

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

829



FROM: Human Resources Department

SUBMITTAL DATE:
November 1, 2007

SUBJECT: Severance Pay for At-Will Employees

RECOMMENDED MOTION: That the Board receive and file the attached report on At-Will employment.

BACKGROUND: On October 2, 2007, Agenda Item 3.79, Supervisor Stone directed Human Resources to reevaluate Article 6, Section 601.E.2.5.6. and 7 as it relates to severance pay for At-Will employees. Based on the attached report, the existing At-Will provisions are fulfilling their intended purpose and no changes are recommended.

Departmental Concurrence

Ronald W. Komers
Asst. County Executive Officer/Human Resources Dir.

FINANCIAL DATA

Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
Annual Net County Cost:	\$ 0	For Fiscal Year:	2007/08

SOURCE OF FUNDS:

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Elizabeth J. Olson

County Executive Office Signature

- Policy
- Policy
- Consent
- Consent

Dept. Recomm.
Per Exec. Ofc.:

Prev. Agn. Ref.: 10/2/2007; 3.79

District:

Agenda Number:

3.29

At-Will Report

Background

The underlying concept of At-Will employment is the need for top management to be assured that they can properly manage the performance of key policy-level subordinates; and, remove those subordinates that fail to perform as required without documented "cause" and without subjecting the County to expensive and protracted due-process bureaucracy or litigation that would undermine the delivery of effective public service.

Historically, employment of at-will persons in the County of Riverside was limited to those with a specific agreement detailing a "contractors status", and/or specifying a "quid pro quo" of "severance pay" for accepting such status.

County resolutions covering management employees have, since the 1980's, designated department heads and assistant department heads, as "at-will". Persons newly hired into at-will positions were required to sign an at-will statement and granted severance benefits. In exchange for accepting an at-will position, incumbents generally were offered a 5.5% pay increase, granted severance pay benefits, and required to sign an at-will statement. (See Attachment "A").

Beginning in February 2000, the Executive Performance Pay Program was implemented for at-will department heads, and others, reporting directly to the Board of Supervisors or County Executive Officer (CEO), to further motivate their desire to serve at-will and to more competitively reward top performers.

In 2003, "at-will" status was extended to management reporting directly to the Sheriff, and the Community Health Agency's management reporting directly to the Director of the Community Health Agency and a 5.5% incentive for becoming at-will was again offered to incumbents. Beginning in June 2005, at-will status and a limited performance based pay system was extended countywide to assistant department heads and some deputy department heads.

Currently there are 98 positions (out of 20,000 employees) that serve at-will. Each position that serves at-will is eligible for, 1) one month of severance pay for each year of employment up to a maximum of 6 months (other than department heads); or 2) at the discretion of the appointing authority one month of severance pay for each year of employment up to a maximum of 6 months (department heads, specific at-will positions in the Sheriff's Department, Community Health Agency, and the District Attorneys Office). (See Attachment "B")

Public Employee Employment Rights

In general, California is an "At-Will" state, as it relates to employment rights, for private sector employees. The appointment and tenure of County employees is, however, generally not-at-will. The reason employment of California public employees is not at-will is based primarily upon a constitutional argument.

The U.S. Constitution's 14th Amendment provides that no state shall "deprive any person of ...property without due process of law." Public employers cannot deprive "property interest" employees of employment rights without satisfying this requirement of due process. See *Skelly v. State Personnel Board*, 15Cal.3D 194 (1975). Indeed, this application of due process is a core feature of public-sector employment law. "Property interest" employees for the most part are those who have worked beyond their probationary period, who are not temporary or substitute employees and who do not have "at-will" employment arrangements. Once employees have a "property interest" in employment, the employer cannot deprive them of it without due process. Actions short of termination can constitute a "deprivation" including reduction in pay, forced retirement or suspension without pay.

The employment of non-at-will County employees is additionally controlled by County policy, approved Memoranda of Understanding, State Merit System regulations, and State Employee Relations Laws. For example, Board of Supervisors Ordinance 440 designates "Personnel Administration" in the County as a "Merit System" and specifies that appointments shall be made "only from among persons certified...as eligible...by the Human Resources Director".

The employment of persons appointed to regular positions (as above) is subsequently regulated by applicable Memoranda of Understanding or Resolution as appropriate, based upon an assigned bargaining unit. Each Memorandum of Understanding provides that represented employees acquire "permanent status" after completing a prescribed "probationary period" and can only then be removed for good cause. Unionized employees are thus provided a system of due process to protect permanent employees from unjustified discipline and termination. For management and unrepresented employees, pursuant to the Management Resolution, once a probationary period is completed, an employee becomes "permanent", and can only be terminated for "good cause". Management and unrepresented employees are thus provided a system of due process to protect permanent employees from unjustified discipline and termination.

Generally, the determination of at-will is at the County's discretion, although there are limitations on the number of employees who can be so designated. For example, Local Agency Personnel Standards (LAPS) apply to personnel engaged in the administration of federally aided programs, which by law or regulation require a merit system of personnel administration that meets standards published by the United States Office of Personnel Management. These rules are applicable to all positions in such programs, irrespective of the source of funds for their individual salaries, for the department of Public Social Services and Child Support Services. LAPS allows only members of policy, advisory, review, and appeals boards or similar bodies who do not perform administrative duties as individuals; officials serving ex officio and performing incidental administrative duties; one confidential assistant or secretary to any of the foregoing exempted officials; attorneys serving as legal counsel or conducting litigation; the executive head of an independent local agency or department administering programs covered by these rules; deputies who share with executive heads authority over all major functions in covered local agencies or departments; time-limited positions established for the purpose of conducting a special study or investigation; and unskilled labor to be employed at-will.

Under State Employee Relations Law (Meyers-Milias Brown) every County employee, even department heads, can become unionized by virtue of the broad definition of "public employee" which excludes only elected officials and those appointed by the Governor.

Even if at-will employees waive their constitutional due process remedies, at-will employees still have legal remedies available to them, as follows:

Court Remedies for Wrongful Termination or Discipline In private sector employment, most employees not covered by collective bargaining agreements are considered to serve “at the will” of the employer, meaning they can be fired without “cause.” However, the courts have permitted such employees to sue the employer for monetary damages for “wrongful termination,” claiming that dismissal either violated an individual employment contract or violated public policy.

Breach of Contract Actions Employees may sue for violation of an employment contract, alleging an express or implied promise that they only would be discharged for good cause, provided they can prove they had a reasonable expectation of continued employment. The “right” to continued employment may be based on actions or communications by the employer, on personnel policies or practices, or simply on the length of an employee’s service. Contract-based suits generally are not available to public employees because the courts have held that public employment is based on statute or ordinance, not on individual employment contracts. However, contract-based actions may be available to those public employees whose employment is not governed by statute, such as those exempt from merit systems.

Actions for Violation of Public Policy Employees can sue for damages beyond back pay (punitive or compensatory damages) if they can show that the discharge violated a fundamental public policy. The courts have reasoned that employees should not be discharged for asserting rights that society has an interest in protecting. For example, a public policy violation occurs when (1) an employee is discharged for refusing to engage in illegal activity, or opposing or reporting the employer’s illegal activity; (2) the discharge violates a statute, such as retaliation for filing a workers’ compensation or discrimination claim; (3) an employee is discharged for exercising a right protected by a statute, such as the right to have a certain political affiliation; or (4) the employee is discharged because of sex, race, religion, or other constitutionally protected ground.

Severance pay is the “quid-pro-quo” for accepting an at-will position in consideration of the prevailing due process, litigation, and labor-relations environment of public employee managers in California. It is designed to compensate separated employees for the short notice (10 days or less) and non-appealability of the separation action. Often, there is immediate loss of pay, insurance, vacation and other benefits of employment that are not easily or quickly duplicated. For some, this transition can lead to early retirement or delayed retirement due to vesting and minimum age/service requirements.

Since 2001, eight employees have been separated from their at-will positions. Six of those received a full 6-months of severance pay, and two received either 3-months or 4-months severance pay. One has since returned to County service.

Recently, the question has arisen as to whether separated at-will employees can return to county service in another capacity; and whether re-employment should affect the severance pay received. Separation and re-employment are two separate transactions and should be treated as such. Should an at-will employee’s “misstep” require separation from one position; it seems short-sighted to assume this employee cannot learn from mistakes and therefore not be given a second chance in a different role.

Conclusion

In general, it seems that the present policy of at-will employment, with severance pay and performance pay, does properly support the delivery of effective public service by allowing the County to properly reward, attract, and retain quality productive management, and to promote a management/leadership culture of high performance. How an organization lets people go makes a strong statement about the culture, and treating people differently upon separation will undermine the high performance culture the County encourages and promotes.

The Board could adopt a policy disallowing re-employment after at-will separation, but such action may be viewed as punitive and could be characterized as tarnishing someone's reputation, thus limiting the former employee's constitutional right to liberty, violating public policy, and an abridgment of merit system principles – which could then expose the County to litigation of its own making.

The Board could also require that all employees individual terms of separation, such as length of severance or a ban on re-employment be reviewed in public session. For any discussions held in public, however, the affected employee would have the opportunity and right to address the Board in public. As above, the risk may outweigh the reward of following such a strategy.

MEMORANDUM OF UNDERSTANDING

This memorandum is an employment understanding between the County of Riverside and:

Name: _____

Appointed Position: _____

Salary: _____

Date of Appointment: _____

Employment Conditions:

The incumbent has been appointed and serves at the pleasure of the Board of Supervisors (i.e. At-Will) as provided under Article 6, Section E (1) of the Management Resolution No. 2007-436.

Employee Signature

Date

Department Head/Agency Head Signature

Date

MEMORANDUM OF UNDERSTANDING

This memorandum is an employment understanding between the County of Riverside and:

Name: _____

Appointed Position: _____

Salary: _____

Date of Appointment: _____

Employment Conditions:

The incumbent is appointed by the Agency/Department Head and serves at the pleasure of the Agency/Department Head (i.e. At-Will) as provided under Article 6, Section E (2) of the Management Resolution No. 2007-436.

Employee Signature

Date

Department Head/Agency Head Signature

Date

MEMORANDUM OF UNDERSTANDING

This memorandum is an employment understanding between the County of Riverside and:

Name: _____

Appointed Position: _____

Salary: _____

Date of Appointment: _____

Employment Conditions:

The incumbent is appointed by the Board of Supervisors and serves at the pleasure of the individual Supervisor (i.e. At-Will) as provided under Article 6, Section E (3) of the Management Resolution No. 2007-436.

Employee Signature

Date

Department Head/Agency Head Signature

Date

Filled/Vacant At-Will

ATTACHMENT B

Job Code	Job Title	Sal Plan	Dept ID	Descr	Position
74611	ADMIN DIRECTOR-COMM HLTH AGCY	XMB	4200300000	COMMUNITY HEALTH AGENCY ADMIN	00089149
73522	ANIMAL SERVICES DIRECTOR	XMB	4200610000	Animal Control Administration	00051246
74135	ASSOC MEDICAL CENTER ADMIN	XMB	4300186100	HOSPITAL ADMINISTRATION	00101821
76477	ASST CHF FLOOD CONTROL ENG	XMB	947200	FLOOD CONTROL	00016658
76478	ASST CHF WASTE MGMT ENGINEER	XMB	4500100000	WASTE MANAGEMENT	00107414
74265	ASST CLERK OF THE BOARD	XMB	1000160000	Clerk of the Board	00103287
74242	ASST COUNTY EXEC OFFCR/HR/EDA	XMA	1130100000	HUMAN RESOURCES	00000772
74242	ASST COUNTY EXEC OFFCR/HR/EDA	XMA	1900100000	AGENCY ADMINISTRATION	00001681
74128	ASST COUNTY EXECUTIVE OFFICER	XMA	1100100000	EXECUTIVE OFFICE	00000178
74231	ASST DIRECTOR OF EDA	XMB	1900300000	WORKFORCE DEVELOPMENT	00050122
74231	ASST DIRECTOR OF EDA	XMB	1900100000	AGENCY ADMINISTRATION	00027394
74231	ASST DIRECTOR OF EDA	XMB	1900400000	HOUSING AUTHORITY	00108868
74231	ASST DIRECTOR OF EDA	XMB	1900400000	HOUSING AUTHORITY	00113723
74274	ASST DIRECTOR OF FLEET SVCS	XMB	7300599000	Admin	00104384
74243	ASST DIRECTOR OF PUB SOC SVCS	XMB	5100110000	ASSISTANT DIRECTOR - ADMIN	00058475
74243	ASST DIRECTOR OF PUB SOC SVCS	XMB	5100120000	CWS - CHILD WELFARE SVCS DIV	00057967
74243	ASST DIRECTOR OF PUB SOC SVCS	XMB	5100150000	SELF SUFFICIENCY DIVISION	00034220
79915	ASST DIRECTOR OF VETERANS SVCS	XMB	5400100000	VETERANS SERVICES	00013855
74197	ASST DIRECTOR, FACILITIES MGMT	XMB	7200100000	ADMINISTRATION	00113021
74197	ASST DIRECTOR, FACILITIES MGMT	XMB	7200100000	ADMINISTRATION	00001630
74098	ASST DIRECTOR, PURCH & MAT SVC	XMB	7300198000	Admin - Central	00000590
80084	ASST GENERAL MGR - WRMD	XWB	943001	WRMD OPERATING	00014643
85056	ASST GM-NAT & CULT RES - PARKS	XPB	931104	REG PARKS & OPEN-SPACE DIST	00036806
85007	ASST GM-OPS & MAINT DIV-PARKS	XPB	931104	REG PARKS & OPEN-SPACE DIST	00060495
74775	ASST HUMAN RESOURCES DIRECTOR	XMB	1130100000	HUMAN RESOURCES	00000799
79803	ASST MENTAL HEALTH DIRECTOR	XMB	4100413649	GENERAL ADMIN	00056868
78557	ASST PUBLIC DEFENDER	XAB	2400100900	ADMINISTRATION	00003524
78557	ASST PUBLIC DEFENDER	XAB	2400100000	PUBLIC DEFENDER	00112565
78557	ASST PUBLIC DEFENDER	XAB	2400100900	ADMINISTRATION	00069529
78557	ASST PUBLIC DEFENDER	XAB	2400100900	ADMINISTRATION	00000199
74834	ASST REGISTRAR OF VOTERS	XMB	1700100000	REGISTRAR OF VOTERS	00080344
74255	CHA DIRECTOR/P.H. OFFICER	XMA	4200300000	COMMUNITY HEALTH AGENCY ADMIN	00010760
74255	CHA DIRECTOR/P.H. OFFICER	XMA	4200300000	COMMUNITY HEALTH AGENCY ADMIN	00112800
74140	CHF FINANCE OFFICER, CHA	XMB	4200310000	CHA Fiscal Services	00101976
74139	CHF FINANCE OFFICER, RCRMC	XMB	4300186100	HOSPITAL ADMINISTRATION	00015936
74268	CHF INFORMATION OFFICER	XMA	7400101000	Office of CIO	00105699
73968	CHF NURSING OFFICER	XMB	4300186100	HOSPITAL ADMINISTRATION	00017385
73887	CHF OF MED SVCS, RCRMC CA & N	XMB	4300186100	HOSPITAL ADMINISTRATION	00113277
73888	CHF OF MEDICAL SERVICES, CHA	XMB	4200100300	Clinical Management	00010536
73888	CHF OF MEDICAL SERVICES, CHA	XMB	4200100300	Clinical Management	00114756

Filled/Vacant At-Will

ATTACHMENT B

Job Code	Job Title	Sal Plan	Dept ID	Descr	Position
74235	CHF TECHNOLOGY OFFICER	XMB 7400101100		Technology Office	00051223
74259	CLERK OF THE BOARD	XMA 1000160000		Clerk of the Board	00000124
74249	COUNTY DIR OF TRANSPORTATION	XMB 3130110000		Administration	00007834
74130	COUNTY FINANCE DIRECTOR	XMA 1100100000		EXECUTIVE OFFICE	00000179
74138	DEP COUNTY EXECUTIVE OFFICER	XMA 1100100000		EXECUTIVE OFFICE	00000184
74138	DEP COUNTY EXECUTIVE OFFICER	XMA 1150100000		CFD / ASSESSMENT DIST ADMIN	00000182
74138	DEP COUNTY EXECUTIVE OFFICER	XMA 1100100000		EXECUTIVE OFFICE	00047596
74138	DEP COUNTY EXECUTIVE OFFICER	XMA 1100100000		EXECUTIVE OFFICE	00000183
74289	DEP DIR FOR SENIOR PROGRAMS	XMB 5300100000		OFFICE ON AGING - TITLE III	00103199
73556	DEP DIR I, CHA	XMB 4200420000		Environmental Resources Mgmt	00108820
73557	DEP DIR II, CHA	XMB 4200311000		CHA Internal Support Services	00010748
73557	DEP DIR II, CHA	XMB 4200610000		Animal Control Administration	00107699
73557	DEP DIR II, CHA	XMB 4200100000		PUBLIC HEALTH	00011105
73557	DEP DIR II, CHA	XMB 4200100000		PUBLIC HEALTH	00109543
73557	DEP DIR II, CHA	XMB 4200100000		PUBLIC HEALTH	00011115
73557	DEP DIR II, CHA	XMB 4200100000		PUBLIC HEALTH	00010508
73557	DEP DIR II, CHA	XMB 4200100000		PUBLIC HEALTH	00010509
73557	DEP DIR II, CHA	XMB 4200430000		District Environmental Service	00108821
73557	DEP DIR II, CHA	XMB 4200440000		Hazardous Materials	00108822
73557	DEP DIR II, CHA	XMB 4200610000		Animal Control Administration	00113006
74288	DEP DIR, ADMINISTRATIVE SVCS	XMB 5300100000		OFFICE ON AGING - TITLE III	00103198
74257	DEP P.H. OFFICER	XMB 4200100000		PUBLIC HEALTH	00103037
74236	DIR OF BUILDING & SAFETY	XMB 3110110000		Administration	00107045
37489	DIR OF CHILD SUPPORT SERVICES	XMA 2300100000		CHILD SUPPORT SERVICES	00018861
33247	DIR OF CODE ENFORCEMENT	XMB 3140110000		Code Enforcement Admin	00112597
73543	DIR OF ENVIRONMENTAL HEALTH	XMB 4200410000		EH Administrative Services	00103936
74193	DIR OF ENVIRONMENTAL PROGRAMS	XMB 3100500000		Environmental Programs	00106932
74266	DIR OF FACILITIES MGMT	XMA 7200100000		ADMINISTRATION	00001633
74246	DIR OF LEADERSHIP & ORG DEV	XMB 1130100000		HUMAN RESOURCES	00104846
73881	DIR OF PUBLIC HEALTH	XMB 4200100000		PUBLIC HEALTH	00102809
74248	DIR OF PUBLIC SOCIAL SERVICES	XMA 5100100500		DIRECTOR OF DPSS	00012924
74232	DIR OF PURCHASING & FLEET SVCS	XMA 7300198000		Admin - Central	00000592
74290	DIR OF SENIOR SERVICE SYSTEMS	XMA 5300100000		OFFICE ON AGING - TITLE III	00014175
74210	DIR OF VETERANS SERVICES	XMA 5400100000		VETERANS SERVICES	00013848
80000	GENERAL MGR - CHF ENG - WRMD	XWA 943001		WRMD OPERATING	00074394
74252	GENERAL MGR-CHF FLD CNTRL ENG	XMA 947200		FLOOD CONTROL	00016586
74250	HOSPITAL ADMINISTRATOR	XMA 4300186100		HOSPITAL ADMINISTRATION	00015940
74205	M.H. DIRECTOR	XMA 4100413649		GENERAL ADMIN	00010100
74154	MANAGING DIRECTOR OF EDA	XMB 1900100000		AGENCY ADMINISTRATION	00113093
74154	MANAGING DIRECTOR OF EDA	XMB 1900100000		AGENCY ADMINISTRATION	00097526

Filled/Vacant At-Will

ATTACHMENT B

Job Code	Job Title	Sal Plan	Dept ID	Descr	Position
73890	MEDICAL DIRECTOR, MH SERVICES	XMB 4100413649	GENERAL ADMIN		00110120
73513	OPS CHIEF, ANIMAL SERVICES	XMB 4200600100	Clinical Services		00110764
73513	OPS CHIEF, ANIMAL SERVICES	XMB 4200610000	Animal Control Administration		00106758
73513	OPS CHIEF, ANIMAL SERVICES	XMB 4200600500	DAS Comm Outreach & Education		00113200
73513	OPS CHIEF, ANIMAL SERVICES	XMB 4200600400	Clerical		00113199
73513	OPS CHIEF, ANIMAL SERVICES	XMB 4200610000	Animal Control Administration		00011173
73513	OPS CHIEF, ANIMAL SERVICES	XMB 4200600600	DAS Fiscal		00110272
73513	OPS CHIEF, ANIMAL SERVICES	XMB 4200610000	Animal Control Administration		00107698
73513	OPS CHIEF, ANIMAL SERVICES	XMB 4200600200	Field Services		00113198
73513	OPS CHIEF, ANIMAL SERVICES	XMB 4200600200	Field Services		00115122
85023	PARKS DIRECTOR - PARKS	XPA 931104	REG PARKS & OPEN-SPACE DIST		00055178
74230	PLANNING DIRECTOR	XMB 3120110100	Administration		00104396
79804	PROGRAM CHF, M.H. SVCS(NONMED)	XMB 4100413649	GENERAL ADMIN		00081852
74245	PUBLIC DEFENDER	XAA 2400100900	ADMINISTRATION		00003440
74460	PUBLIC INFORMATION OFFICER	XMB 1100100000	EXECUTIVE OFFICE		00101439
74833	REGISTRAR OF VOTERS	XMA 1700100000	REGISTRAR OF VOTERS		00040950
74270	TLM AGENCY DIRECTOR	XMA 3100210000	Director's Office		00008430
74272	TLMA DIRECTOR OF ADMIN	XMB 3100230000	Agency Administration		00041582