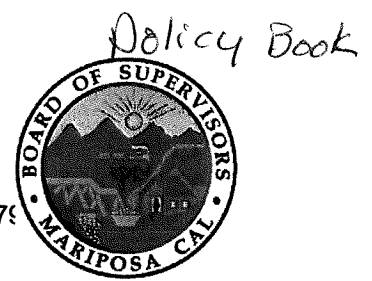


MARIPOSA COUNTY

Human Resources/Risk Management • (209) 742-1375



RESOLUTION - ACTION REQUESTED 2016-100

MEETING: March 1, 2016

TO: The Board of Supervisors

FROM: Steve Johnson, Human Resources Director - Risk Manager

RE: County Reference Check Policy

RECOMMENDATION AND JUSTIFICATION:

Rescind Resolution 97-359 - a Resolution Setting Policy for Disseminating Information Regarding Current or Former Employees and Approve an Updated Mariposa County Reference Check Policy.

Staff originally presented this item at the January 26, 2016, Board of Supervisors meeting for review and approval. Based on input provided by the Board at that meeting, staff is returning to the Board with a slightly modified Mariposa County Reference Check Policy that includes the following changes from the version presented to the Board on January 26th:

- The updated Policy clarifies that a request for a Reference Check received by the County need only be put into writing if the County has not received the appropriate Waiver Form (page one of the attached Policy).
- The updated Policy clarifies that Reference Checks will only be conducted on candidates who are finalists for County positions (page two of the attached Policy).
- The word Agency has been replaced with the word County under the section of the Policy that addresses Maintaining Confidentiality of Source Information (page three of the attached Policy).

Staff now recommends the approval of the attached, updated Mariposa County Reference Check Policy.

This draft Policy was developed primarily using template information provided by the County's labor law firm, Liebert, Cassidy & Whitmore, and was reviewed by the County's Department Heads, labor unions and by a senior partner at the Liebert, Cassidy & Whitmore law firm.

The County Board of Supervisors adopted a Reference Check Policy in 1997 that governs the process by which staff provides or conducts Reference Checks on behalf of the County. But legal changes since 1997 make an updated Board

approved Policy imperative in order provide a consistent, orderly and legally enforceable Reference Check process for the County.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board of Supervisors adopted Resolution number 97-359 in 1997 that adopted a Policy relative to disseminating information regarding current or former employees. A revised version of this Policy was presented to the Board of Supervisors at their November 9, 2015 meeting for review and comments.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

A non-affirmative vote would mean that the County would be out of legal compliance in regards to employees either conducting or providing Reference Check information on behalf of the County.

ATTACHMENTS:

Reference Check Policy November 2015 (DOCX)

Reference Check Policy March 2016 (DOCX)

CAO RECOMMENDATION

Requested Action Recommended


Mary Hodson, CAO 1/19/2016

RESULT: ADOPTED [UNANIMOUS]

MOVER: Merlin Jones, District II Supervisor

SECONDER: Rosemarie Smallcombe, District I Supervisor

AYES: Smallcombe, Jones, Long, Cann, Carrier



MARIPOSA COUNTY

REFERENCE CHECK POLICY

March, 2016

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RESPONDING TO REQUESTS FOR REFERENCE INFORMATION

Mariposa County has a Policy for responding to requests for reference information. Mariposa County expects all employees to be aware of and to strictly adhere to this Policy. Mariposa County's response is as follows:

- 1) Each and every request for reference information shall be referred to a first line supervisor or higher. If no supervisor is available, the request shall be referred to the Human Resources Department.
- 2) The supervisor or Director of the Human Resources Department shall ask the prospective employer to agree to receive and maintain all reference information in confidence. Information shall be provided only after the prospective employer agrees to this condition.
- 3) Before giving any response, the supervisor or Director of the Human Resources Department shall ensure that Mariposa County has received a written waiver signed by the applicant/former employee. The Human Resources Department shall maintain copies of all signed waivers.
- 4) If a written waiver has not been received by the County, each and every response shall be provided in writing. The Human Resources Department shall maintain copies of all responses.
- 5) A supervisor shall draft a written response(s) and provide the draft response(s) to the Director of Human Resources for his/her review and approval. The reviewing official shall ensure that the reference information is supported by documentation, and is factually consistent with other reference responses.
- 6) To the extent possible, all Mariposa County employees who receive and respond to requests for reference information shall maintain the confidentiality of the reference information. The only individuals who should discuss and review Mariposa County's responses are those who draft and approve the reference information.
- 7) Any individual that violates this Policy may be subject to discipline.

CONDUCTING REFERENCE CHECKS

1. Purpose

The purpose of this Policy is to ensure that Mariposa County ("the County"), through a designated reference checker, conducts thorough and adequate pre-employment background investigations/reference check of finalist candidates in accordance with state and federal laws.

2. Signed Authorizations and Releases

The reference checker shall ensure that all applicants have provided *signed* authorization and release forms for their employment information, including copies of their personnel files. The Human Resources Department shall maintain the personnel files obtained from applicants' former and current employers.

The reference checker should run credit checks on the applicants, if applicable to the particular job for which the County is recruiting. Before doing so, the reference checker shall ensure that the applicants have provided signed election forms to obtain copies of any public records, e.g., criminal offender history information, civil judicial action, tax liens or outstanding judgments. The Human Resources Department shall maintain the credit history reports obtained.

The Human Resources Department shall maintain all public records obtained pertaining to applicants. Unless an applicant has elected not to receive them, the Human Resources Department shall provide the applicant with a copy of any public record which is obtained for employment purposes within seven (7) days after receipt of the public record information, whether the information is received in a written or oral form.

Even if the applicant has elected not to receive any public records information, if the County takes any adverse action, i.e., denies employment, because of the public records information, the Human Resources Department shall provide the applicant with a copy of the public record.

3. Carefully Review All Job Applications

The reference checker shall review all job applications for completeness, including *signed* certifications.

- If an application reveals gaps in the employment history, the reference checker should ask the applicant to explain the gaps.
- If an applicant requests that the County not contact his/her current employer, the reference checker should ask for an explanation. Check whether the applicant has signed an authorization and release for the County to access and review his/her personnel file, otherwise, the applicant should provide a sealed copy of his/her personnel file to the County. The reference checker should remind applicants of their right to review their personnel files in accordance with Labor Code section 1198.5.

4. Verify Employment History

To verify employment history, reference checkers should telephonically contact individuals (e.g., direct supervisors, department heads), who actually supervised the applicants at their prior and current employment. In the alternative, reference checkers may send a written questionnaire. If ambiguous answers are provided by applicants' former and/or current employers in response to the questionnaire, the reference checker should follow up promptly with telephone or in-person contact.

- Ask questions which elicit only information that is relevant to determining the candidate's qualifications for the job. For example, if the job requires the individual to carry 50 pound boxes on a daily basis, the reference checker may ask whether the applicant was/is able to do so at his/her prior or current job.
- Do *not* ask for an applicant's detailed family history, including marital status. Do not ask about the applicant's membership in any category protected under state and federal laws, i.e., race, sex, national origin, skin color, religion, sexual orientation, physical or mental disability, medical condition, and age.
- Do *not* ask whether an applicant has filed workers' compensation claims at his/her prior or current job.

5. Maintain Confidentiality of Source Information

The County should maintain confidentiality of source information, particularly if the reference checker agreed to maintain confidentiality in response to the request of any prior employer and/or current employer.

6. Criminal History Record Information

The County should obtain criminal history record information, i.e., conviction records, on applicants who met the minimum employment qualifications, and where appropriate for the job positions.

The County shall obtain criminal history record information, including arrest records, on applicants for all sworn job positions. The Human Resources Department should disclose criminal data to authorized personnel on a need to know only basis. Criminal offender history information shall never be disclosed to individuals not employed with Mariposa County.

7. Maintenance of Applicants' Information

The Human Resources Department shall maintain candidates' job applications and reference information including high school, college/university, and trade school transcripts and credit history reports.

The Human Resources Department shall maintain reference documents in confidential files separate from ordinary personnel files and criminal history record information.

APPENDIX A

CHECKLIST FOR INITIATING A REFERENCE CHECK

- Review employment applications:
 - Dates of employment
 - Names, addresses, telephone numbers, and email addresses of current and former employers
 - Job positions held
 - Job duties
 - Beginning and ending rates of pay
 - Reason(s) that prior employment(s) ended
 - Has the applicant ever been asked to resign?
 - Any issue that would impact the County's hiring decision?
 - Did applicant sign a certification stating that the information he/she provided is true and correct?
- Ask applicant to explain any and all gaps in his/her employment history.
- Obtain telephone numbers and email addresses for direct supervisors, Department Heads, and Human Resources Directors.
- Ensure that the applicant has signed an authorization and release for the County to obtain his/her employment information, including a copy of his/her personnel files from current and former employers.
- Ensure that each applicant has been provided with notice that he/she has the right to obtain a copy of any public records obtained.
 - Provide the notice and election form concurrently with the job application. The applicant should indicate whether he/she wants a copy of any public records obtained.
 - Is the election form completed and signed by applicant?
- If a consumer credit report will be sought, ensure that each applicant has been provided with notice of the specific reason under Labor Code § 1024.5 for obtaining the report prior to the request.
 - Provide the notice concurrently with the job application.

APPENDIX B

CHECKLIST FOR CONDUCTING REFERENCE CHECKS

- Contact all persons to verify key information about the applicant's employment history and work performance.
 - Direct Supervisors
 - Department Heads
 - Human Resources Directors
- Advise each reference that you will keep source information confidential.
- Ask each reference whether he/she would re-hire the applicant.
- Document all information obtained, e.g., date, time, source name and contact information and comments.
- Consider obtaining a copy of the applicant's personnel file(s) when:
 - All former and current employers have a policy of providing no information or providing only basic information, e.g., employment dates.
 - If the applicant does not want you to contact his/her current employer, then ask the applicant to provide a sealed copy of his/her personnel file.
- Under Labor Code section 432.7, agencies should not consider the following criminal history information:
 - arrests which did not result in convictions
 - referrals to diversion programs
 - convictions that have been sealed or expunged
- Under Labor Code section 432.8, the County should not consider marijuana related convictions which are more than two years old. Specifically, you should not consider two-year plus convictions for violations of subdivision (b) or (c) of section 11357 of the Health and Safety Code or a statutory predecessor thereof, or subdivision (c) of section 11360 of the Health and Safety Code, or section 11364, 11365, or 11550 as they related to marijuana prior to January 1, 1976, or a statutory predecessor thereof.
- Under California Fair Employment and Housing Commission Regulations (Cal. Code of Regs., tit. 2, § 11017), the County should not consider any conviction for which the record has been judicially ordered sealed, expunged, or statutorily eradicated (e.g., juvenile offense records sealed pursuant to Welfare and Institutions Code section 389 and Penal Code sections 851.7 or 1203.45); any misdemeanor conviction for which probation has been successfully completed or otherwise discharged and the case has been judicially dismissed pursuant to Penal Code section 1203.4

- ❑ The County, when employing peace officers, may obtain and use arrest information when deciding whether to hire peace officer candidates (including marijuana related convictions which are more than two years old). Information contained in an arrest report may be used as the starting point for an independent, internal investigation of a peace officer candidate. (Lab. Code, § 432.7.)
- ❑ When the County is hiring a peace officer candidate, we will:
 - Comply with P.O.S.T. regulations for conducting peace officer background checks.
 - Provide the former employer with the County's written request for the candidate's employment information.
 - Provide the former employer with a **notarized** authorization which is signed by the peace officer candidate that releases the former employer from liability. (Gov. Code, § 1031.1.)
 - Present both the written request and notarized authorization to the former employer.
- ❑ Public health facilities may ask applicants about arrests for violations of California Penal Code section 290 and Health and Safety Code section 11590. (Lab. Code, § 432.7.)
- ❑ Individuals applying to perform services at a park, playground, recreational center or beach, in positions of supervisory/disciplinary power over minors must complete applications regarding convictions of specified crimes. Affirmative answers would disqualify the applicant from employment. (Pub. Res. Code, § 5164.)
- ❑ If the County decides not to hire the applicant, provide a copy of all public records obtained to the applicant. (Cal. Civ. Code § 1786.53, subd. (b)(4).)

APPENDIX C

APPLICANT EMPLOYMENT VERIFICATION AND REFERENCE CHECK FORM

ATTENTION:

Your firm/agency has been listed by an applicant for employment with Mariposa County as a current or previous employer. This form and signed release from the applicant are being sent to you as part of the reference/background check on this applicant. Your honest response to the following inquiries would be appreciated.

Any and all responses will be maintained with strict CONFIDENTIALITY and will only be considered in regards to the applicant's ability to perform the functions of the position applied for within the stipulated workplace environment.

California Civil Code section 47 grants protection from tortious liability to California employers who provide references upon request about prospective employees to other employers if the references are based on fact and not maliciously intended. It also grants protection to privileged communications of employment references with the intent to encourage employers to openly respond to questions from prospective employers concerning the job performance and knowledge of their employees.

1) Name of Applicant: _____

2) Social Security Number: _____

CERTIFICATION OF NON-EMPLOYEE STATUS

[] "I certify under penalty of perjury that I/we have no records for an employee either under this name or social security number."

Signed: _____

Dated: _____

Title: _____

Phone #: _____

REFERENCE CHECK QUESTIONS

- 3) The above applicant indicates that he/she was employed by you during the period of _____ through to _____.

Is this substantially correct? [] Yes [] No

If not, what are the correct dates of hire/separation?

_____ to _____.

EMPLOYMENT REFERENCE INQUIRY:

- 4) The applicant indicates that his/her job classification was/is:

_____.

Is this substantially correct? [] Yes [] No

If not, what is the correct job classification/title? _____

- 5) The applicant indicates that his/her highest salary received while in your employment was approximately: \$_____ per [] Hour [] Day [] Month

Is this substantially correct? [] Yes [] No

- 6) The applicant indicates that his/her normal job duties in his/her job classification were:

Is this substantially correct? [] Yes [] No

If not, please cross out any items you believe were not assigned or performed by the employee.

Effectively managing critical workplace incidents, especially those dealing with actual or potential violence, is a top priority of the County. The County is committed to providing a safe work environment to its employees that is free of violence or the threat of violence. **The following actions are considered to be acts of violence:**

- *Striking, punching, slapping or assaulting another person;*
- *Fighting or challenging another person to fight;*
- *Grabbing, pinching, or touching another person in an unwanted way (sexual or otherwise);*
- *Engaging in dangerous, threatening, or unwanted horseplay;*

- *Possession, use or threat of use of a gun, knife or other weapon of any kind on employer's property, including parking lots, company vehicles, or while engaged in activities for the firm/agency in other locations; and*
- *Threatening harm or harming another person, or any other action or conduct which implies the threat of harm.*

7) Relative to the above statement and examples of violent acts or an implied threat of violence on the previous page, during the time the applicant was employed by you, do you have any knowledge concerning allegations or known instances regarding the following:

a) That the applicant verbally threatened another worker or supervisor?

Yes No

b) That the applicant was involved in a physical confrontation with another employee or client?

Yes No

c) That the applicant has ever exhibited behavior or made remarks that could be considered as being threatening or alluding to violence against a coworker, supervisor, spouse, or client?

Yes No

8) Please rate the applicant's overall work attendance record during his/her employment with you:

9) Applicant indicates that the reason for leaving employment with you was:

Is this essentially correct? Yes No

If not correct, please indicate why this applicant left your employment:

Still employed

Layoff

Involuntary Separation

Resignation

Are there any significant issues involving the applicant, which have not been addressed above, that you think would impact the County's hiring decision? If yes, please explain below:

Do you have any other comments which you feel are relevant to this reference inquiry?

Signed: _____

Dated: _____

Title: _____

Phone #: _____

APPENDIX D
WAIVER AND RELEASE OF INFORMATION
NON-SWORN (INCLUDING FIRE PERSONNEL)

I, _____ (print name), hereby request, authorize and consent to the release of information to Mariposa County regarding my previous and/or current employment with _____ (name of Responding Agency) for the purpose of evaluating my suitability for employment.

I further authorize _____ (name of Responding Agency) or its agents to respond to any verbal or written request regarding my employment record, including but not limited to: positions held; dates of employment; beginning and end pay rates; work performance; disciplinary records, including any records which were sealed as part of a settlement; reliability and any incidents of dishonest; insubordination, violence and/or unsafe behavior; harmful or threatening behavior, including information based upon materials in my personnel file. I direct (name of Responding Agency) or its agents to release such information regardless of any agreement, instructions, or representations I may have previously made with (Responding Agency) to the contrary. I further authorize _____ (name of Responding Agency) or its agents to answer whether it would rehire me.

In addition, I authorize _____ (name of Responding Agency) to release the contents of and/or to provide a photocopy of my entire personnel file with (Responding Agency) if requested by Mariposa County, including any documents sealed pursuant to any settlement agreement or stipulation, and all application information including questionnaires, interviews, and education transcripts. I further authorize the disclosure of all records to which, as an employee, I would have or did have access under Labor Code section 1198.5 [For firefighters add: Government Code sections 3255 and 3256].

I have received a copy of this Waiver and Release and had adequate time to review it. I understand the meaning and purpose of this Waiver and Release, and by signing this document, I release _____ (name of Responding Agency) including its officers, employees, or related personnel both individually and collectively, from any and all liability for damage of whatever kind, which may at any time result to me, my heirs, and family associates because of this Waiver and Release or any attempt to comply with it. Specifically, _____ (name of Responding Agency) will not be subject to any civil liability for any relevant cause of action by virtue of releasing information identified above in compliance with California Civil Code section 47 as amended.

This Waiver and Release will expire one (1) year after the date signed. A photocopy of this Waiver and Release is to be considered as valid as an original.

Signature of Applicant

Date

APPENDIX E
WAIVER AND RELEASE OF INFORMATION
SWORN

I, _____ (print name), hereby request, authorize, and consent to the release of information to Mariposa County regarding my previous/current employment with _____ (name of Responding Agency) for the purpose of evaluating my suitability for employment. I further authorize _____ (name of Responding Agency) or its agent to respond forthrightly to any verbal or written request regarding my employment record, including but not limited to: positions held; dates of employment; beginning and end pay rates; work performance; disciplinary records, including any records which were sealed as part of a settlement; reliability and any incidents of dishonest; insubordination, violence and/or unsafe behavior; harmful or threatening behavior, including information based upon materials in my personnel file. I direct the _____ (name of Responding Agency) or its agents to release such information regardless of any agreement, instructions, or representations I may have previously made with (Responding Agency) to the contrary. I further authorize _____ (name of Responding Agency) or its agents to answer whether _____ (name of Responding Agency) would rehire me.

In addition, I authorize _____ (name of Responding Agency) to release the contents and/or to provide a photocopy of my entire personnel file with (Responding Agency), if requested by Mariposa County, including any documents sealed pursuant to any settlement agreement or stipulation, and all application information, including questionnaires, interviews, education transcripts, and polygraph examination results. If the prospective employer is a law enforcement agency, I authorize the _____ (name of Responding Agency) to release all information that it obtained from my prior employers. (Gov. Code, § 1031.1.) If the prospective employer is a governmental agency, I authorize (Responding Agency) to provide local criminal history information (conviction information; arrest information within five years from date of arrest and where no post arrest diversion program was completed). (Lab. Code, § 432.7; Pen. Code, § 13203.)

I am aware that my personnel file or information contained therein may be considered confidential under subdivision (c) of Government Code section 6254 and Penal Code section 832.7, and therefore subject to disclosure only pursuant to a noticed motion under Evidence Code section 1043 et seq. By signing this authorization, **I HEREBY WAIVE ANY AND ALL RIGHTS** to have any record(s) or information contained therein disclosed only by noticed motion. I also authorize the disclosure of all records to which, as an employee, I would have or did have access under Labor Code section 1198.5 and Government Code section 3306.5.

**ACKNOWLEDGMENT OF RECEIPT OF
MARIPOSA COUNTY'S REFERENCE CHECK POLICY**

I, _____ [print employee's name], acknowledge receipt of Mariposa County's Reference Check Policy. I understand and acknowledge that I am required to be aware of and adhere to the provisions in this policy. I further acknowledge that violation of this policy may result in discipline.

Employee signature: _____

Date: _____