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CHANCELLOR'S OFFICE**

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Date: September 23, 2013

To: Chief Executive Officers, Chief Human Resources Officers

From: Steve Bruckman
Executive Vice Chancellor and General Counsel

Re: Revision of Equal Employment Opportunity Program Regulations

Summary

In 2011, the Board of Governors approved a substantial revision of the title 5 regulations pertaining to equal employment opportunity (EEO) in recruiting and hiring. Since that time, the regulations have been under review by the Department of Finance (DOF). DOF was concerned that the regulations could result in claims for reimbursement from districts. On September 10, 2013, DOF signed off on the regulations. The regulations have been filed with the Secretary of State and will become effective on October 19, 2013. The revised regulations can be found on our website at:

http://extranet.cccco.edu/Portals/1/Legal/Regs/FINAL_AS_FILED_EEO_regs.pdf.

While still encouraging diversity in hiring, the revised regulations are less prescriptive in the means of accomplishing this goal. The revised regulations also change what is required for a district equal employment opportunity plan. Although the revised regulations provide that the Chancellor's Office is no longer required to approve district EEO plans, districts are still required to submit their plans to the Chancellor's Office. The adoption of these regulations provides a great opportunity for districts to take a fresh look at the processes for ensuring diversity in employment.

Background

In 2008, community college HR and EEO professionals brought their concerns to the Chancellor's Office about the EEO regulations. The concerns included outdated terminology, methodologies, and potential for legal liability. Most specifically, the regulations required the Chancellor's Office to provide "availability data" for use by districts in determining whether

pools were adequately diverse. Despite multiple efforts, the Chancellor's Office was unable to obtain useful and accurate availability data. This left districts unable to comply with the regulations as written.

Together, the field and Chancellor's Office developed a collaborative effort to share information and gather statewide feedback on the law and current regulations, best practices for promoting, and accurately measuring and assessing employee diversity, and how to design regulations that would best serve California's dynamic and growing community college student population. Under this process, the statewide EEO and Diversity Advisory Committee (led by the Chancellor's Office and comprised of representatives from constituent groups including HR/EEO, faculty and classified staff) formed a task force to draft new regulatory language. The task force, like the Advisory Committee, included the Chancellor's Office and constituent groups. After extensive consultation with professionals in the field, the task force established broad goals and principles for title 5 revisions. Then, a writing team assembled from among its members began its work. The primary goals charged to the writing team were to develop new EEO strategies that would:

- better align with the current legal and social context;
- provide HR and EEO professionals with better tools which are legal and methodologically sound, and practice-oriented; and
- continue to demonstrate and expect meaningful and effective efforts to maximize diversity and identify and eliminate barriers to the employment opportunities for underrepresented groups.

Overview of Revisions

Historically, districts have been held accountable for outcomes, measured by comparisons to external reference groups. Under the revised regulations, districts have both the independence and the responsibility to design and implement strategies that make sense for their particular communities. Districts must conduct systematic self-evaluation of practices that are focused at the district level. Data will still be collected and analyzed, but instead of relying on a single specific test or set of numbers, a more systematic and integrated design allows districts to measure and assess diversity from various angles and through various means relative to known populations. Districts are provided with the flexibility to utilize practices that best meet the needs of their diverse populations, as well as an opportunity to optimize available resources. Chancellor's Office oversight is secondary, in that it is triggered by a district's failure to take responsibility for developing and implementing EEO strategies on its own.

In addition, the rules for interim appointments have been changed. Previously, interim appointments were allowed for one year, and districts could request approval from the Chancellor's Office for an additional year. The revised regulations allow for a two year interim

appointment with no provision for extension. After two years, the interim appointment must be terminated.

Aside from technical and nonsubstantive changes, below is an overview of the substantial changes and associated rationales.

Previous regulations	Revised regulations
<p>Remedy for discrimination: Pool certifications are based on comparison of diversity of applicants with expected rates in availability data provided by Chancellor's Office and from the qualified applicant pool. Where analysis indicates underrepresentation due to flaws in hiring process, districts are required to re-recruit before hiring.</p>	<p>Remedy for discrimination: Modernization of methodology to include multiple strategies for optimal flexibility for local solutions and preventative practices. <i>Which</i> strategies to use are optional. However, implementing diversity/EEO plans and meaningful strategies is required. Rationale: Avoid overreliance on a single measure; allow for district flexibility and increased validity/reliability. Replaces costly and time consuming certification process with practices aimed at prevention and a broader array of lawful strategies designed to maximize diversity rather than react to underrepresentation.</p>
<p>Sources of accountability: EEO plans reviewed and approved by Chancellor's Office. Applicant pools are required to be certified.</p>	<p>Sources of accountability: Chancellor's Office may impose from among the multiple strategies <i>if</i> they find a pattern of discrimination complaints or other indicators that a district is not employing effective practices, and <i>after</i> the district has been given notice and an opportunity to correct. Rationale: Recognizes limited resources/staff in the Chancellor's Office, as well as provides for advance disclosure of more specific practices which might be required should problems be identified.</p>
<p>EEO for persons with disabilities: Goals and timetables allowed because preferential treatment on the basis of disability is not prohibited by Prop 209. Thus, disability treated differently from other monitored groups.</p>	<p>EEO for persons with disabilities: Disabled applicants are treated consistently with all other applicants, and afforded the benefits and protections of all other protected groups under the law, as well as the proactive practices-based approaches districts are to utilize to maximize diversity. Of course, this is in</p>

	<p>addition to all rights specifically afforded to disabled applicants under the American Disabilities Act and Fair Employment & Housing Act.</p> <p>Rationale: By employing a consistent approach for applicants in ALL underrepresented groups, the regulations are more consistent, coherent, practical and cost effective. It also eliminates the tension of requiring different treatment of one group within regulations designed by their very name to ensure equal treatment. Further, because the Task Force sees the revisions as offering more effective and modern approaches to diversity, this revision does not reflect a diminished commitment to expanding opportunities for disabled applicants</p>
<p>Allowable interim appointments: One year, with additional year based on “business necessity.”</p>	<p>Allowable interim appointments: Two years, without a required showing of business necessity.</p> <p>Rationale: One-year limit is not workable because the recruitment process for leadership positions takes so long. Business necessity, as defined in the regulation, is a standard that is virtually impossible to meet rendering the extension possibility extremely unlikely. A cleaner approach is to allow two years with no extensions.</p>

Next Steps

The revised regulations and implementation will be discussed at the Chief Human Resources Officers Annual Meeting on October 15-18, 2013. Please contact Ruth Cortez if you are interested in attending. The primary Chancellor’s Office contact person will be Senior Attorney, Julia Blair. Julia can be reached at (916) 445-6212, or jblair@ccco.edu.