



Agenda Submittal

Agenda #:
Type: CSC-Document
File #: CSC 19-0013
Agenda date: 4/10/2019
Title: Request for a Civil Service Commission Hearing on an allegation of workplace discrimination and consider the appointment of a Hearing Officer

Status: Agenda Ready
Department: Civil Service Commission
Contact: Marc Fox, 784-2552
Final action:

Governing body: Civil Service Commission
District:
Attachments: 1. CSC Rule 1.031, 2. CSC Rule 1.032

Date	Ver.	Action By	Action	Result
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HUMAN RESOURCES' RECOMMENDATION

The Director of Human Resources recommends that the Civil Service Commission appoint a hearing officer in the matter of the March 21, 2019 complaint alleging a probationary employee ("**Employee G**") was released from employment on the basis of discrimination, pursuant to Civil Service Rule 1.034, Civil Service Commission Hearing (Final Administrative Review Level), paragraph C, Hearing by a Hearing Officer.

Further, the Director of Human Resources recommends that the parties (County and the complainant, or complainant's representative, if any) mutually select a hearing officer. In the event the parties do not mutually select a hearing officer within twenty (20) calendar days, then the Director of Human Resources will provide a list of three names to the parties. Following a coin toss, each party will alternatively strike one name and the remaining name will be the selected hearing officer.

SUMMARY

On March 21, 2019, the Human Resources Department received a written request for a hearing before the Civil Service Commission, alleging her release from employment during the probationary period was on the basis of discrimination. The employee requested a Civil Service Commission hearing in accordance with Civil Service Rule 1.031.

DISCUSSION

Civil Service Rule 1.031, Procedures for Filing a Complaint of Alleged Discrimination, provides six options for an individual to file his/her discrimination complaint:

1. Immediate supervisor;
2. Any supervisor or manager within or outside the department; or
3. Department Head; or
4. Director of Human Resources, or his/her designee; or
5. Equal Employment Opportunity (EEO) Officer; or
6. The Civil Service Commission, with the exception of harassment complaints which do not affect a tangible job benefit.

Section 1.032, Civil Service Commission Hearing (Final Administrative Review Level), paragraph A states:

“The complainant may appeal alleged discrimination to the County Civil Service Commission by filing a request for a hearing with the Director of Human Resources within thirty (30) days following the date the alleged discriminatory action, or the date the employee/applicant should have first become aware of the violation.

A complainant is not required to file a complaint at one of the other five options described above before requesting a hearing before the Civil Service Commission. Rather, the complainant may request the hearing before the Civil Service Commission without seeking resolution through a different option.

Civil Service Rule 1.032, Civil Service Commission Hearing (Final Administrative Review Level), paragraph C, Hearing by a Hearing Officer, permits the Commission to delegate hearing responsibilities to a hearing officer. The Civil Service Rules specify that the hearing officer minimally must be approved by the American Arbitration Association for employment law matters, or be an attorney with at least five years of practice in California with an emphasis in employment law. In utilizing services of a hearing officer, the Commission, however, is not delegating authority for rendering a decision. Rather, as outlined in paragraph #5 of this subsection, the delegated hearing officer provides the Commission a written record and a recommendation. The Commission renders the final written decision.

The Commission has previously delegated to a hearing officer.

- In September 2004, the Commission delegated to a hearing officer in the matter of an employee who alleged her release of employment during the probationary period was a pretext based on sex discrimination. At that meeting, the Commission directed the Director of Human Resources to retain a hearing officer. The staff report and the meeting minutes infer that the Director had discretion on whom to retain as the hearing officer.
- In April 2012 the Commission delegated to a hearing officer in the matter of an employee who alleged discrimination. At that April 2012 meeting, the Commission directed the County and employee to mutually agree on a hearing officer. To the extent that an agreement was not reached, the Director of Human Resources would provide a list of three names and the parties would alternatively strike names until one name remained, and that remaining individual would be the selected hearing officer.
- In March 2013 the Director of Human Resources recommended that Commission delegate to a hearing officer in the matter of two employees who alleged a failure to timely investigate discrimination complaints. At that March 2013 meeting, the Commission decided to not have a hearing officer and to hear the matter directly. The two employees ultimately abandoned their appeal and no Commission hearing occurred.
- In April 2015 the Commission delegated to a hearing officer in the matter of an employee who alleged her release of employment during the probationary period was a pretext based on disability discrimination. At that meeting, the Commission directed the County and the employee to mutually agree on a hearing officer. To the extent that an agreement was not reached, the Director of Human Resources would provide a list of three names and the parties would alternatively strike names until one name remained, and that remaining individual would be the selected hearing officer.

Because of the complexity of discrimination employment law and the potential liability, the recommendation is that the Civil Service Commission retain a hearing officer pursuant to the criteria listed under Civil Service Rule 1.032, Civil Service Commission Hearing (Final Administrative Review Level), paragraph C, Hearing by a Hearing Officer.

The Director of Human Resources recommends, consistent with the Commission’s prior direction that the parties (County and the complainant, or complainant’s representative if any) mutually select a hearing officer. In the event the

parties do not mutually select a hearing officer within twenty days, then the Director of Human Resources will provide a list of three names to the parties. Following a coin toss, each party will alternately strike one name and the remaining name will be the selected hearing officer.

ALTERNATIVES

The Commission could choose not to approve the staff's recommendation and either select the hearing officer itself or provide discretion to the Director of Human Resources for the selection of the hearing officer (as appears to have been the case in 2004).

The Commission could choose not to approve the staff's recommendation and conduct the hearing itself. This alternative is not recommended because of the legal complexity of discrimination employment law. If, however, the Commission opts to conduct the hearing itself, the Director of Human Resources recommends that the Commission schedule the hearing for 6:30 p.m., Wednesday, June 12, 2019.

OTHER AGENCY INVOLVEMENT

None.