.
- B. The accommodation does not have to be the best accommodation or the one preferred by the individual with a disability.
- C. In general, the employer is not required to provide an accommodation that is primarily for the employee's personal use (e.g., eyeglasses, hearing aids, wheelchairs, etc.).

**Leave of Absence as a Reasonable Accommodation**

A temporary leave of absence can be considered a reasonable accommodation as long as it is effective in enabling the individual's medical condition to improve such that they can return to work and perform their essential job functions at the required level. Although a leave of absence may initially be provided as a reasonable accommodation, continued leave can become unreasonable if any of the following occur:

- A. The time off work does not enable the employee's medical condition to improve and/or appears to become indefinite in nature.
- B. The employee's off work status or restrictions (that cannot be reasonably accommodated) become permanent.

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<sup>29</sup> 2 CCR 11069(g)

<sup>30</sup> CA Gov. Code §12940(n)

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Numerous ADA/FEHA court cases have held that employers are not allowed to have uniformly enforced rules regarding allowable length of medical leave.<sup>31</sup> Instead, the determination as to whether an additional medical leave of absence is reasonable requires a case-by-case, fact-specific analysis. Human Resources staff members perform a key role in conducting this analysis, with input from the County department.

**Reassignment as a Reasonable Accommodation**

If through the Interactive Process, it is determined that an individual cannot be reasonably accommodated in his/her own position, but is otherwise qualified and able to perform the essential functions of another position, both ADA and FEHA require the County to reassign the individual to another County job as a reasonable accommodation, provided that the following conditions are met:

- A. The reassignment is to a current, open position, or a position that will become available within a reasonable amount of time (the County is not required to create a new position or bump another employee to create an open position).
- B. The reassignment is to an equivalent level of classification (the County is not required to promote an employee in order to reassign them).
- C. The employee meets the required qualifications for the position.

**It should be noted that when exploring a reassignment opportunity as a reasonable accommodation, an employee with a disability is entitled to preferential consideration to an open position over other applicants and existing employees.<sup>32</sup> This is unlike a typical recruitment process in which multiple candidates compete for the job and the most qualified candidate is selected. When considering reassignment as a reasonable accommodation, the employee with a disability need not be the most qualified individual for the job as long as they meet the position's required qualifications.**

**Reassignment is not available to applicants. An applicant for a position must be qualified for, and able to perform the essential functions of, the position sought, with or without reasonable accommodation.**

**"Assistive Animals" as a Reasonable Accommodation**

An "assistive animal" is defined as a dog or other animal that is necessary as a reasonable accommodation for a person with a disability. Specific examples include, but are not limited to:

- A. A guide dog trained to guide a blind or visually impaired person;
- B. A service dog individually trained to the requirements of a person with a disability; and
- C. A support dog that provides emotional or other support to an individual with a cognitive or mental disability, such as traumatic brain injury or major depression.<sup>33</sup>

Under FEHA, an "assistive animal" can be a reasonable accommodation in the workplace. As in other situations, what constitutes a reasonable accommodation requires an individualized

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<sup>31</sup> For example, see *EEOC v. Sears, Roebuck & Co.*, N.D. Ill. No. 04 C 7282

<sup>32</sup> 2 CCR § 11068(d)(5)

<sup>33</sup> 2 CCR § 11065(a)

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analysis reached through the Interactive Process. The County may require that any "assistive animal" meet the following minimum standards:

- A. That the animal is free from offensive odors and displays habits appropriate to the work environment, for example, the elimination of urine and feces;
- B. That the animal does not engage in behavior that endangers the health or safety of the individual with a disability or others in the workplace; and
- C. That the animal is trained to provide assistance for the employee's disability.
- D. If an employee requests permission to bring an assistive animal into the workplace as a reasonable accommodation, prior to allowing the animal in the workplace, the employer may require that the employee supply a letter from the employee's health care provider stating that the employee has a disability and explaining why the employee requires the presence of the assistive animal in the workplace (e.g., why the animal is necessary as an accommodation to allow the employee to perform the essential functions of the job).<sup>34</sup>

Exceptions to Reasonable Accommodation

There are some exceptions to the requirement that employers reasonably accommodate qualified employees with disabilities. These exceptions, which require an individualized assessment and analysis, include the following:

- A. The accommodation poses an undue hardship, taking into account the nature and cost of the accommodation as well as the overall financial resources of the employer.
- B. The individual cannot perform the essential functions of the job, even with the accommodation. **It should be noted that the County may not deny reasonable accommodation on the sole ground that an employee with a known disability can no longer perform the essential functions of the job, but must consider whether a reasonable accommodation would enable them to do so.**
- C. The accommodation conflicts with other statutory requirements (e.g., the national Occupational Safety and Health Act).
- D. The accommodation endangers the health or safety of the individual with a disability or others because the job imposes an imminent and substantial degree of risk that cannot be eliminated by reasonable accommodation.<sup>35</sup> Factors to be considered when determining the merits of this exception include, but are not limited to the following:
  - 1. the duration of the risk;
  - 2. the nature and severity of the potential harm;
  - 3. the likelihood that potential harm will occur
  - 4. the imminence of the potential harm; and
  - 5. consideration of relevant information about an employee's past work history.
- E. Any other exceptions or defenses as may be provided by law.

<sup>34</sup> 2 CCR § 11069(e)

<sup>35</sup> 42 USC § 12111(3); CA Gov. Code § 12940(a)(1),(2)

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**5. Public Services**

The County is required to ensure that its programs, services, and activities are fully accessible to and usable by members of the public with disabilities as required under the Americans with Disabilities Act, as amended (ADA). Equal access to County programs, services and activities can be accomplished in several ways:

- A. Physical Access: Some examples of physical access include, but are not limited to, making existing facilities accessible through wheelchair ramps, elevators, escalators, electronic doors, etc.
  
- B. Communications Access: Access through communications includes providing auxiliary aids and services, where reasonable. Some examples of auxiliary aids and services can include the following:
  - 1. Qualified sign language interpreters on-site or through video remote interpreting (VRI) services; notetakers; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive learning systems; text telephones (TTY); closed caption decoders; open and closed captioning, etc.
  - 2. Qualified readers; taped texts; audio recordings; Braille materials and displays; large print materials, accessible electronic and information technology, etc.
  - 3. Providing websites in a format that is accessible to individuals with vision and/or hearing impairments.
  
- C. Access through Policies and Procedures: Access to programs, services and activities can also be provided through development and/or changes to County policies, work rules or practices. Some examples may include the following:
  - 1. Modifying a "no food or drink" policy to allow a constituent with Type I Diabetes to attend bring a snack to a meeting or hearing, where food or drink is not otherwise permitted.
  - 2. Modifying a dress code policy to allow an employee recovering from foot surgery to temporarily wear athletic shoes to work that would otherwise be in violation of said policy.
  
- D. Service Animals: The County must permit the use of a service animal by an individual with a disability in all areas of the County's facilities where members of the public or participants in County services, programs or activities are allowed to go.<sup>36</sup>

For the purposes of this section, a service animal is defined under ADA as any dog that is individually trained to work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work tasks performed by a service animal or miniature horse (see below) must be directly related to the individual's disability.

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<sup>36</sup> 28 CFR § 35.136(a-g)

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ADA limits the type of questions an organization may ask of individuals with service animals, and prohibits inquiries about the nature or extent of a person's disability. However, employers such as the County are allowed to make the following two inquiries to determine whether an animal qualifies as a service animal:

1. Is the animal is required because of a disability?
2. What work or task the animal is trained to perform?

**Note: The County may not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.**

The County may ask an individual with a disability to remove a service animal from the premises under any of the following conditions:

1. The animal is out of control and the animal's handler does not take effective action to control it.
2. The animal is not housebroken.

**Note: Even if an animal is properly excluded, the person with a disability may still participate in the service, program, or activity without the service animal on the premises.<sup>37</sup>**

- E. **Miniature Horses:** The County is required to make reasonable modifications in policies, practices or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.<sup>38</sup> In determining whether reasonable modifications to policies, practices, or procedures can be made to allow a miniature horse into a specific facility, the County may consider the following:
1. The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
  2. Whether the handler has sufficient control of the miniature horse;
  3. Whether the miniature horse is housebroken; and
  4. Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

The above requirements that apply to inquiries regarding service animals, also apply to miniature horses.

- F. **Exceptions:** The County is not required to provide reasonable accommodation under the following conditions:
1. Providing the accommodation would pose a "direct threat" to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids and services.<sup>39</sup>

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<sup>37</sup> 28 CFR § 35.136

<sup>38</sup> 28 CFR § 35.136(i)

<sup>39</sup> 28 CFR § 35.139(a)

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2. Providing the accommodation would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.<sup>40</sup>

**Note: In general, the County may impose legitimate safety requirements necessary for the safe operation of its services, programs or activities. However, the County must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.**

- G. Retaliation or Coercion: Pursuant to ADA, Title II, the County is prohibited from retaliation or coercion against members of the public for exercising their rights under the Act. Regulations specify that no private or public entity shall discriminate against any individual because that individual opposed any act or practice made unlawful by these regulations, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the Act.<sup>41</sup>

Additionally, no private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act.<sup>42</sup>

## **6. Required Training**

### Disability Awareness and Sensitivity

Staff training is an essential step in preventing unlawful discrimination and mitigating any potential liability. Accordingly, the County currently has in place a requirement that all County staff attend Disability Awareness and Sensitivity Training.<sup>43</sup> The purpose of the training is to inform the County workforce of the basic legal requirements under ADA and FEHA, discuss the causes of myths and stereotypes towards individuals with disabilities, and provide tips that may be useful to employees in easing their comfort level when assisting members of the public with disabilities. This training is currently offered in a self-paced, online format and is available through the Human Resources Department, COR Learning website.

### ADA/FEHA for Managers and Supervisors

In addition to the required Disability Awareness and Sensitivity training, all managers and supervisors are required to take training on the employment requirements of ADA and FEHA.<sup>44</sup> The purpose of this training is to inform managers and supervisors of the County's obligations to employees and job candidates with disabilities under these laws, including requirements to conduct a good faith Interactive Process and to reasonably accommodate qualified individuals with disabilities. This training is also available through the Human Resources Department, COR

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<sup>40</sup> 28 CFR § 35.164

<sup>41</sup> 28 CFR § 35.134(a)

<sup>42</sup> 28 CFR § 35.134(b)

<sup>43</sup> As required by Riverside County Board of Supervisors Agenda Item 3.59, dated August 9, 2005

<sup>44</sup> As required by Riverside County Board of Supervisors Agenda Item 3.59, dated August 9, 2005

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Learning website.

### **7. Posting Requirement**

Under ADA Title II, the County is required to make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of the ADA and its applicability to the services, programs or activities of the County.<sup>45</sup> This information must also include the designation of at least one employee to coordinate its efforts to comply with and carry out the requirements of ADA, along with adoption and publication of grievance procedure providing for prompt and equitable resolution of complaints of disability discrimination (addressed in the following section).

In an effort to meet this requirement, all departments are required to ensure that the County's Disability Access and Nondiscrimination Notice is posted in all areas of the County where the public is served. This notice is available through the Human Resources Department, Disability Access and Leave Management Office website.

### **8. ADA Complaint Resolution Procedure**

In compliance with ADA Title II, the County has adopted and published grievance procedures for equitable resolution of complaints of disability discrimination. The County of Riverside ADA Complaint Resolution Procedure is available through the Human Resources Department, Disability Access and Leave Management Office website. The ADA Complaint Resolution Procedure is available to members of the public, applicants and employees who wish to file a written complaint of disability discrimination. Once received, resolution of their complaint will be coordinated with the appropriate department.

In addition, any employee who wishes to file a written complaint of harassment and/or discrimination based on disability or any other protected classification or activity under the law may do so pursuant to County of Riverside Board Policy C-25, Non-Discrimination and Anti-Harassment Policy and Complaint Procedure.

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<sup>45</sup> 28 CFR § 35.106