



MARIPOSA COUNTY

Human Resources/Risk Management • (209) 742-1379



RESOLUTION - ACTION REQUESTED 2016-592

MEETING: November 15, 2016

TO: The Board of Supervisors

FROM: Steve Johnson, Human Resources Director - Risk Manager

RE: Adopt Updated Nepotism Policy

RECOMMENDATION AND JUSTIFICATION:

Rescind Resolution 86-79 - County's Nepotism Policy and Approve a New Updated County Nepotism Policy.

In the public sector, nepotism is generally disfavored. Dating back to the early 19th century, the practice of giving jobs in return for political support was known as the "spoils system," from a speech by a Senator in which he defended political patronage systems and declared "to the victor belong the spoils." This system diminished the public's confidence in government, because positions were not being filled on the basis of the most qualified to perform the public's work.

The underlying principle now with public employment is that hiring and promotional decisions should be based solely on merit - the education, experience and skills an individual can bring to the position in question. Such decisions are all about finding the very best-qualified individual to serve the public.

The County has the legal right to adopt a nepotism policy for its employees. California courts have found such policies are constitutionally permissible in light of the public employers' right to reduce favoritism or even an appearance of favoritism in the workplace. Similarly, the attached policy is legally sound based on a review by the County's labor law firm.

Nepotism policies need to be distinguished from "non-fraternization policies" which prohibit co-workers from engaging in intimate relationships. Where no issue of supervision or favoritism exists, such policy could raise concerns regarding the unwarranted invasion of an employee's privacy rights.

Consistent with State law, staff provided the County's four bargaining units with an opportunity to provide input on the updated policy and there were no concerns.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The County's existing nepotism policy was approved by the Board of Supervisors in 1986 with Resolution 86-79, and is attached to this Staff Report.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

The County's current nepotism policy is outdated and continued adherence to this outdated policy would prevent the County from fully embracing sound public employment practice.

ATTACHMENTS:

County Nepotism Policy 1986 (PDF)

Nepotism Policy Final November 2016 (DOCX)

CAO RECOMMENDATION

Requested Action Recommended



Mary Hodson, CAO

11/9/2016

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Rosemarie Smallcombe, District I Supervisor

SECONDER: Merlin Jones, District II Supervisor

AYES: Smallcombe, Jones, Long, Cann, Carrier

MARIPOSA COUNTY NEPOTISM POLICY

Purpose

The purpose of this policy is to establish the nepotism standard for the County of Mariposa. This policy is intended to avoid conflicts of interest between work-related and personal/family obligations; reduce favoritism or even the appearance of favoritism; and prevent personal/family conflicts from affecting the workplace.

Policy/Procedure

It is an express finding of the County that the situation specified in this section, the employment of relatives as that term is defined herein, is contrary to appropriate County goals of safety and efficiency. The purpose of this section is to define those specific circumstances and to delineate the manner in which such employment issues will be addressed.

For purposes of this policy, "relative" means spouse, child, step-child, parent, step-parent, grandparent, grandchild, brother, sister, step-brother, step-sister, aunt, uncle, niece, nephew, parent-in-law, brother-in-law, sister-in-law, legal guardian, and/or significant other as defined herein, and/or any other individual related by blood or marriage living in the same household as the County employee.

An employee is defined as any person who receives wages from the County for services rendered to the County of Mariposa on a full-time, permanent part-time, or extra-help basis.

Relatives of employees shall not be employed in the same department of such a relative at any time by the County as further proscribed below.

As of the effective date of this Policy, County employees who are related (as defined herein) shall not be affected in their current job status except when the County Administrative Officer or his/her designee determines that the circumstances of that employment raises an undue hardship upon the other employees within the particular work unit and that such continued employment is detrimental to the supervision, safety, security and/or morale of the particular work unit.

It is found by the County that a business purpose exists and dictates that a prohibition on employment of relatives within County departments is essential to safety and efficiency when such employment results in any of the following:

- A supervisor-subordinate relationship;
- The employees having job duties, which authorize performance of shared duties on the same or related work assignment;
- Both employees being under the jurisdiction of the same immediate supervisor;
or
- An adverse impact on supervision, safety, security and/or morale.

Relatives working together in the same unit, division, or work site may be waived by the Department Head or his/her designee. However, where the Department Head determines that waiver is appropriate, he or she must notify the Human Resources Director of his or her decision as soon as practical.

The definition of work site means the same office, station, or sub-station. Those working in different areas of the County such as: East Area Roads, North County Roads, South County patrol, North County patrol will not be affected due these being different work sites.

Those who are related that are required to work the same work site may do so at the discretion of the Department Head or his/her designee, however, they will not supervise each other. Nevertheless, under no circumstances shall relatives, as defined by the Policy or employees in a dating or married relationship, be in a direct chain of command with each other at any work site.

Effect of Post-Employment Marriage or Creation of Other “Relative” Status of County Employees

In determining rules and regulations governing the employment of County employees who become related, as defined herein, after commencement of County employment, the County is guided by the principles enunciated in the California Fair Employment and Housing Act (FEHA) which prohibits discrimination on the grounds of marital status. However, FEHA and its regulations defining the same do authorize restrictions being placed upon married County employees (or upon people deemed related as a result of marriage [i.e., in-laws]) where for business reasons of supervision, safety, security or morale, the employer may refuse to place one spouse or other relative under the direct supervision of another spouse or other relative and refuse to place both spouses or other relatives in the same department, division or facility if the work involves potential conflicts of interest or other hazards greater for married couples or other relatives than for other persons. (Cal. Code Reg., tit. 2, section 11057; Government Code section 12940(a) (3).)

Recognizing the principles stated above, the County determines that “marital status” is defined as an individual’s state of marriage, non-marriage, divorce or dissolution, separation, widowhood, annulment, or other marital state for purpose of this policy. Further, a “spouse” is defined as a partner in marriage or domestic partner.

The County retains the right to refuse to place one spouse or other relative under the direct supervision of the other spouse where there is a potential for creating adverse impact on supervision, safety, security or morale.

The County retains the right to refuse to place both spouses and other relatives in the same department where doing so has the potential for creating adverse impact on supervision, safety, security or morale or involves potential conflicts of interest.

In order to implement these policies, and where the above circumstances exist and mandate that two spouses or other relatives shall not work in a prohibited relationship, the department will attempt to do any of the following: 1) redefine the job responsibilities of the related employees within the department to minimize the conflict; or 2) if the redefinition of job status is not feasible, will attempt to transfer one spouse or other relative to a similarly classified position in another County department.

Although the wishes of the involved parties as to which spouse or other relative is to be transferred will be given consideration by the County, the controlling factor in determining who is to be transferred shall be based on the operational efficiency of the County.

If any such transfer results in a reduction in salary or compensation, the transfer shall not be considered disciplinary in nature and shall not be the subject of any form of administrative appeal.

In lieu of a transfer from one department to another, or in situations where no similar counterpart classification exists to which a spouse or other relative can be transferred, the County may request the voluntary resignation of one of the employees and if one of the employees does not voluntarily resign, the employee with the least employment experience/service with the County may be discharged by the County Administrative Officer. Married or other related employees may continue to be employed within the same County department subject to approval by the Department Head and the County Administrative Officer or his/her designee. However, any such continuing employment is predicated upon both spouses or other similarly situated relative as defined in this Policy not reporting to the same immediate supervisor, not being supervised by each other, not working the same shift at the same work site; or, otherwise becoming involved in a work environment having the potential for adverse impact on supervision, safety, security or morale.

It is the duty of all involved employees who are in a situation prohibited under this policy to immediately notify their supervisor either in person or through the chain of command that a situation exists in which the involved employee may be in violation of this policy. The County reserves the right to reasonably investigate the situation and determine whether the employee has violated this policy.

Responsibility Assignments:

Human Resources Director: As assigned, responsible for coordinating the resolution of any concerns of nepotism.

Department Heads: Responsible to ensure that appropriate hiring practices are upheld in their respective Department/Division.

County Administrative Officer: Responsible for implementing the policy and adjudication of instances of potential breach of this policy.

Created: 11/15/2016 (B/S Res No. 16-592)