



Board of Supervisors Memorandum

December 7, 2021

Process for Off-Boarding Unvaccinated Staff who work with Vulnerable Populations

Background

On November 2, 2021, the Board of Supervisors approved a plan to require COVID-19 vaccination of employees who work with vulnerable populations, with a deadline to become fully vaccinated against COVID-19 on or before December 31, 2021. "Vulnerable populations" were defined as those employees working in person with individuals confined either in a detention or correctional facility, as well as those that may be in a nursing home and/or assisted living facility, or who provide in-person direct services to children or the elderly on a regular or recurring basis.

A total of 2,168 employees¹ were identified by their Appointing Authorities as working with vulnerable populations. Of those 2,168 employees², 80 percent (1,741) have been verified by Human Resources as already fully vaccinated against COVID-19. The remaining **427 employees appear to be unvaccinated** as they have not yet been verified by Human Resources. Of those 427 employees, 414 are merit protected (classified) and 13 are unclassified. A total of 52 employees have requested a medical or religious accommodation.³

Off-Boarding Process

- ***Merit Protected Employees***

Merit System Rules 11 and 12 cover the process for 414 employees who will be involuntarily terminated. Per Merit System Rule 11, the basis for the termination will be non-disciplinary:

An employee may be terminated for inability to meet the minimum qualifications, for failure to pass a required background check, or for failure to obtain and/or maintain licensing, certification or other requirements for the position currently held.

¹ No Courts staff are included in this count as we are awaiting the Supreme Court determination on current mandates and requirements as they apply to the Courts.

² Employee counts are as of November 18, 2021.

³ While there is no accommodation that can be made to permit unvaccinated employees to permit them to work with vulnerable populations, these employees can be eligible for reappointment as an accommodation, if they choose to request it, which is discussed in detail below.

The process requires:

1. **Notice of Intent to Involuntarily Terminate** – Written notification given to an employee identifying the Department's *intent* to involuntarily terminate the employee on a future date and outlining the specific details/reasons for the involuntary termination.
2. **Pre-action Meeting** – A pre-identified meeting time for the employee to meet with the Department's representative so they have an opportunity to give any facts/evidence as to why they should not be involuntarily terminated.
3. **Notice of Involuntary Termination** – Should the County determine that termination should proceed, written notification given to the employee of their involuntary termination, the specific reason(s) for the involuntary termination, and advisement of their right to appeal the action.

Each unvaccinated employee identified for involuntary termination must be given their own written notifications and Pre-Action Meeting, with sufficient time between the issuance of the Notice of Intent to Involuntarily Terminate and the Pre-Action Meeting. A period of three (3) days is typically given to allow the employee time to prepare a verbal and/or written response for the Pre-Action Meeting. Sufficient time must be given to allow Departments to draft the paperwork and conduct the meetings with employees. Employees will be permitted to continue to attend work until the process outlined above is completed.

- ***Unclassified Employees***

For the thirteen (13) unclassified employees and forty (40) probationary employees that work with vulnerable populations, they can be issued a letter notifying them that are in an "At Will" position, serving at the pleasure of the Department Head, and that their employment is being terminated as of a specific date. No formal process is required and the termination is effective as of the date specified.

- ***Reappointment Period for Employees Who Requested an Accommodation***

Fifty-two (52) of the 427 unvaccinated, vulnerable population-serving employees have requested a religious accommodation or an accommodation/exemption due to a disabling condition or medical contraindication. Employees who requested a religious accommodation or experience a medical contraindication will be permitted to request a reappointment as an accommodation.⁴ While the County is not required to provide this option, given the employee's inability to become vaccinated due to a sincerely held religious

⁴ Those who have requested an accommodation due to a medical disability fall under Administrative Procedure 23-29, *Reasonable Accommodation of Applicants and Employees with Disabilities*, which affords its own reappointment process which will be applied to these employees.

belief or a medical contraindication, permitting a reappointment for this select group is an act of good faith by the County, before concluding the required interactive process.

To elect this option, an employee who requested a religious accommodation or provided documentation of a medical contraindication must submit their request for a reappointment **on or before December 31, 2021**. When requested, the employee will be given thirty (30) days as a reappointment period, a period of time during which they can locate and request another County position.⁵ *Employees will not be permitted to work during any part of their reappointment period that occurs from January 1, 2022 to January 30, 2022, but may use any available compensatory time or vacation accruals, or take leave without pay – leave must be taken in that order.*

A reappointment will only occur where all apply:

- The selected position does not serve vulnerable populations in person;
- The employee meets the minimum qualifications of the selected position;
- The selected position is the same salary grade or lower than the employee's current position; and,
- The Appointing Authority of the destination Department agrees to the reappointment.

The onus is on the unvaccinated employee to identify positions for which they qualify and to notify Human Resources. Human Resources will notify the Appointing Authority who can determine whether they would like to meet with the employee to see if the employee is a good fit for the position or whether they wish to retain their competitive hiring process. All reappointments are at the discretion of the Appointing Authority; however, should a Department decline a reappointment, it is recommended that Appointing Authorities document a business case as to why the reappointment is not provided. Where both the Appointing Authority and employee agree to the reappointment, Human Resources will ensure that any necessary approvals are obtained to effectuate the reappointment. An employee who is not successfully reappointed during the stated period will be terminated at the end of the reappointment period, or in this case, no later than January 30, 2022.

Timing of the Involuntary Terminations⁶

Allowing sufficient time to conduct the terminations is imperative. Our rules require notice of the involuntary termination and an opportunity to be heard by the employee. Currently there are 414 potential involuntary terminations to implement.

⁵ Reappointment, per Merit System Rule 1.52, is a competitive or non-competitive change in the assignment of an employee from one position to another of any classification having the same or lower salary grade.

⁶ All affected unvaccinated employees were formally notified by Human Resources on November 18, 2021, that they were in a position that worked with vulnerable populations and that they were required to be fully vaccinated against COVID-19 by January 1, 2022. This provides the employee six (6) weeks in which to become fully vaccinated by either the two-dose series or single-dose series.

The Honorable Chair and Members, Pima County Board of Supervisors
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Recommendation

Direct all Appointing Authorities to draft their Notices of Intent to Involuntarily Terminate and issue them to employees **no later than December 20, 2021**. Departments schedule Pre-Action Meetings with each employee, allowing a minimum of 30 minutes for each meeting, or longer if warranted. A final Notice of Involuntary Termination to be issued **no later than December 31, 2021**. Employees are permitted to work during the Pre-Action process; however, in no event later than December 31, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Lesh", with a stylized, flowing script.

Jan Lesh
Chief Deputy County Administrator

JL/dym – November 29, 2021

c: Carmine DeBonis, Jr., Deputy County Administrator for Public Works
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer,
Health and Community Services
Cathy Bohland, Director, Human Resources