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CIVIL SERVICE COMMISSION
POLICY ON INTERVIEWING REQUIREMENTS FOR OPEN AND PROMOTIONAL
ELIGIBLE LISTS

1. ~~The Personnel Department, working with the employing department, will make every effort to assure that women, minorities and the disabled are represented on eligible lists and within certifiable range for appointment, considering labor force goals established by the Board of Supervisors in its Affirmative Action Plan.~~

The Personnel Department, working with the employing department, will make every effort to ensure equal employment opportunity to employ the most qualified workforce. It is the goal of the Personnel Department to maintain a diverse workforce by continually evaluating, monitoring, tracking all levels of employment in all categories and occupational groups; and maintaining a county wide EEO plan as required by federal laws.

2. Departments that are under-represented by total department and/or by occupational categories as indicated in the County Affirmative Action Equal Employment Opportunity Plan will be required to conduct interviews for open or promotional eligible lists under Civil Service Rule VI.B.4.d.2 for vacancies in occupational groups where they are under-represented. The Personnel Department will notify all eligibles so certified of their right to an interview and the department must interview all certified eligibles responding within five days of the notice.
3. In the event there are no under-represented group members on the eligible list, the Personnel Department will make a determination on whether to re-recruit after consultation with the Affirmative Action Equal Employment Opportunity Program Manager.
4. In the event that approval to interview from a list with no under-represented members is authorized, the department may conduct interviews under Civil Service Rule VI.B.4.d.1 or VI.B.4.d.2 as desired.

Approved by Civil Service Commission 1/23/93 revised 3/11/93;
Board of Supervisors 3/23/93



PERSONNEL REGULATIONS AND REFERENCES
OF SANTA CRUZ COUNTY
SECTION 190
AFFIRMATIVE ACTION POLICIES
EQUAL EMPLOYMENT OPPORTUNITY POLICIES
AND COMPLAINT RESOLUTION PROCEDURES

- Section 191 ~~Affirmative Action Policies~~
~~Equal Employment Opportunity/Nondiscrimination Program~~
~~Equal Employment Opportunity/Affirmative Action Policy~~
~~Equal Employment Opportunity/Nondiscrimination Policy~~
Harassment Policy
Sexual Harassment Policy
Disability Nondiscrimination Policy
Reasonable Accommodation Policy
- Section 192 Employment Discrimination/Harassment Complaint Procedure
- Section 193 Americans with Disabilities Act - Complaint Procedure

Updated: 7/98

PERSONNEL REGULATIONS
EQUAL EMPLOYMENT OPPORTUNITY/ AFFIRMATION
ACTION ~~NONDISCRIMINATION~~ PROGRAM

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191.1. ~~EQUAL EMPLOYMENT OPPORTUNITY/ AFFIRMATIVE ACTION~~
~~NONDISCRIMINATION~~ POLICY

(Adopted Resolution 320-75 7/75; Revised Resolution 791-81 10/81;
Resolution 599-90 10/90; Resolution 385-91 and 386-91 6/91;
Resolution 25-92 1 /1 3/92; Resolution 91-93 3/2/93; Resolution 164-94
4/12/94)

The Santa Cruz County Board of Supervisors, recognizes the need for and reaffirms its commitment to equal employment opportunity and nondiscrimination. The continuing practice of the County of Santa Cruz shall be:

- A. This policy shall be known and may be cited as the:

COUNTY OF SANTA CRUZ
EQUAL EMPLOYMENT OPPORTUNITY/ AFFIRMATIVE ACTION
~~NONDISCRIMINATION~~ POLICY

- B. ~~As provided by State and Federal Laws~~, the County of Santa Cruz will ensure equal employment opportunity and nondiscrimination in all personnel transactions including, but not limited to, the recruitment, selection, transferring, promotion, retention, discipline, compensation, assignment, benefits, training, evaluation, layoff, and rehire of qualified persons; to be fair and impartial with all of its employees and applicants for employment, whether elected, exempt, or civil service without regard to race, color, ~~creed~~, religion, national origin, ancestry, disability, medical condition (cancer related and genetic characteristics), marital status, sex, sexual orientation, gender, age (over 40 18), veteran status, pregnancy or any other nonmerit factor; and
- C. The County of Santa Cruz is committed to equal employment opportunity and views equality of opportunity, fair access, equal treatment and the concept of diversity in the workforce as necessary elements of its merit system; these elements shall be integrated, and considered congruent, with its Personnel practices; and
- D. Each employee of the County of Santa Cruz shall take affirmative steps, within his or her job responsibility, to implement this policy and to protect the rights it guarantees.
- ~~E. It is the goal of the Board of Supervisors to employ a diverse County work force that is at least representative of the area labor force at all levels of employment in all job categories and occupational groups, with a commitment to continue affirmative action efforts directed to the achievement of a County work force that is representative of the County population at all levels of employment in all job categories and occupational groups; and~~



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E. The Board of Supervisors is committed to the concept that in order to best serve the diverse County population, pro active efforts to ensure equal employment opportunity should be taken in order to employ the most qualified workforce. It is the goal of the Board of Supervisors to maintain a diverse workforce by continually evaluating, monitoring, tracking all levels of employment in all categories and occupational groups, and maintaining a countywide EEO plan as required by federal laws.

F. This policy shall be implemented in the following manner:

1. The County Administrative Officer is hereby charged with ensuring the achievement of the policy goals of equal employment opportunity as established by the Board, and stated herein.
2. The County Administrative Officer has designated the Affirmative Action Program Manager Equal Employment Opportunity Officer as the manager of the Equal Employment Opportunity/ Affirmative Action Nondiscrimination program and all related programs and activities.
3. The County Administrative Officer has designated the Affirmative Action Program Manager Equal Employment Opportunity Officer as the "504" Equal Employment Opportunity/ Affirmative Action Nondiscrimination program compliance officer.
4. The Affirmative Action Program Manager Equal Employment Opportunity Officer shall provide for effective communication of the Board's goals, and see that each agency or department head takes such affirmative action proactive steps as is necessary to achieve its goals in compliance with Federal, State, and local law and as policies specified in the Equal Employment Opportunity/ Affirmative Action Nondiscrimination Program.

191.2. HARASSMENT POLICY
(Adopted Resolution 791-81 1 0/81 ; Revised Resolution 386-91 6/91)

A. The Policy of the County of Santa Cruz regarding discriminatory harassment is established as follows:

1. It is the policy of the County of Santa Cruz to promote an employment practices environment free from harassment having the effect, either directly or indirectly, of discriminating against a County employee or applicant on the basis of race, color, creed, religion, national origin , ancestry, disability, medical condition (cancer related and genetic characteristics), marital status, sex, sexual orientation, age (over 40 18), pregnancy, gender, veteran status, or any other nonmerit factor, and to take reasonable steps to prevent such harassment from occurring in the employment practices environment, including the following:

- a. affirmatively raising the subject of harassment;
- b. expressing strong disapproval;
- c. developing appropriate sanctions;
- d. informing employees of their right to raise and how to raise the issue of harassment under California law;

AND

- e. developing methods to sensitize all concerned.

2. Harassment includes but is not limited to:

- a. verbal harassment, e.g., epithets, derogatory comments or slurs on a basis enumerated in the foregoing paragraph;
- b. physical harassment, e.g., assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on a basis enumerated in the foregoing paragraph;
- c. visual forms of harassment, e.g., derogatory posters, cartoons or drawings on a basis enumerated in the foregoing paragraph;

OR

- d. sexual advances, including but not limited to sexual advances which condition an employment benefit upon an exchange of sexual favors. (See the policy on Sexual Harassment in Section 192.3. below.)

3. It is the policy of the County of Santa Cruz that such harassment shall not be tolerated, condoned or trivialized, and any harasser, if a County employee, manager, official, volunteer, client, advisory board or commission member, contractor or vendor, shall be subject to appropriate discipline, including possible dismissal, as determined by the employee's department head or appointing authority upon due consideration of the findings and recommendations of the ~~Affirmative Action Program Manager~~ Equal Employment Opportunity Officer.

B. This policy shall be implemented in the following manner:

- 1. The procedure for resolving complaints alleging harassment shall be that set forth in Personnel Regulations and References of Santa Cruz County Section 192 for resolving complaints of discrimination or harassment. ~~The Affirmative Action Program Manager~~ Equal Employment Opportunity Officer shall inform the alleged harasser of the alleged offending behavior(s) and provide an opportunity to respond to the allegations by way of refutation thereof or correction of behavior deemed to be harassment, as part of the informal

investigation and resolution of the complaint.

2. ~~The Affirmative Action Program Manager~~ **Equal Employment Opportunity Officer** shall be responsible for:

- a. insuring that this policy, its definition of harassment, including sexual harassment, and the complaint procedures are disseminated to all employees;
- b. providing guidance, training and assistance to department heads, supervisors, liaisons and employees on dealing with harassment within their areas of responsibility;
- c. investigating, resolving and making findings and recommendations on complaints of harassment that are reported according to established informal and formal complaint procedures;

AND

- d. upholding the rights of all employees to appeal in accordance with Personnel Regulations Section 192 .
3. Department heads shall be responsible for informing personnel in their respective departments during employee orientation or special training sessions, of their rights and responsibilities under this policy regarding harassment, and for coordinating and cooperating with the ~~Affirmative Action Program Manager~~ **Equal Employment Opportunity Officer** in resolving complaints involving personnel in their respective departments.
 4. Contractors with the County of Santa Cruz shall be responsible for insuring that effective policies and procedures concerning the prevention of harassment exist in their companies as part of the requirements under the equal employment opportunity/ nondiscrimination clause of their contracts with the County in a manner consistent with the purpose and intent of this policy.
- C. It is the policy of the County of Santa Cruz, and of departments having regular public contact in particular to be supportive of employees experiencing harassment on the job from members of the public by taking reasonable steps to identify and prevent such behavior as it may occur.
 - D. In applying this policy, the rights of free speech and association shall be accommodated consistently with the intent of this policy.
 - E. Nothing in these regulations may be construed as limiting the County's right to take reasonable disciplinary measures which do not discriminate on a basis enumerated in this policy.



191.3. SEXUAL HARASSMENT POLICY

A. It is the policy of the County of Santa Cruz that sexual harassment is unacceptable conduct and is prohibited in the work environment. Such employee misconduct is a form of discrimination on the basis of sex as defined in Section 703 of Title VII of the 1964 Civil Rights Act (as amended), and is subject to disciplinary action up to and including dismissal. Employees should also be aware that charges of sexual harassment can be filed in civil court, with potential monetary damages.

B. The County of Santa Cruz will not tolerate sexually harassing behavior by any of its employees, managers, officials, volunteers, clients, advisory board or commission members, contractors, or vendors. If sexual harassment is found, action will be taken against the harasser.

C. Sexual harassment is defined as:

1. conduct including, but not limited to:

- a. unsolicited and unwelcome sexual advances;
- b. requests for sexual favors;

OR

- c. verbal, visual or physical conduct of a sexual nature.

2. WHEN any of the following criteria are met:

- a. submission to such conduct is made either explicitly or implicitly a term or condition of employment (Quid Pro Quo);

OR

- b. submission to or rejection of such conduct or communication by an employee is used as a basis for employment decisions affecting the employee (Quid Pro Quo);

OR

- c. such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or create an intimidating, hostile or otherwise offensive work environment (Hostile Environment).

D. The three categories of sexual harassment are defined below but not limited to the following examples:

1. Verbal

Sexually derogatory comments, slurs, jokes, remarks or epithets. It is not necessary to use graphic or sexually explicit language to verbally harass someone. Otherwise benign language, spoken in

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a suggestive or derogatory tone of voice or accompanied by visual or physical harassment, can also be considered sexual harassment.

2. Visual

Leering, looking someone "up and down", making sexual gestures, notes or letters, displaying sexually suggestive objects, pictures, cartoons or posters.

3. Physical

Touching, impeding or blocking movement, sexual assault and attempted sexual assault. (Note: reporting sexual assault as sexual harassment does not replace the filing of criminal charges). Common physical gestures like hugging or other physical contact can be improper taken in context with other comments and/or behavior.

E. For the purpose of further clarification, sexual harassment includes but is not limited to:

1. Subjecting women ~~any person~~ in nontraditional work environments to hazing (for example being dared or asked to perform unsafe work practices; having tools and equipment stolen, etc.) if requests for sexual favors are not met.
2. Making sexual advances that are unwanted, even in situations where the relationship began with reciprocal attractions, but later ceased to be reciprocal.
3. Making reprisals, threats of reprisal, or implied threats of reprisal following a negative response to a request for sexual favors. For example, either implying or actually withholding support for an appointment, promotion, or change of assignment; suggesting a poor performance report will be prepared or suggesting probation will be failed. Also making reprisals against an individual who has filed a sexual harassment complaint.
4. Engaging in implicit or explicit coercive sexual behavior which is used to control, influence, or affect the career, salary, and/or work environment of another employee. This may include situations where an individual is treated less favorably because others have acquiesced to sexual advances.
5. Offering favors or employment benefits, such as promotions, favorable performance evaluations, favorable assigned duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.
6. Repeatedly asking an employee out, "hanging around" an employee with no legitimate work related reason, and pursuing an employee in or out of the workplace CAN cause a hostile work environment, affecting the employee's job performance.



If the interest is not reciprocal, this IS sexual harassment, even if no job benefit is lost, and even if there is no superior/subordinate relationship involved.

7. Engaging in written, verbal, physical and/or visual behavior (as defined above) that results in an ongoing intimidating, hostile or offensive work environment impacting the recipients' ability to do his or her job.

F. Sexual Favoritism: A situation when one person is granted a promotion or other job benefit by a department head, manager or supervisor received it because that person submitted to sexual advances or requests. An isolated instance of favoritism toward a lover, friend or spouse may be unfair and entirely unethical, but it does not discriminate against women or men in violation of Title VII, since both are disadvantaged for reasons other than their genders. However, there are slightly different circumstances in which sexual favoritism does constitute sexual harassment.

1. If an female employee is coerced into submitting to unwelcome sexual advances in return for a job benefit, this constitutes quid pro quo harassment of the coerced employee. Other female employees sex who were qualified for but denied the benefit may be able to establish that sex was generally made a condition for receiving the benefit (a condition that would not have been imposed on the opposite sex men). ~~Men too would have a standing to challenge the favoritism on the basis that they were injured as a result of the discrimination leveled against the woman who was coerced.~~

2. If favoritism based upon the granting of sexual favors is widespread in a workplace, both male and female colleagues who do not welcome this conduct can establish that a hostile work environment exists, regardless of whether any objectionable conduct is directed at them and regardless of whether those who were granted favorable treatment willingly bestowed the sexual favors.

G. Nonemployee Sexual Harassment: Departments may be responsible for sexual harassment of an employee by a nonemployee where the department head, managers or supervisory employees knew or should have known of the unlawful conduct and the department failed to take immediate and appropriate corrective action. A department is potentially liable for nonemployee sexual harassment in the same way they are liable for co-worker sexual harassment depending on:

- 1. the extent of the department's control over the nonemployee; and
- 2. any legal responsibility which the employee may have with respect to the nonemployee's conduct.



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H. This policy shall be implemented in the following manner:

1. Employees may file a formal complaint using the Discrimination or Harassment Complaint Process (Personnel Regulations - Section 192) in dealing with sexual harassment. The Complaint form is available through the County's Online Personnel Regulations Information (OPRI) System and at the ~~Affirmative Action Office~~ ~~Equal Employment Opportunity Office~~. The ~~Affirmative Action Program Manager~~ ~~Equal Employment Opportunity Officer~~ shall inform the alleged harasser of the alleged offending behavior(s) and provide an opportunity to respond to the allegations by way of refutation thereof or correction of behavior deemed to be harassment, as part of the informal investigation and resolution of the complaint. If appropriate action is not taken to stop the harassment, employees may further file a formal complaint with the state Department of Fair Employment and Housing (DFEH) and/or the federal Equal Employment Opportunity Commission (EEOC).
 2. The ~~Affirmative Action Program Manager~~ ~~Equal Employment Opportunity Officer~~ shall be responsible for:
 - a. insuring that this policy, its definition of sexual harassment, and the complaint procedures are disseminated to all employees;
 - b. providing guidance, training and assistance to department heads, supervisors and employees on dealing with sexual harassment within their areas of responsibility;
 - c. investigating, resolving and making findings and recommendations on complaints of sexual harassment that are reported according to established informal and formal complaint procedures;
- AND
- d. upholding the rights of all employees to appeal in accordance with Personnel Regulations Section 192.
3. All department heads, managers and supervisors shall be responsible for creating a business-like work environment free from sexual harassment. This includes closely scrutinizing their own actions. In addition, they are responsible for taking direct, effective action to stop sexual harassment they are aware of, and harassment they should be aware of (in other words, ignorance of harassment is not necessarily an acceptable defense for inaction). Action taken must prove effective. ~~Managers and supervisors can be held personally responsible, and personally be sued in civil court, if their action is ineffective in stopping the harassment.~~
4. Although it is not required, it is generally helpful for individuals who believe they are being sexually harassed to inform the harasser that his or her behavior is unwelcome, offensive, or highly



inappropriate. This is often the first and sometimes the only action needed to end the harassment. Employees who believe they have been sexually harassed can and are advised that they may seek assistance from management, the department's Sexual Harassment Liaison or the Affirmative Action Office. ~~Equal Employment Opportunity Office.~~

- 5. Employees should understand that total confidentiality cannot be guaranteed in regard to sexual harassment. While the need to protect all parties involved will be addressed with confidentiality as much as possible, and no one without a clear need to know will be involved, the need to resolve a sexual harassment situation and remove future sexual harassment threat from the workplace may require directly contacting the alleged harasser and his or her supervisor(s). This should not scare ~~deter~~ an employee away from contacting the Affirmative Action Office ~~Equal Employment Opportunity Office~~ to try to resolve a difficult, uncomfortable, or threatening situation. Every effort will be made to take the complainant's wishes into consideration, especially if there are informal ways to resolve the problem.
- 6. It should be noted that in some cases the actions of employees or supervisors, while not being targeted at one single employee, may be considered harassing if those actions (including the telling of sexually explicit or derogatory jokes and display of lewd or suggestive printed pictures, cartoons, or posters) are perceived to create a hostile or intimidating work environment. The safest course of action to take in resolving such problems or any potential situation of harassment is to cooperate by modifying behavior or removing or asking that the offensive materials be removed.
- 7. Employees and managers/supervisors are strongly encouraged to seek assistance early from the Affirmative Action ~~Equal Employment Opportunity~~ Office with any situation that they perceive has the potential of becoming a sexual harassment case.

G. Santa Cruz County's policy on Sexual Harassment is not intended to inhibit or restrict the relationships of women and men employees within appropriate modes of behavior - but rather to welcome, encourage and support teamwork and mutual respect among all employees.

191.4. The Santa Cruz County Board of Supervisors Policy regarding discriminatory practices effecting individuals with disabilities is established as follows:

A. DISABILITY NONDISCRIMINATION POLICY (Resolution 25-92 1/13/92)

- 1. The County of Santa Cruz shall promote programs, services and a workplace environment for County employees, applicants and the public free from unlawful discrimination, either directly or indirectly, on the basis of an individual's disability; and
- 2. The County of Santa Cruz shall take steps to prevent such discrimination from occurring in County government including the



following areas: a) opportunity for employment; and b) accessibility to public services and accommodation including programs, services and facilities.

- 3. Each employee of the County of Santa Cruz whether elected, exempt or civil service is hereby directed to uphold this policy and to acknowledge and protect the rights that it guarantees; and
- 4. Contractors with the County of Santa Cruz shall be responsible for insuring that effective policies and procedures concerning the prevention of discrimination based upon an individual's disability exist in their companies as part of the requirements under the equal employment opportunity/nondiscrimination clause of their contracts with the County in a manner consistent with the purpose and intent of this policy.

B. This policy shall be implemented in the following manner:

- 1. The County Administrative Officer shall be responsible for upholding the rights of all individuals both from the public and employees to express allegations of unlawful discrimination without fear of retaliation or reprisal.
- 2. Employees are encouraged to pursue resolution of their complaints of alleged discrimination with their supervisors; other complainants including the public are encouraged to resolve their complaints or allegations at the lowest level possible within the department or agency as published by the department providing the service or program in the complaint resolution procedure.

3. For purposes of employment:

- a. ~~The Affirmative Action Program Manager~~ **Equal Employment Opportunity Officer** shall develop and maintain procedures for Discrimination Complaint Resolution. These procedures for informal and formal resolution of charges, complaints, allegations of unlawful discrimination, shall be set forth in the County Personnel Regulations Section 193.
- b. ~~The Affirmative Action Program Manager~~ **Equal Employment Opportunity Officer** shall be responsible for:
 - 1. insuring that this policy, its definition of discrimination, and the Discrimination and Harassment Complaint Resolution procedures are disseminated to all employees;
 - 2. providing guidance, training and assistance to department or agency administrators, departmental liaisons, supervisors, and employees on dealing with discrimination and reasonable accommodation within their areas of responsibility;



- 3. resolving or investigating and making findings and recommendations in response to allegations and complaints of discrimination that are reported according to established procedures; and
- c. The County Administrative Officer shall be responsible for upholding the right of appeal in accordance with the Discrimination or Harassment Complaint Resolution procedures.
- d. Department or agency administrators shall be responsible for informing their employees of their rights, responsibilities and performance account abilities under this policy, and for the administration of the Discrimination and Harassment Complaint Resolution process in coordination and cooperation with the ~~Affirmative Action Program Manager~~ ~~Equal Employment Opportunity Officer~~.
- 4. For the purposes of the public's accessibility to public services including the benefits of services, programs or activities and accommodation related issues;
 - a. ~~The Affirmative Action Program Manager~~ ~~Equal Employment Opportunity Officer~~ shall develop and maintain procedures for Discrimination or Harassment Complaint Resolution. These procedures for informal and formal resolution of charges, complaints, allegations of unlawful discrimination, shall be set forth in the County Personnel Regulations Section 193.
 - b. Each Department Head shall use the County's complaint resolution procedure as defined in Personnel Regulations Section 193, for resolving complaints made by a member of the public in regards to issues covered by these regulations. This complaint resolution procedure will be made available to the public through a published document distributed to individuals using the program or receiving services.
 - c. Each Department Head shall be responsible for:
 - 1. designating a staff member responsible for disseminating information to staff and the public and resolving complaints received and publishing this individual's name and contact information.
 - 2. insuring that this policy, its definition of discrimination, and the complaint resolution procedures are disseminated to the public;
 - 3. providing guidance, training and assistance to department or agency managers, supervisors, and employees on dealing with discrimination within their areas of responsibility;
 - 4. resolving or investigating and making findings and recommendations in response to allegations and



complaints of discrimination that are reported according to established procedures.

- d. The County Administrative Officer shall be responsible for upholding the right of appeal in accordance with the complaint resolution procedures.
- C. In exercising their right to express an allegation of discrimination or complain against unlawful practices, an individual shall be free from retaliation, reprisals, or threats of reprisals because they made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this policy.
- D. In applying this policy, the rights of free speech and association shall be accommodated consistently with the intent of this policy.
- E. Nothing in these regulations may be construed as limiting the County's right to take reasonable disciplinary measures which do not discriminate on a basis enumerated in this policy.

191.5. REASONABLE ACCOMMODATION POLICY (Resolution 25-92 1/1 3/92)

- A. It is the policy of the County of Santa Cruz that no qualified individual with a disability, shall on the basis of a disability, be subjected to discrimination in employment as covered under Section 703 of the Civil Rights Action of 1964 (as amended) and defined in the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.
- B. It is the policy of the County of Santa Cruz that individuals with disabilities who require a reasonable accommodation in order to take an examination must inform the Personnel Department at the time of application of the need for the accommodation. Documentation from a physician or Department of Rehabilitation verifying the need for accommodation must accompany the request. Reasonable accommodation in the test administration will be made considering the individual's needs and the physical ability requirements to perform the essential job functions.

Physical Agility Tests: Physical agility tests are not medical examinations and can be given at any time during the employment process. These tests will be job related and consistent with business necessity and will used where performance of job related activities measures cannot be achieved with reasonable accommodation.

- C. It is the policy of the County of Santa Cruz to conduct a medical examination or inquiry, only after a job offer has been made and to consider reasonable accommodation of an individual to perform the essential functions of the job considering work restrictions; working conditions exposure limitations; job restructuring; adaptive technique, device or equipment; and protective gear and devices. All entering employees in the same job class are given the same examination or screening. Information on the medical condition of an applicant is maintained in separate files and treated as confidential except that



supervisors and managers are be informed of restrictions and accommodations required by an employee; Occupational Safety and Health Division is informed where a disability might require emergency treatment; and government officials investigating compliance also could be provided with information.

D. It is the policy of the County of Santa Cruz when an employee becomes injured or disabled, whether on the job or off the job, to consider reasonable accommodation of the individual's disability whether short term or permanent.

E. Definitions:

1. Disability Defined: A physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

a. Physical impairment includes a physiological disorder, cosmetic disfigurement, or anatomical loss affecting a body system.

b. Mental impairment includes a mental disorder such as mental retardation or emotional or mental illness.

c. Substantially limits includes being unable to perform a major life activity that the average person can perform or being significantly restricted as to the condition, manner or duration under which a major life activity can be undertaken.

d. Major life activities would include functions such as caring for oneself, walking, hearing, seeing, speaking, etc.

2. Qualified Individual with a Disability Defined: an individual with a disability who satisfies 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. Departments are required to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability unless it would result in an undue hardship.

a. Exclusions: individuals who are currently engaging in illegal use of drugs, however, anyone who has successfully completed a drug rehabilitation program and is not currently using drugs would be included in the definition.

b. Essential Functions: fundamental job duties of the position. Marginal job functions are not included. Factors to be considered in determining whether a function is essential include: the judgment of the employer; written job descriptions; the amount of time spent in performing the function; and the consequences of not requiring the

performance of the function.

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- c. **Reasonable Accommodation:** An accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. No specific form of accommodation is guaranteed for all individuals with a specified disability. Reasonable accommodation could include making existing facilities accessible to persons with disabilities (both work and nonwork areas); job restructuring; part-time or modified work schedules; reassignment to a vacant position; providing readers or interpreters; or modifying examinations and training materials. Additionally, reasonable accommodation could include using accrued leave or providing additional unpaid leave for medical treatment; making employer provided transportation accessible; providing reserved parking spaces; and providing personal assistants, such as a page turner or travel attendant.
 - d. **Undue Hardship:** Departments do not have to undertake a reasonable accommodation if they can demonstrate it would result in significant difficulty or expense. Undue hardship refers to accommodations that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business.

F. This policy shall be implemented in the following manner:

- 1. Employees may file a formal complaint using the Discrimination or Harassment Complaint Process (Personnel Regulations - Section 192) in dealing with discrimination based upon a disability or cancer related medical condition. The Complaint Form is available through the County's Online Personnel Regulation Information (OPRI) System or at the ~~Affirmative Action Office~~ **Equal Employment Opportunity Office**. Employees may further file a formal complaint with the state Department of Fair Employment and Housing (DFEH) and/or the federal Equal Employment Opportunity Commission (EEOC).
- 2. The ~~Affirmative Action Program Manager~~ **Equal Employment Opportunity Officer** shall be responsible for:
 - a. insuring that this policy and the complaint procedures are disseminated to all employees;
 - b. providing guidance, training and assistance to department heads, supervisors and employees on dealing with reasonable accommodation within their areas of responsibility;
 - c. investigating, resolving and making findings and recommendations on complaints of discrimination based upon a disability that are reported according to established

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informal and formal complaint procedures;

- d. determining reasonable accommodation of an individual employee upon the recommendation of the Occupational Health physician, where an employee becomes injured or disabled, whether on the job or off the job;

AND

- e. upholding the rights of all employees to appeal in accordance with Personnel Regulations Section 192.

3. Personnel Services Division staff shall be responsible for:

- a. Conducting job analysis of positions/classes to determine the physical abilities required to perform the essential job functions;
- b. Making reasonable accommodation for test administration purposes.
- c. For the purpose of pre-employment medical examinations or screening, determining reasonable accommodation of an individual employee upon the recommendation of the Occupational Health physician.

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SECTION 192
EMPLOYMENT DISCRIMINATION OR HARASSMENT
COMPLAINT PROCEDURE

Originated: 2/13/79
Revised: 1/87, 1/92, 11/94, 12/94
Res: 91-93 3/2/93
Res: 164-94 4/12/94
Res:

192.1. INTRODUCTION

This procedure establishes the standards for the submission, investigation and handling of discrimination or harassment complaints for employees, County Departments and the ~~Affirmative Action Office (AAO):~~ ~~Equal Employment Opportunity Office (EEO)~~

Each Appointing Authority is responsible to insure that this procedure, along with its provisions, is made known and is available to every employee within their organization through employee orientation and/or special department meetings. (An Appointing Authority may be a department head, or another person or group, i.e., Presiding Judge, who has lawful power to make appointments to, or remove persons from, County positions) The name and number of the ~~Affirmative Action Program Manager~~ ~~Equal Employment Opportunity Officer~~ will be made a part of this notice. New employees will be informed by the Personnel Department of the County's Equal Employment Opportunity/ ~~Affirmative Action Non Discrimination~~ Policy regarding non-discrimination, the County's Harassment, Sexual Harassment, Disability and Reasonable Accommodation Policies, and this procedure's provisions, when they are processed for employment.

192.2. Purpose

To provide a procedure for the effective resolution of all employee complaints that are based on actual or alleged acts or practices of discrimination or harassment in employment. This procedure is separate and distinct from the grievance procedures existing under any of the collective bargaining agreements which deal with management misapplication or misinterpretation of provisions of such agreements, rather than with discrimination or harassment. Issues covered by such agreements shall continue to be dealt with through the Employee Relations Division of the Personnel Department.

192.3. Legal Basis

For the purposes of this procedure, discrimination is defined as in Title VII, Section 703 of the Civil Rights Act of 1964 (as amended); and in the Board of Supervisors' Equal Employment Opportunity/ ~~Affirmative Action Non Discrimination~~ Policy (adopted 7/75; revised 5/90, 6/91, 1/92) - Personnel Regulations and References Section 191.

192.4. Scope

This procedure applies to all employees, both permanent and probationary, and is intended to resolve employee discrimination or harassment complaints that are based on race, color, ~~creed~~, religion, national origin, ancestry, disability, medical condition (cancer related and ~~genetic characteristics~~), marital status, ~~gender~~, pregnancy, sex, sexual orientation, age (over 18 40), veteran status, or any other non-merit factor and applies to all personnel actions including recruitment, selection, appointment, training, promotion, retention, discipline, layoffs or any other aspects of employment.

If applicants for employment allege discrimination during part of the selection process under the control and authority of the Personnel Department, they will be referred immediately to the Personnel Director for resolution within the existing Civil Service Rules and procedures.

A County employee has the option of filing an informal complaint of discrimination or harassment with his/her supervisor or directly with the ~~Affirmative Action Office Equal Employment Opportunity Office~~ —The ~~AAO EEO Office~~ may refer the complaint, whenever appropriate, to the Appointing Authority for investigation and resolution of the complaint, in attempt to gain informal resolution of the issue. If the complaint is referred to the Appointing Authority by the ~~AAO EEO Officer~~, a copy of the Appointing Authority's findings and recommendations to the complainant employee shall be forwarded to the ~~AAO EEO Office~~. If the complainant chooses to file the complaint with the Department first, a copy of the Appointing Authority's findings and recommendations to the complainant employee shall be forward to the ~~AAO EEO Office~~. The complainant may appeal the Appointing Authority's decision to the ~~Affirmative Action Program Manager Equal Employment Opportunity Officer~~. The complainant and/ or the Appointing Authority may appeal the ~~Affirmative Action Program Manager's Equal Employment Opportunity Officer's~~ decision to the County Administrative Officer. The County Administrative Officer's shall consider the complaint and issue a decision which shall be final.

In all instances, staff from the ~~AAO EEO Office~~, at the request of either party, may participate in a consultative role.

192.5. Investigation Process & Timetables

The complaint process must be initiated within ten (10) working days after the alleged act occurred. EXCEPTION: A complaint alleging sexual harassment must be initiated within 180 calendar days after the alleged act of sexual harassment has occurred. Complaints not submitted within the time limitations will not be processed under this complaint resolution procedure, however, every attempt will be made to resolve any issue of discrimination or harassment brought to the attention of the ~~Affirmative Action Office Equal Employment Opportunity Office~~ whether anonymous, informal, formal or timely.

A. Department Administrative Resolution

1. Employees are encouraged to discuss discrimination complaints with their immediate supervisor. The employee's supervisor must attempt to resolve the complaint within five (5) working days from the date of



discussion. If, for any reason, the complaint is not resolved at this step, the employee may submit a formal complaint to the Appointing Authority. (An Appointing Authority may be a department head, or another person or group, i.e., Presiding Judge, who has lawful power to make appointments to, or remove persons from, County positions.) To be considered, the formal complaint must be submitted within five (5) working days of the date the supervisor's response was due.

- 2. If the complaint is specifically between an employee and the employee's immediate supervisor, the employee may go directly to the Appointing Authority and attempt to resolve the complaint informally. If this does not resolve the issue the employee may submit a formal, written complaint with the Appointing Authority. If a formal complaint is filed with the Appointing Authority, a copy shall be sent to the ~~Affirmative Action Program Manager~~ **Equal Employment Opportunity Officer** of the **AAO EEO Office** by the Appointing Authority.
- 3. If the complaint is specifically between an employee and the employee's Appointing Authority, the employee may go directly to the **Affirmative Action Equal Employment Opportunity Office** and submit a formal, written complaint.
- 4. Upon receipt of a formal, written complaint, the Appointing Authority may, at his/her discretion, discuss the complaint with all parties involved. The Appointing Authority will provide a written decision to the employee within ten (10) working days of the receipt of the formal complaint. The Appointing Authority's written decision shall inform the complainant of his/her right to appeal to the ~~Affirmative Action Program Manager~~ **Equal Employment Opportunity Officer**. The Appointing Authority shall forward a copy of the written decision to the **A Manager: Equal Employment Opportunity Officer**.
- 5. If the complaint is specifically between an employee from one department and an employee from another department, the employee may go directly to their Appointing Authority and submit a formal, written complaint. The department receiving the complaint shall forward a copy of the written complaint to the **AAO EEO Office** and contact the ~~Affirmative Action~~ **Equal Employment Opportunity Office** for resolution of the complaint between the two departments.
- 6. If the complaint is specifically between an employee and the ~~Affirmative Action Program Manager~~ **Equal Employment Opportunity Officer** or a Board of Supervisor member, the employee may go directly to the County Administrative Officer and submit a formal, written complaint.

B. Formal ~~Affirmative Action~~ **Equal Employment Opportunity Office Resolution**

- 1. If the employee is not satisfied with the decision of the Appointing Authority, or if the Appointing Authority fails to respond within ten (10) working days, s/he may submit a written complaint to the ~~Affirmative Action~~ **Equal Employment Opportunity Office**. The written complaint must be submitted within five (5) working days of the Appointing

Authority's decision or within five (5) working days from the date the Appointing Authority's decision was due. Complaints submitted to the Affirmative Action Equal Employment Opportunity Office must include a completed Discrimination Complaint Form (PER4002).

2. Upon receipt of a complaint, the Affirmative Action Program Manager Equal Employment Opportunity Officer, or his/her designee, will discuss the complaint with the employee and/or all other parties involved to determine the validity of the complaint. The Affirmative Action Program Manager Equal Employment Opportunity Officer will attempt a resolution of the complaint through informal means. If an informal resolution is not possible, the Affirmative Action Program Manager Equal Employment Opportunity Officer will make a formal investigation of all allegations. A report will be made within 20 working days of the Affirmative Action Program Manager's Equal Employment Opportunity Officer's receipt of the complaint.
3. After review by County Counsel the results will be sent to the complainant and the Appointing Authority. A report of findings will be sent to the complainant and the Appointing Authority within 20 working days of completion of the Affirmative Action Equal Employment Opportunity Office report. The parties will have (5) working days to resolve this matter before the Affirmative Action Program Manager's Equal Employment Opportunity Officer's findings will be acted on. Should the findings require action by the Board of Supervisors, the Affirmative Action Program Manager Equal Employment Opportunity Officer will present his/her final decision and any recommendations to the Board of Supervisors for approval.

C. Appeal of Affirmative Action Program Manager's Equal Employment Opportunity Officer's Decision

1. Employees, both permanent and probationary may appeal the Affirmative Action Program Manager's Equal Employment Opportunity Officer's decision to the County Administrative Officer within one (1) calendar week after receipt of the decision. This appeal right shall be included in all written decisions issued by the Affirmative Action Program Manager Equal Employment Opportunity Officer. The County Administrative Officer shall consider the complaint and findings and within 45 calendar days from receipt, issue a decision which shall be final.
2. Employees, both permanent and probationary from the Human Resources Agency and Emergency Services who are covered by the State of California Merit System Services may appeal the Affirmative Action Program Manager's Equal Employment Opportunity Officer's decision through the Personnel Director to the Civil Service Commission. The Civil Service Commission's decision shall be final.

D. An investigation conducted by the Affirmative Action Equal Employment Opportunity Office when resulting from a complaint of discrimination or harassment is to remain neutral to all parties. Information collected during the

investigation of a discrimination complaint are confidential in nature. Any findings published for resolution of any matter, shall remove all references to specific individuals or the specific details of negative actions taken against any party. Any correspondence to the complainant, the Appointing Authority or any other involved party will be declared as confidential. Details of an investigation will only be released through a formal request from the California Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC); a subpoena issued by a recognized court; or in the case of a Human Resource Agency or Emergency Services employee's appeal to the Civil Service Commission to that commission during a closed hearing.

E. In all complaints of discrimination or harassment, the complainant shall be advised of their right of filing with either the Equal Employment Opportunity Commission (EEOC) or the State Department of Fair Employment and Housing (DFEH), in the complaint form information packet and with the ~~Affirmative Action Program Manager's~~ Equal Employment Opportunity Officer's report of findings, should the complainant be dissatisfied with the final response on behalf of the County.

F. No Retaliation

No one shall be retaliated against for reporting conduct which he/she believes to be a violation of County EEO/AA Non Discrimination program policies; for participating in an investigation of a possible violation of policies; or for using the County's Employment Discrimination or Harassment Procedure.

192.6. Coordination of EEOC and DFEH Investigations

The ~~AAO EEO Officer~~ is responsible for responding to and maintaining files of all requests for information received from the United States Equal Employment Opportunity Commission (EEOC) or the State Department of Fair Employment and Housing (DFEH) or any other federal or state agency concerning complaints of discrimination filed against the County.

Therefore, when requests are made directly with a department, the ~~AAO EEO Officer~~ should be immediately informed and sent copies of all related correspondence to ensure all requests are answered appropriately as to employment data, background, etc. Likewise, if the ~~AAO EEO Officer~~ receives such a request for information, the department will be immediately informed and the reply will be jointly developed. The coordinated effort of the ~~AAO EEO Office~~ and the department(s) is necessary to protect the County's interest and fiscal liability as well as its reputation as an ~~aggressive affirmative action~~ equal employment opportunity employer.

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REGULATIONS SECTION 193

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AMERICAN WITH DISABILITIES ACT COMPLAINT RESOLUTION PROCEDURE CONCERNING ACCESSABILITY TO FACILITIES, PROGRAMS, SERVICES, AND ACTIVITIES OFFERED BY THE COUNTY OF SANTA CRUZ (Resolution 35-92 1/21/92)

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193.1 On July 26, 1990, the Federal Government enacted the Americans with Disabilities Act (ADA) which requires the County of Santa Cruz to make facilities accessible and to make reasonable accommodations to integrate qualified individuals with disabilities into services, programs and/or activities offered by the County of Santa Cruz. If you believe that you have been discriminated against on the basis of a disability in connection with Santa Cruz County's facility access or programs, services or activities, you have the right to file a complaint with the department of the County of Santa Cruz responsible for the program, or with any agency that provides funding to the County department that is the subject of the complaint, or with the U.S. Department of Justice.

193.2 Complaint Procedure

- A. Purpose: This complaint procedure is intended to provide a progressive series of steps through which a discrimination complaint may be presented with the aim of resolving the complaint at the lowest administrative level within the County departments. This procedure is not intended to supplement or supplant any other formal appeal or complaint procedure under the ADA.
- B. Application: A qualified individual with disabilities, a specific class of individuals, or their authorized representative(s) may file a formal discrimination complaint, in writing, with the County Equal Employment Opportunity Office Department responsible for the program. ADA complaint forms may be obtained from the responsible department or the County Equal Employment Opportunity Office Affirmative Action Department, 701 Ocean Street, Room 510, Santa Cruz, California, 95060 95062.
- C. Timing: A discrimination complaint must be filed with the Santa Cruz County department within sixty (60) days of occurrence of the alleged complaint.
- D. Where to File: An individual may file a complaint with the County department or the County Equal Employment Opportunity Office Affirmative Action Department, 701 Ocean Street, Room 510, Santa Cruz, CA 95060 95062.
- E. Scope of Complaints: A discrimination complaint under these procedures may only be filed if it relates to access to any facilities, services, programs, or activities run by Santa Cruz County. Specifically excluded from this complaint procedure are subjects involving employment with the County of Santa Cruz. These subjects are covered under the Santa Cruz County Discrimination or Harassment Complaint Procedure, Personnel Regulations Section 192.



193.3 Resolution of Complaints

- A. The complainant may informally discuss the complaint with the Department Head or the ~~Equal Employment Opportunity Officer~~ ~~Affirmative Action Program Manager~~ concerning program or architectural barrier complaints to attempt to resolve the issue at the informal level.
- B. If the complaint is not settled through informal discussion, the complainant may file a formal complaint within sixty (60) calendar days of the occurrence of an alleged complaint. The formal complaint shall be presented in writing to the Department Head. The complaint form shall contain information which:
- 1) Identifies the complaint.
 - 2) Indicates the date, time and place of its occurrence.
 - 3) Contains the specific nature of the complaint.
 - 4) Indicates the consideration given or steps taken to secure informal resolution including the date of informal discussion.
 - 5) States the corrective action desired.

A copy of the complaint will be sent to the ~~Equal Employment Opportunity Officer~~ ~~Affirmative Action Program Manager~~ by the department within five (5) calendar days of receipt of the complaint. A decision by the Department Head shall be made in writing within thirty (30) calendar days of receipt of the complaint.

- C. If the complaint is not settled at Step 2, the complainant may, within fifteen (15) calendar days after receipt of the Department Head's response at Step 2, refer the complaint to the Equal Employment Opportunity Officer at 701 Ocean Street, Room 510-310, Santa Cruz, CA 95060 (95062). The ~~Equal Employment Opportunity Officer~~ ~~Affirmative Action Program Manager~~ or his/her designee shall respond in writing within thirty (30) calendar days after the date of receipt of the complaint.
- D. If the complaint is not satisfied with the decision of the ~~Equal Employment Opportunity Officer~~ ~~Affirmative Action Program Manager~~ at Step 3, the complainant may, within one (1) calendar week after receipt of the Step 3 decision, request that the County Administrative Officer consider the complaint and make a decision within forty-five (45) calendar days.

193.4 General Provisions

- A. Time limits specified in the processing of the complaint may be waived by mutual written agreement.
- B. If a complainant does not present his/her complaint or does not appeal the decision rendered regarding his/her complaint within the time limits, the complaint shall be considered resolved.
- C. If the Department Head or the ~~Equal Employment Opportunity Officer~~ ~~Affirmative Action Program Manager~~ does not respond within the time limits provided, the aggrieved may proceed to the next step of this complaint procedure or file such complaint with the Federal Government as specified within the Americans with

300 - CONTRACTS AND AGREEMENTSA. Contracts

All contracts for goods and services provided to the County of Santa Cruz are entered into under the legislative authority of the Board of Supervisors. Unless authority is delegated to another official (for example, to the Purchasing Agent for certain contracts under the purchasing ordinance, or to another individual as specified in this Section), ALL contracts must be approved in writing by the Board before their terms can be enforced, except for contracts entered into by constitutional office holders pursuant to Government Code Section 25303 and 29601. Verbal contracts are acceptable only under emergency circumstances when necessary for the detection or prosecution of criminal matters, and the basic provisions of any verbal contracts shall be confirmed in writing within 1-10 working days.

In order for the Board and interested members of the Public to assess the financial impact of an agreement being considered by the Board, the agenda items, asking for the agreement to be approved must summarize the fiscal content of the contract. An appropriate consent agenda item might read, for example:

"Approve a contract with the Department of Health Services, in the amount of \$5,680, to provide for increased public outreach activities with respect to Lymes Disease, as recommended by the Health Services Officer."

Contracts are initiated by the department which requires a service, and it is the department's responsibility to administer the contract after it is approved by the Board of Supervisors or Purchasing Agent.

Changes to contracts approved by the Board or Purchasing Agent must be approved by same.

If the Board authorizes a Department Head to negotiate an agreement, it must be returned to the Board for approval. Agreements shall be submitted to the Board prior to the commencement of any work. In extraordinary circumstances, if the terms of a contract are to be retroactive, the Board must state their intent in advance. IF THE BOARD DOES NOT CLEARLY STATE ITS INTENT TO MAKE CONTRACT PROVISIONS RETROACTIVE TO A SPECIFIC DATE, NO PAYMENTS WILL BE ALLOWED FOR SERVICES RENDERED PRIOR TO BOARD APPROVAL OF THE AGREEMENT.

When the Board authorizes a Department Head to execute an agreement, it is authorizing the Department Head to sign the Board approved agreement on behalf of the Board but the terms and conditions must not be altered.

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It is recommended that the standardized Agreement Forms approved by County Counsel be used. See example included at the end of this section.

Contracts are generally divided into two groups:

- Services, construction and repair
- Revenue

The Purchasing Department has the authority to engage independent contractors to perform services for the County and its offices and to employ independent contractors for construction and repairs within limits prescribed by the Government Code. To establish necessary procedures to be followed in these areas, Purchasing should be consulted as particular requirements arise. This authority has been provided in Santa Cruz County Code Chapter 2.37.

Under this provision the Purchasing Agent has the duty to purchase, rent, lease or lease/purchase for the County, all materials, supplies, furnishings, equipment and other personal property of whatever kind and nature for items previously budgeted and approved by the Board. The splitting of projects into smaller projects to circumvent any or all limitations is prohibited by State law. Purchase orders may also be utilized in these transactions.

All personal service agreements greater than \$7,500 and all public project agreements greater than \$10,000 must be approved by the Board of Supervisors. Contracts submitted to the Board of Supervisors must be accompanied by an ADM-29. Agreements below these levels may be approved by the Purchasing Agent or other Board authorized agents.

Approval of contracts, leases or any other form of agreement for contracted services or supplies, or revenue contracts, requires the use of Forms ADM-29 and W-9. These forms standardize and facilitate processing of such requests and approvals through the Auditor's Department, and gather required information for tax reporting.

The originating department must provide that each contract contain provisions for:

- adequate documentation of personal service agreement with individual to determine their status as an independent contractor. The 20 factors below should be used as a test to determine the status of contractors independence:
 1. Whether instructions are provided to the workers. The more control exercised over the manner and means of accomplishing the result, the more likely it is that the individual is an employee. *

2. Whether training is provided to the worker. Employers tend to train employees.
3. Whether the work is integrated into the principal's business. Independent contractors do not typically perform tasks that are essential to the business. *
4. Whether the services must be rendered personally. Employees must perform the services themselves, while independent contractors can delegate their work.
5. Whether the principal or the worker hires supervisors and pays assistants. Employees generally do not hire others to perform on their behalf.
6. Whether or not the relationship is continuing. Independent contractors tend to work for short, definite time periods. *
7. Whether there are set hours of work. Independent contractors tend to work for short, definite time periods. *
8. Whether the work is full time or part time. Independent contractors generally do not work full time for a single business. *
9. Whether the work is performed on the principal's premises. Independent contractors do not work in a specific area and are often not required to work on the employer's premises.
10. Whether the worker or the principal sets the order or sequence in which the work must be done. If the sequence is set by the principal, it may be an element of control exercised over the "employee."
11. Whether the worker is required to provide oral or written reports. Periodic reports to the employer indicate employment status.
12. Whether payment is by the hour, week, month or by the job. Independent contractors are typically paid by the job. *
13. Whether the business or travelling expenses are paid by the principal. Independent contractors are often paid a flat fee and are not individually reimbursed for expenses.
14. Whether the principal furnishes tools and materials. Independent contractors generally supply their own tools and/or other implements. *



- 15. Whether the worker has made a significant investment. investment in the "job" indicates independent contractor status.
- 16. Whether the worker can realize a profit or loss. Independent contractors are generally at risk for losses incurred by the business.
- 17. Whether the worker works for more than one firm at a time. Independent contractors generally manage several commitments to different businesses at the same time. *
- 18. Whether the worker offers services to the general public. Independent contractors advertise and offer their service directly to the public.
- 19. Whether the principal has the right to discharge the worker at will. The right to fire at will is a strong element of control suggesting an employment relationship. *
- 20. Whether. the worker can terminate the relationship without liability. Independent contractors can often terminate the relationship without further consequences. *

* These are considered very important factors.

The IRS uses the 20 factors to determine the level of control the employer can exert over the employee. Actual control is of less importance than the right to exert control. The test is a balancing test. In other words not all of the factors must be met in order to qualify as an independent contractor. In addition, the weights given the different factors vary according to the industry and job.

- adequate clarity as to payment for services. Contract provisions should not provide for payment in less than 30 days of receipt by the County of invoice without specific approval by Auditor-Controller.

use of escalator clauses, factors that automatically increase agreement payments annually, are generally discouraged except for rental and use type agreements.

- advances are allowed only under the following conditions:
 - 1. Non-profit, community based organizations granted tax exempt status under IRC Section 501 may receive a one-time cash advance, not to exceed 1/4th of the total contract amount. Each subsequent payment will be made based on actual services. If advances are to be allowed, they must be approved by the Board when the contract is approved. The Department Head or designee

shall determine that the program cannot be carried out without the advance prior to submitting it to the Auditor-Controller. Evidence of such shall be retained in the department files. The contract shall include a written assurance by the contractor that cash advances will not be used to provide working capital for non-County programs, and when possible such advances shall be deposited in interest bearing accounts, and the interest used to reduce program costs. In most cases a one or two month advance should be adequate.

2. Cash advances for all other organizations shall require the analyses and assurances in (1) above, AND may require faithful performance and fidelity bonds naming the County as loss payee depending on the necessity which will be determined and approved by both the CAO and Auditor.

- allowance for audit and retention of records for a period of not less than 5 years or until audited whichever occurs first.
- termination and/or suspension of payments for non-compliance.
- any budgetary control.

declaration as to required insurances and posting of the necessary certificates of insurance coverage with the originating department and copy to Auditor-Controller. Insurance is usually required for:

- a. general liability
- b. automobile
- c. worker's compensation
- d. fidelity bonds

The department will require the inclusion of the following equal opportunity clauses as a condition of all contracts in excess of \$10,000:

The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, ~~physical handicap, disability,~~ medical condition (cancer related and genetic characteristics), gender, pregnancy, marital status, sex, sexual orientation, age (over 40 18), veteran status or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor

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agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

- For all contracts in excess of \$50,000 where the Contractor employs at least 15 employees, the department will require the inclusion of the following equal opportunity clauses as a condition of the contract:

The Contractor will state that they are an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of the Contractor, and ensure that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, ~~physical handicap, disability~~, medical condition (cancer related and genetic characteristics), gender, pregnancy, marital status, sex, sexual orientation, age (over 40 18), veteran status or any other non-merit factor unrelated to job duties.

If applicable according to the contract funding source, the Contractor will comply with all provisions of Executive Order 11246, as amended, and of the rules, regulations and orders of the Secretary of Labor, which include furnishing required information and report.

In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders this contractor may be declared ineligible for further contracts with the County.

The Contractor shall furnish information and reports in the prescribed reporting format (PER4012) identifying the sex, race, disability, and job classification of its employees to the ~~Affirmative Action~~ Equal Employment Opportunity Office of Personnel.

- The department in solicitation for goods or services will make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises.

Standard Definitions For Minority/Women/Disabled Business Enterprise for the purposes of Santa Cruz County contract compliance procedures shall be as follows:

1. A Minority Business Enterprise (MBE) is a small business owned and controlled by one or more minorities or women. Owned and controlled means that:

- a. at least 51 percent of the small business concern is owned and controlled by one or more minorities or women or, in the case of a publicly owned business, at least 51 percent of the stock of which by one or more minorities or women; and
 - b. whose management and daily business operations are controlled by one or more such individuals.
2. A Women Business Enterprise (WBE) is a small business, owned and controlled by one or more women. Owned and controlled means that:
- a. at least 51 percent of the small business concern is owned by one or more women; and
 - b. whose management and daily business operations are controlled by one or more women who own it.
3. A Disabled Owned Business Enterprise (DOBE) is a small business owned and controlled by one or more disabled persons. Owned and controlled means that:
- a. at least 51 percent of the small business concern is owned by one or more disabled persons; and
 - b. whose management and daily business operations are controlled by one or more disabled persons who own it.

NOTE: Certain projects conducted under State and Federal oversight may have additional definitions and requirements.

Where sub-contractors will be used the contractor shall furnish to the County ~~Affirmative Action~~ Equal Employment Opportunity Officer the names, dates and methods of advertisement and direct solicitation efforts made to contract with minority/women/disabled business enterprises.

B. Risk Manager

Before being submitted to the Board for approval, contracts shall be reviewed to insure that the County is adequately protected against liability for the potential negligence of the contractor while under contract with the County.

In the case of independent contractor agreements, departures from

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the standard insurance requirements must be approved by the Risk Manager.

C. Originatina Department

Copies of Forms ADM-29 and W-9 are included in this section. The procedure for the use and routing of these forms is as follows:

1. ADM-29

- | | |
|---------|---|
| Heading | Name of Department and Department Head Signature |
| Item 1 | Insert name of entity, e.g., "County of Santa Cruz" or "Aptos Sanitation District", and name and address of contracting party. |
| Item 2 | Insert purpose of the agreement. |
| Item 3 | Insert reason the agreement is needed. |
| Item 4 | Insert date agreement will commence and termi n a
t e |
| Item 5 | Insert cost or revenue amount (actual or estimat ed), whether a certain amount monthly or yearly, and a not-to-exceed figure for contracts. |
| Item 6 | Insert other pertinent information, including departmental contact person and phone number. |
| Item 7 | Insert index code number and name, and the appro priate sub-object account in which the required money is budgeted. If APPROPRIATIONS HAVE NOT BEEN BUDGETED OR ARE INSUFFICIENT, COMPLETED AUD-74 "REQUEST FOR TRANSFER OF FUNDS" MUST ACCOMPANY REQUEST. In connection with a revenue contract indicate index code and account number to be credited. |
| Item 8 | Forward all copies together with attachments including the contract or a copy thereof, to the Auditor-Controller. The documents should be forwarded to the Auditor-Controller and the original contract submitted to County Counsel at least 48 hours prior to the time the County Administrative Officer has established as a cutoff for including the item on the Board of Supervisor's Agenda (See Section 103 of Title V). The goldenrod copy will be returned to the origi- nating department by the Clerk of the Board after all approvals have been received, so the depart- |

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ment will know when it can submit claims for payment under the contract.

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2. FORM W-9

This form is used to gather required tax information for reporting payments to Federal and State tax agencies. All applicable items must be completed, and the form must be signed. Staple to the front of the W-9. The Auditor will detach this form, and it will become part of the contract file. The W-9 is not required for revenue contracts.

Caution must be exercised to determine that individuals using fictitious names actually used to file or report tax payer information to the IRS. Failure to submit will result in the automatic backup withholding of income taxes pursuant to IRS regulations.

D. Auditor-Controller

The Auditor-Controller will review and approve by signature the following:

1. Assign a separate contract number to all contracts, including revenue contracts.
2. Indicate that appropriations are available and have been or will be encumbered for contracts. If sufficient appropriations are available, funds will be encumbered. If appropriations are NOT sufficient, and an appropriate AUD-74 or AUD-60 is not included to correct the insufficiency, THE ADM-29 WILL NOT BE PROCESSED BY THE AUDITOR-CONTROLLER, and the entire package will be returned to the originating department for correction. ALL DEPARTMENTS MUST USE THE ONLINE FAMIS INQUIRY TO ASSURE THAT SUFFICIENT FUNDING IS AVAILABLE BEFORE SUBMITTING ADM29's OR AUD74's.

The originating department is responsible for ensuring that all required standard and special provisions are included in the agreement and that payment terms and conditions are clearly stated and the proper amount and timing of payments under the contract can be computed.

The Auditor-Controller will NOT process any contract which is not received at least 48 hours prior to the deadline for submitting agenda items to the CAO.

E. County Counsel

The County Counsel will review and approve other than standard County contracts by signature for "approval as to form." Such approval indicates that the contract contains all of the necessary

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elements of a Contract and is binding on the parties. Such approval does not necessarily indicate that the Contract contains all clauses which may be advisable or that the language clearly expresses the intent of the parties. SUCH CONCERNS SHOULD BE RAISED BY SPECIFIC QUESTIONS TO COUNTY COUNSEL. Failure to submit the original contract for review at least 48 hours prior to the deadline for submitting agenda items to the CAO may result in a deferral of the item to the next agenda.

F. County Administrative Office

The signature lines on the Contract Cover Letter and the ADM-29 which go to the Board of Supervisors certify that the subject agreement clearly expresses the intent of the parties.

All pertinent documents will be forwarded to the Clerk of the Board.

G. After Board Approval

Each department is responsible for preparing the agreement and administering it after Board approval which includes:

1. Executing the Agreement
2. Providing Clerk of the Board with original signatures on Agreements for distribution.
3. Obtain and maintain Certificates of Insurance and oversee compliance of terms of the agreement.
4. All contracts must be reviewed for recertification or renegotiation not less than every four (4) years.
5. Copies of deposit permits (AUD-36) must be reconciled to the revenue agreement. Revenue contracts must also use Form ADM-29.

H. REQUIREMENTS FOR A CLAIM AGAINST A CONTRACT (GREEN CLAIM AUD-8)

To pay claims against contracts an AUD-8 must be submitted to the Auditor-Controller's office and the following conditions must be met:

1. The requested payment amounts must conform to the provisions of the contract as the services performed and rates charged will be verified to comply with the terms of the contract. A DESCRIPTION IS REQUIRED.
2. Approved signatures are required on a claim form. If the contractor's signature does not appear on the claim form, the contractor's invoice should be attached to the claim. The only exceptions to this requirement are

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claims prepared by departments in payment of rent or lease agreements, or the release/reduction of retention on construction contracts.

- 3. Authorized department signature. By signing a claim, the departmental representative is stating that he/she is aware of the provisions of the contract; the invoice has been reviewed; and that the contractor is in compliance with ALL terms of the agreement, including insurance provisions.

Some contracts are approved for limited amounts as indicated in the contract and/or the ADM-29. When the expenditures reach the limited amount additional expenditures are prohibited until the Board of Supervisors approves additional funds for that contract.

- 4. To assure timeliness of payments each department must:
 - a. date stamp each invoice upon receipt;
 - b. review and approve each invoice and attach to a completed claim form (AUD-8); and
 - c. make a concerted effort to forward completed claims to the Auditor-Controller's Office within 15 calendar days or less to see that customers are paid in 30 days or less.

If contractor/vendor invoices have an error, each department and contractor must work to resolve problems in a timely manner.

For public works projects, undisputed progress payments must be made within 30 days of receipt of invoice. Late payments are subject to a 10% annual interest rate penalty. Disputed claims must be returned to contractor not later than seven days of receipt. For specific information refer to Section 20104.5 of the Public Contracts Code.

AUD-8 (User Code Contracts Payable-Claim on the Treasury) forms are used to make a request for payment against funds encumbered under a board approved contract.

A sample copy of Form AUD-8 is included in this section. The numbers shown on the sample form will correspond with the numbers listed below. These items must be filled out by the Department. Please print or type all data on all claims.

- 1. The top right hand corner MUST be completed.

PAGE OF - Designate page number. If more than one claim page is being submitted indicate total number of pages, i.e. Page 1 of 2, Page 1 of 3, etc. Other-

wise, indicate Page 1 of 1.

DEPT NAME - Print name of department submitting claim.

PREPARED BY - Enter the name of individual who filled out claim form.

PHONE OR EXTENSION - Enter daytime telephone number of individual who filled out claim form.

2. AMOUNT - Document amount - Total of all lines on one particular voucher.
3. LNS - Number of lines - Total number of lines used in coding on one particular voucher.
4. T/C HASH - Transaction Code Hash - Total of all transaction codes on one particular voucher.
5. lCK - This field indicates if a single check is to be issued to the vendor for the detail lines to be entered below. If you must "hand deliver" or issue a single warrant to a vendor put a "Y" in this coding block. Highlight this coding block in yellow. ATTACH AN EMPTY #10 ENVELOPE TO THE CLAIM FORM, WITH THE DEPARTMENT NAME, THE VENDOR NAME AND THE AMOUNT OF THE WARRANT PRINTED ON THE FRONT. When the warrants are sorted for mailing, the single check will be placed in this envelope and held for pick up BY THE DEPARTMENT.
6. VENDOR - All vendors will have permanent vendor numbers. THIS SPACE MUST BE USED BY THE PREPARER, IF THE PERMANENT VENDOR NUMBER IS KNOWN. The vendor number identifies the vendor for the computer system. The name and address stored in the system is printed regardless of the address written on the voucher. The warrant writer combines all payments to one vendor (represented by a record on the Document File) onto one warrant unless the separate check indicator has been set for the voucher. The warrant stub identifies the payments.
7. VENDOR NAME AND ADDRESS - Enter the name AND complete address of vendor being paid. For 1099 purposes the address must be in our vendor file. Use complete legal names. Enter complete street number and name, apartment numbers, suite numbers, etc. For city, state, and zip code, please be complete, as the post office will return any mail which does not bear the zip code. This will cause delay in delivery and in some cases cause penalties to be charged by the vendor. If the permanent vendor number is available, it is not necessary to fill in address information each time; THE NAME MUST BE

FILLED IN REGARDLESS.

8. 1099 REPORTING VERIFICATION - This information must be checked by the department. If the information is not available in the vendor file of On-Line FAMIS the department must provide a W-9 or verify that the payment is non-reportable.
9. T/C - Transaction Code - Enter the valid three-digit transaction code.
- 151 To record vouchering of an expenditure previously encumbered - current year (generates 152 - automatic liquidation of encumbrance, current year)
- 155 To record vouchering of an expenditure previously encumbered - current year multiple vendor (generates 156 - automatic liquidation of encumbrance, current year - vendorless)
- 161 To record vouchering of an expenditure previously encumbered in prior year (generates 162 - automatic liquidation of encumbrance, prior year)
- 165 To record vouchering of an expenditure previously encumbered in prior year multiple vendor (generates 166 - automatic liquidation of encumbrance, prior year - vendorless)
10. F - Partial or Final payment - This field defaults to "P" or partial payment and will liquidate only the amount being paid on this detail line. To make a final payment or to liquidate the balance of the encumbrance insert an "F" in this space. Please highlight the "F" in yellow. IMPORTANT: AN "F" WILL LIQUIDATE THE ENTIRE ENCUMBRANCE.
11. DOC REF - Document Reference Number - Enter the document reference number in the proper format (AANNNNNA).

Every encumbrance has its own unique five-digit document number preceded by two alpha characters and suffixed with one alpha character. The alpha prefix for contracts is "C0." The first digit of the contract number denotes the year the funds were budgeted. The remaining digits represent the contract number assigned by the Auditor-Controller. The alpha suffix is established when the contract is encumbered. The suffix represents the sequence of lines within that contract document. A document may contain up to 26 lines (A-Z).

EXAMPLES:

- a. Contract 0768 - 1993 appropriations - one index and one sub object
 - "CO30158A" - 731000/3520
 - b. Contract 0862 - 1994 appropriations . one index and multiple sub objects
 - "CO40862A" - 601000/9400
 - "CO40862B" - 601000/9085
 - "CO40862C" - 601000/9500
 - c. Contract 0614 - 1995 appropriations - multiple index and one sub object
 - "CO50614A" - 461010/3665
 - "CO50614B" - 453000/3665
-
- 12. USER CODE - This field is used when a user or project code is needed and that user code has not been encumbered.
 - 13. AMOUNT - Enter the amount of invoice, account, etc. to be paid
 - 14. REMITTANCE DESCRIPTION - This area has 50 spaces which will appear on the stub of the warrant. It should signal to the vendor what the payment represents. Insert invoice numbers, account numbers, billing dates, etc. It is extremely important that vendors be able to recognize the payment. If this space is inadequate to describe the payment to the vendor, then it is your department's responsibility to furnish an attachment to be mailed with the warrant.
 - 15. DESCRIPTION OR ITEMIZATION - Provide a brief and concise description of all costs incurred. Read "Instructions to Claimants" on reverse side of claim form. Fill this box accordingly.
 - 16. CLAIMANT'S SIGNATURE - Claimant MUST sign, and signature stamps are not allowed. The ONLY exception is when the claimant is an outside vendor and they have submitted an invoice (original) which is attached to the back of the green claim.
 - 17. DEPARTMENT HEAD - An authorized signature must always be on all claims. No signature stamps are allowed. All claims must be signed by an authorized administrative person, higher in rank than the claimant, except the department heads themselves. A list of all department authorized signatures must be maintained with the Auditor-Controller's Claims Section. Blank forms are available from the Auditor's office (AUD-16).

I. OTHER CONTRACT ISSUES

- Multi Year Grant Agreements should be prorated and budgeted

in the appropriate fiscal year. At fiscal year end, the Board authorizes the Auditor-Controller to adjust budget requirements. Departments must request all rebudgets.

Encumbrance Changes may be made when approved by the CAO where the terms of an agreement are unaffected, e.g. Personal Service Agreements when the terms are stated at a rate per hour without limit on the hours or where a maximum dollar limit is not stated.

- Continuing Contracts comprise two categories of agreements:

1. agreements which are multi-year or continuous whose ORIGINAL terms extend from the old fiscal year into the new fiscal year; and
2. agreements which terminate on June 30 of the old fiscal year, but which will be re-established by a new agreement in the new fiscal year.

The procedure for obtaining Board approval for Continuing Contracts is generally the Continuing Contracts List. The Continuing Contracts List is considered and acted on by the Board of supervisors during final budget hearings each June, and once the list is approved by the Board, it becomes the legal authority to accept goods and services, and make payments on those agreements which are included on the list. Omission of an agreement from the Continuing Contracts List considered during budget hearings will result in delayed or denied contract payments because there is no legal authority to pay on that contract. Agreements which were omitted from the list which was approved by the Board will need to be taken individually to the Board for approval in the new fiscal year. During the extension period authorized by the continuing agreements list, monthly payments on these agreements are limited to the lesser of: one-twelfth of the prior year amount, or one-twelfth of the new year amount.

The Continuing Contracts List which is presented to the Board for consideration during budget hearings includes four sections. Agreements are grouped into the sections depending on the nature; the dollar amount, and the terms of the agreement. Although ALL continuing agreements must be included on the Continuing Contracts List, different types of agreements will require different actions AFTER the list is approved by the Board, as described below.

SECTION I: Contracts included in Section I of the Continuing Contracts List are those agreements which, BY THEIR ORIGINAL TERMS are multi-year or continuous, and which require no changes from the original terms, which have already been approved by the Board, during the new year. These contracts will not return to the Board for

any future action, because the original terms and conditions are merely ratified by the Board at this time. Any contract whose terms and conditions contain built-in changes such as cost-of-living escalators or periodic rate changes are considered to be No-Change agreements because the Board has already approved these escalators when they considered the original contract terms. Agreements with built-in escalators or modifications DO NOT need to return to the Board to implement the agreed upon changes. However, the oversight department will need to notify the Auditor-Controller whenever a change occurs.

Contracts approved by the Purchasing Agent under the authority of County Code Section 2.35-2.37, and contracts approved by the Board of Supervisors for specific public works construction improvements by formal bid process are NOT continuing contracts for purposes of this section and DO NOT require Board approval to allow payments into the new fiscal year unless Board approved contingency amounts are exceeded.

SECTION II: Agreements included in Section II of the List are those which expire on June 30 of the old fiscal year, but which will be renewed for the new year, and:

1. Are for total contract payments less than \$5,000;
OR
2. Include NO program changes and only minimal increases in the total contract amount. Minimal means increases in total contract payments not exceeding 10% of the old year total payments.

Section II agreements are approved by the Board for a temporary period of the new year, pending execution and approval of the new agreement. Following approval of the Continuing Contracts List during budget hearings, the new agreements will be presented to the Board weekly, in a group, as item #8 on the Consent Agenda, as they are prepared and submitted by the Departments.

SECTION III: Section III of the Continuing Contracts List will include all contracts which will incorporate changes in scope or program activities in the new year, and all contracts which are not eligible to be in the Section I list, which exceed \$5,000 in total contract payments, or which involve total contract payments in the new year which increase by more than 10% from the old fiscal year. All Section III contracts must be submitted as individual items on the Board's agenda during the new year, as approval of the Continuing Contracts List constitutes only temporary authority to

spend until the new contract is executed.

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SECTION IV: Revenue **agreements**, such as grant awards and State financing agreements, must be approved by the Board each year, and are identified in this section of the Continuing Contracts List.

J. CONTRACTS OUT OF SPECIAL FUND BY SHERIFF AND DISTRICT ATTORNEY

DISTRICT ATTORNEY AND SHERIFF SPECIAL FUND INDEPENDENT CONTRACTORS
Whenever these offices hire an independent contractor and pay for those services out-of-the-special fund, they must submit to the Auditor-Controller, at least annually on or before January 15th, a listing of the individual contractor paid and the total paid to each for the calendar year. In addition, they must secure and submit to the Auditor-Controller a completed W-9 with required tax payer information.