



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

MEMORANDUM
CSC No. 2014 – 10


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COMMISSIONER

GINA M. ROCCANOVA
COMMISSIONER

Date: April 24, 2014
To: Department Heads
Human Resources Representatives
Cc: Micki Callahan, Human Resources Director
From: Jennifer Johnston, Executive Officer 
Subject: **Policy and Guidelines regarding Future Employment Restrictions
under Civil Service Rule Series 022**

JENNIFER C. JOHNSTON
EXECUTIVE OFFICER

Civil Service Rule Series 022 provides that the appointing officer or Human Resources Director may impose restrictions on a separated employee's future employment with the department and/or City—either indefinitely or conditioned on the individual meeting certain requirements—subject to appeal to the Civil Service Commission (“Commission”). Such restrictions apply to all future employment with the City in any appointment type (e.g., permanent civil service, exempt, provisional, etc.).

This memorandum states the Commission's policies and guidelines on the imposition, removal and appeal of such future employment restrictions, as adopted by the Commission on April 21, 2014. Civil Service Adviser No. 021 provides additional guidance on appeals of proposed restrictions on future employment.

I. Authority

Under Charter Section 10.100, the Commission is charged with “the duty of providing qualified persons for appointment to the service of the City and County.” Charter Section 10.101 provides that the Commission shall adopt rules, policies and procedures to carry out the civil service merit system provisions of the Charter, including rules governing eligibility for employment with the City and County of San Francisco.

II. Overview

Departments have an affirmative duty to their employees, other departments, the taxpayers of the City and County of San Francisco and the individuals to whom

the City provides services, to ensure that the selection and appointment of individuals for City employment is done in a careful and responsible manner. This includes the obligation to review the circumstances of any negative separation to determine whether it would be appropriate to restrict a former employee's future employment with the City.

This also includes the responsibility to review the employment history of any current or former employee prior to making an appointment. Departments are prohibited from appointing individuals with any applicable restriction on their future employment, irrespective of the appointment type of the position (e.g., permanent civil service, temporary exempt, provisional, etc.).

There are two primary benefits of future employment restrictions. First, they serve to limit the possibility of a City department making any hiring decision mistakes in the future and/or exposing itself to liability for negligent hiring. This is particularly important in light of the fact that there may not be sufficient existing documentation regarding the circumstances of a former employee's release, since City departments are not required to retain a former City employee's personnel file more than seven years following separation pursuant to the Commission's Citywide Employee Personnel Records Guidelines. Second, individuals who are restricted from future employment with the City do not get referred to a department for selection off of an eligible list, and therefore do not count against the number of reachable eligibles that a department may consider for employment under the applicable certification rule.

III. Imposing a Restriction

When to Impose a Restriction on Future Employment

All negative separations (e.g., discharge/negative release/termination, disciplinary release from probation, designation of services unsatisfactory following a resignation, etc.), irrespective of appointment type (e.g., permanent civil service, exempt, etc.), should be evaluated to determine whether a restriction on future employment would be appropriate.

This evaluation should be on a case-by-case basis, based on the totality of the circumstances (e.g., the egregiousness of the conduct, the consequences of the conduct, whether it was repeated or a one-time occurrence, etc.). *Generally speaking*, and depending on the circumstances, one or more of the following situations would likely merit a future employment restriction of some kind (note that the following is not intended to be an exhaustive list):

- Egregious misconduct (malfeasance or nonfeasance) (e.g., being intoxicated in the workplace).
- Serious unethical conduct which may mar the department's reputation and/or the public's trust in the department/City (e.g., using one's City position for personal gain).
- Misappropriation of public/City/department funds or property.
- Destruction or serious misuse of public/City/department property.
- Mistreatment of persons (e.g., sexual harassment, violence in the workplace).
- Acts or conduct which presented a danger to the health and safety of the individual, his or her coworkers or members of the public.

- Significant, continued performance issues/deficiencies that would indicate that the individual would not satisfactorily perform the duties of his or her future employment with the City.

Type of Restriction to be Imposed

There are a multitude of different types of restrictions that a department may consider. They range from any of the following or a combination of the following: requiring evidence of subsequent satisfactory work performance outside the City for a specified duration; cancelling eligibility status; restricting employment in a particular department, classification or type of job (for example a job that requires driving); and, any other job-related restrictions, up to and including no future employment with the department and/or City and County of San Francisco.

Except in cases of misconduct/malfeasance, the Commission *generally* favors demonstration of satisfactory work experience outside the City consistent with the position for a period of time, prior to allowing a former employee to return to the City workforce.

Departments must be thoughtful in recommending a department-specific ban instead of a City-wide ban, as the latter would be more appropriate absent special circumstances unique to a specific department. For example, an individual who was separated from City employment for violating the City's policy prohibiting workplace violence should be banned from employment in all City departments, not just the one from which he or she was separated. Likewise, a restriction on future employment conditioned on proof of a satisfactory driving record for an individual separated for numerous driving infractions/accidents should apply to any driving position with the City, not just those with the department from which he or she was separated.

There must also be a nexus between the conduct that resulted in the negative separation and the type of the restriction. For example, if an employee has been released due to his or her unsafe driving, the restriction should be related to restricting that person's employment in a driving position with the City pending proof of a satisfactory driving record in a similar position for another employer. Note that this would not prohibit the individual from being appointed to non-driving positions with the City. Again, the restriction should be for *any* driving position with *the City* (not just with the specific department), since many City departments have driving positions.

The severity (scope and duration) of the restriction should also be correlative to, and commensurate with, the conduct that resulted in the negative separation. The duration of the restriction should be meaningful, and should be whatever time period the department believes would be enough to correct the employee's conduct that led to his or her negative separation. Permanent, unconditional bans should be imposed judiciously and only in circumstances that would merit such a severe restriction.

Effective Date of the Employment Restriction

If appealed, recommendations on future employment restrictions become final by action of the Civil Service Commission. In the absence of an appeal, a recommendation of the appointing officer or Human Resources Director that results in a "Final Administrative Action" is in effect a

final action of the Commission, provided that the restriction conforms to Civil Service Rules and applicable laws.

Individuals are placed under general waiver for all appointments pending resolution of an appeal of a restriction on their future employment in accordance with the Civil Service Rules. Further, the Department of Human Resources (“DHR”) and the Municipal Transportation Agency (“MTA”) place individuals under general waiver on all eligible lists pending the outcome of any grievances/arbitrations regarding their dismissal, discharge or termination.

Unless it is a permanent, unconditional ban on any and all future City employment, an individual may still be placed on an eligible list for future consideration under waiver pending satisfaction of any conditions on his or her future employment.

IV. Appeals

The decision of the appointing officer or Human Resource Director to impose restrictions on an individual’s future employment with the City may be appealed to the Commission in accordance with Rule Series 022. The Commission may uphold, modify or expand the recommendation of the appointing officer on the future employment restriction. Again, see Civil Service Adviser No. 021 for additional guidance on appeals of future employment restrictions.

A proposed employment restriction should not be rescinded solely because it has been appealed to the Commission. A department should only consider rescinding a proposed restriction for good cause (e.g., in the event that the department learns of new information that mitigates the conduct, or if DHR advises that the circumstances do not warrant the proposed restriction, etc.).

Commission’s Review

The Commission does not determine if the negative release itself was appropriate, nor does it re-adjudicate an arbitrator’s decision. Rather, the Commission’s role is to determine *if the proposed restriction on future employment is appropriate* (i.e., whether the circumstances surrounding the individual’s negative separation merit a restriction on his or her future employment with the City/department; and whether the scope, duration and type of restriction itself is appropriate under the circumstances).

Requirement for a Staff Report

As indicated, the individual is placed under general waiver for all appointments pending resolution of an appeal of a restriction on future employment to the Civil Service Commission. Therefore, departments are required to submit a staff report to the Commission within sixty (60) calendar days of receiving notification of an appeal on a future employment restriction to ensure that the matter is resolved expeditiously.

The department’s staff report should support the department’s position and address the issue to be determined on appeal: whether the proposed restriction on future employment is appropriate (i.e., whether the circumstances surrounding the individual’s negative separation merit a restriction

on his or her future employment with the City/department; and, whether the scope, duration and type of the restriction itself is appropriate under the circumstances).

The department must notify the Executive Officer as soon as possible if the individual has filed a grievance or lawsuit challenging the underlying separation so that the matter may be postponed until that proceeding has concluded. In the event that the former employee's separation is overturned, therefore making the appeal moot, the department must submit a Form 13 with supporting documentation within ten (10) business days to request administrative closure. In the event that the former employee's separation is upheld, the department must submit a staff report within sixty (60) calendar days so that the appeal can be scheduled for a Commission hearing.

The appeal will be calendared at the next Commission hearing date following receipt of the staff report in accordance with the Commission's meeting calendar.

V. Removing a Restriction

Permanent restrictions on future employment may never be removed. Unless the restriction specifically indicates that it is a "permanent" ban on the individual's future employment with the City and/or department, it will be considered to be a non-permanent restriction eligible for reconsideration after five years in accordance with Civil Service Rule Series 022. A permanent restriction must specify, for example, "Permanent restriction on any future employment with the City and County of San Francisco;" or "Permanent restriction on any future employment in a driving position with the City and County of San Francisco;" or "Permanent restriction on any future employment with the MTA;" etc. Citywide bans imposed before April 21, 2014 are considered permanent restrictions and are therefore not subject to reconsideration.

Non-permanent, unconditional future employment restrictions may be removed by action of the Commission; and conditional restrictions on future employment may generally be removed with the approval of the Human Resources Director (or Director of Transportation, if the conditional restriction is specific to an MTA service-critical class or position), unless otherwise specified by the Commission. The removal of a restriction does not serve to rescind or abrogate the Commission action that imposed the restriction in the first place.

The procedures for removing a future employment restriction are outlined below. In all instances, it is the individual's responsibility to submit a *complete and thorough* request that the restriction/ban be lifted, including all relevant documentation in support of the request.

Individuals cannot be considered for employment in accordance with the terms of any restriction until it is removed. Therefore, DHR and/or the department should endeavor to respond to and process an individual's request to have a non-permanent ban lifted within a reasonable amount of time.

Request to Remove a Conditional Restriction

Unless otherwise specified by the Commission, the Human Resources Director (or Director of Transportation, if the conditional restriction is specific to an MTA service-critical class or

position) may approve the removal of a conditional restriction on an individual's future employment upon determination that he or she has met or otherwise satisfied the terms or conditions of that restriction (e.g., future employment conditioned on the demonstration of one year of satisfactory service with another employer, future employment conditioned on the demonstration of a satisfactory driving record for a period of five years, etc.).

DHR/MTA should endeavor to respond to an individual's *complete* request to remove a conditional ban within thirty (30) calendar days of receipt of the request, notifying him or her of the Human Resources Director's/Director of Transportation's determination on whether the terms or conditions of the restriction have been met. The decision of the Human Resources Director/Director of Transportation is not appealable to the Commission.

Requests to Remove a Non-Permanent, Unconditional Restriction (Requests for Reconsideration)

As indicated, the removal of a non-permanent, unconditional ban may only be done through Commission action. Civil Service Rule Series 022 governs the process and procedures for a request to remove such restrictions.

Departments are required to forward to DHR within thirty (30) calendar days, an individual's *complete* request to lift a non-permanent and an accompanying memorandum with the department's recommendation on whether the request should be approved, declined or modified, and the reason(s) therefor. The memorandum must also include sufficient information that may be available regarding the circumstances of the individual's negative separation (including an overview of what happened and the reason(s) for the separation) and any supporting relevant documentation to inform the Human Resources Director's recommendation to the Commission

Within sixty (60) calendar days of receipt of the department's memorandum, DHR must submit a staff report to the Commission (with the department's memorandum packet attached) with the Human Resources Director's recommendation to either approve, decline or modify the individual's request to remove the restriction, and the reason(s) therefore.

VI. Additional Roles and Responsibilities

Appointing Officers/Departments

An Appointing Officer must properly notify an individual of his or her intent to impose a restriction on his or her future employment in accordance with the procedures prescribed by DHR. The notification must clearly indicate the type (i.e., whether it is permanent or not), scope and duration of the restriction; and it must include information on the process for appealing the restriction. Departments are also required to adequately document in the system of record the base(s) for the employment restriction.

Departments are responsible for ensuring that any proposed employment restriction is appropriately and accurately documented in the system of record and in the individual's personnel file. Departments are also responsible for documenting in the system of record when an individual has appealed a proposed employment restriction, and what the disposition was if the matter did not

ultimately go before the Commission for review.

Finally, departments are responsible for ensuring that any other necessary actions are undertaken to implement a final employment restriction. This includes notifying the DHR Recruitment and Assessment Services Division and/or the MTA of any restriction that requires that an individual's name from any eligible lists.

Human Resources Director/DHR and Director of Transportation/MTA

The Human Resources Director is responsible for establishing the procedures for implementing these policies and guidelines for all departments except for the MTA, which shall be the responsibility of the Director of Transportation.

DHR is required to report to the Commission in February and August of each year with information on individuals who appealed a restriction on their future employment but ultimately withdrew the appeal because the department reduced or rescinded the restriction. The MTA is also required to report such information to the Commission for MTA service-critical positions in February and August of each year.

DHR and the MTA are responsible for ensuring that the Human Resources Director's/Director of Transportation's decision to lift a conditional employment restriction is appropriately and accurately documented in the system of record, and that any other necessary actions are undertaken to implement that decision.

Executive Officer/Commission Staff

The Executive Officer is responsible for ensuring that departments understand their roles and responsibilities as outlined herein. This includes providing any training that may be needed.

The Executive Officer is also responsible for notifying all parties of the Commission's action on an appeal or request to remove an employment restriction, and for ensuring that such action is properly documented in the system of record.

QUESTIONS

Questions on Civil Service Rules or Commission policies, procedures and guidelines may be directed to Commission staff at (415) 252-3247.