

**MEMORANDUM
OF
UNDERSTANDING**

**BETWEEN THE
ALAMEDA COUNTY PUBLIC DEFENDER CHAPTER
IFPTE, Local 21
FOR REPRESENTATION UNITS R68 and 069**

**AND THE
COUNTY OF ALAMEDA**



October 22, 2006 – June 27, 2009

2006 – 2009
MEMORANDUM OF UNDERSTANDING
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IFPTE, LOCAL 21
For Representation Units R68 and 069
AND
THE COUNTY OF ALAMEDA

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THE ALAMEDA COUNTY PUBLIC DEFENDER CHAPTER
Units R68 and 069
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AND
THE COUNTY OF ALAMEDA**

THIS MEMORANDUM OF UNDERSTANDING is entered into by the Director of Human Resource Services of the County of Alameda, a political subdivision hereinafter named as "County," and the Alameda County Public Defender Chapter of International Federation of Professional and Technical Engineers, Local 21, hereinafter named as "Union," as a recommendation to the Board of Supervisors of the County of Alameda concerning the conditions of employment to be in effect during the period October 22, 2006 through June 27, 2009, of those employees working in the representation units referred to and further described in Section 1 of this MEMORANDUM.

SECTION 1. RECOGNITION

The County recognizes the Union as the exclusive bargaining representative for all full-time, part-time, permanent, provisional and probationary employees in Representation Units R68 and 069 in the classifications as specifically enumerated in Appendix A of this Memorandum.

SECTION 2. NO DISCRIMINATION

- A. DISCRIMINATION PROHIBITED.** The parties mutually agree they will not discriminate against any employee because of race, color, creed, national origin, gender, sexual orientation, age, physical or mental disability. Complaints arising pursuant to the provisions of this subsection A shall only be processed according to the Uniform Complaint Procedure contained in Appendix C which is incorporated by reference to this Memorandum of Understanding.
- B. NO DISCRIMINATION BECAUSE OF UNION ACTIVITY.** Neither the County nor the Union shall interfere with, intimidate, restrain, coerce, or discriminate against employees covered by this agreement because of the exercise of rights to engage or to not engage in Union activity. Complaints arising out of this subsection B shall be processed through the grievance procedure in Section 17 of this Memorandum of Understanding, not the Uniform Complaint Procedure.

SECTION 3. UNION SECURITY

- A. NOTICE OF RECOGNIZED UNION.** When a person is hired into a classification represented by the Union, the County shall notify such person(s) that the Union is the

exclusive recognized bargaining agent for the employees in said representation unit and provide such person(s) with enrollment materials supplied by the Union for the sole purpose of joining the Union and affecting payroll dues deductions.

- B. NOTICE TO RECOGNIZED UNION.** The County shall post within the employee work or rest area a notice which sets forth the classifications within the representation units and the name and address of the Union. The County shall also give a written notice to the Union containing the names and addresses of all persons newly employed within the representation units within thirty calendar days from the beginning of their employment.
- C. MAINTENANCE OF MEMBERSHIP.** Employees in Representation Units R68 and 069 who are members of the Union on the date upon which this Memorandum of Understanding is executed or who become members of the Union during the term of this Memorandum of Understanding shall remain members during the term of this Memorandum of Understanding except that such employees may withdraw during the month of June of any year pursuant to subsection D.
- D. REVOCATION OF AUTHORIZATION.** Dues deduction shall be made only upon signed authorization from the employee. Any employee desiring to revoke his/her authorization for Union dues as provided above shall proceed as follows. Said employee shall, within the periods set forth above, forward a written request to the Auditor-Controller setting forth his/her desire to revoke said authorization. The Auditor-Controller shall promptly forward a copy of said letter to the Union. No authorizations shall be revoked for a period of two biweekly pay periods following transmittal of said letter to the Union. To be considered, a letter shall be received by the Auditor-Controller within the month of June as specified in subsection C.

Failure to timely notify the Auditor-Controller shall be deemed an abandonment of the right to revocation until the next appropriate time period. Initial authorization shall be forwarded from the Department to a place or person designated by the Auditor-Controller and shall be processed through payroll. The effective date of dues deductions for employees shall be the pay period immediately following receipt by the County of the dues deduction authorization. The effective date of any revocation of any existing authorization shall be the end of a biweekly pay period.

- E. PAYROLL DEDUCTIONS AND PAY OVER.** The County shall deduct Union dues from employees in represented classes in Representation Units R68 and 069 in conformity with State and County regulations. The County shall promptly pay over to the designated payee all sums so deducted.

Employees may authorize dues only for the organization certified as the recognized employee organization of the Unit to which such employees are assigned.

- F. HOLD HARMLESS.** The Union shall indemnify and hold the County and the County Auditor-Controller harmless from any and all claims, demands, suits, or any other

action arising from the maintenance of membership dues deductions or from complying with any demand for termination hereunder.

SECTION 4. RELEASE TIME

Officers and authorized representatives of the Union who are County employees may utilize time during normal working hours without loss of pay or benefits, for meeting and conferring with County management on matters within the scope of representation. The use of release time for this purpose shall be reasonable in amount and shall not interfere with the performance of County services.

The authorized representatives of the Union shall be made known to the Director of Human Resource Services on a yearly basis and updated as changes occur.

SECTION 5. UNION RIGHTS

A. ACCESS TO EMPLOYEES. Any full-time business agent of the Union may have reasonable access to contact individual employees in County facilities during business hours on matters within the scope of representation. The full-time business agent must obtain permission for such contact from the Department Head. Such permission will not be unreasonably denied. When contact at the work location is precluded by confidentiality of records, work situation, health and safety of employees or the public, or by disturbance to others, the Department Head shall have the right to make other arrangements for a contact location removed from the work area. Unscheduled arrivals during business hours at County facilities of the full-time business agent for the purpose of contacting individual employees without prior approval of the Department Head will not be allowed. No contacts by the full-time business agent shall be permitted during working hours with employees regarding membership, collection of monies, election of officers, or other similar internal Union business.

B. MEETINGS. Meetings of a full-time business agent of the Union and a group of employees shall not be permitted during working hours except as provided in subsection A above, or Section 17 (Grievance Procedure).

C. ACCESS TO RECORDS. An employee shall be permitted to review his/her own personnel record. Union representatives shall be permitted to review employee records when accompanied by the employee or upon presentation of a written authorization signed by the employee. The employee or the Union representative when accompanied by the employee or upon presentation of a written authorization signed by the employee may request a copy of the employee's personnel record. The County shall provide one copy of the record without charge. The County may verify any written authorization. Third party reference material shall not be made available.

D. USE OF BULLETIN BOARDS. Reasonable space shall be allowed on bulletin boards as specified by the Department Head for use by employees and the Union to communicate with Departmental employees. Material shall be posted upon the bulletin board space designated and not upon walls, doors, file cabinets, or any other place. Posted material shall not be obscene, defamatory, or of a partisan political nature, nor shall it pertain to public issues which do not involve the County or its relations with County employees. All posted material shall bear the identity of the sponsor, shall be neatly displayed, and shall be removed by the sponsor when no longer timely.

SECTION 6: USE OF COUNTY FACILITIES

County facilities may be made available for use by employees and the Union. Such use shall not occur during regular working hours. Application for such use shall be made to the management person under whose control the facility is placed. Employees attending meetings under this section during duty hours may do so only on duly requested and authorized leave time. The Union will reimburse the County for costs associated with use of County facilities, if any.

SECTION 7. PREGNANCY & CHILD BONDING LEAVE

A pregnant employee is entitled to receive a pregnancy and child bonding leave of up to six months, the dates of which are to be mutually agreed by the employee and Department Head. Such an employee may elect to take accrued vacation or compensating time off or sick leave, when eligible, during the period of pregnancy and child bonding leave, except that in the case of an employee who is regularly scheduled to work less than the normal full-time workweek for the classification, paid leave shall be granted only for those days, or fractions thereof, on which such an employee would have been regularly scheduled to work and would have worked but for the pregnancy and child bonding leave. The employee shall be entitled to sick leave with pay accumulated pursuant to Alameda County Administrative Code Section 3-20. Notwithstanding the above, the employee is entitled to take up to seven (7) months of total leave for the integration of the disability and child bonding leaves pursuant to the California Family Rights Act. These leaves, when eligible, are taken concurrently with FMLA.

Reinstatement subsequent to pregnancy and child bonding leave of absence shall be to the same classification from which leave was taken and the Department Head shall make his/her best effort to return such employee to the same geographical location, shift, and where there is specialization within a classification, to the same specialization. Questions as to whether or not the Department Head has used his/her best effort herein, shall not be subject to the grievance procedure.

SECTION 8. CHILD BONDING LEAVE

A prospective father, domestic partner or adoptive parent is entitled to child bonding leave of up to six consecutive months, except as provided pursuant to the Family Medical Leave Act (FMLA) or the California Family Rights Act (CFRA), the dates of which are to be mutually agreed by the employee and the Department Head. Such an employee may elect to take accrued vacation or compensating time off during the period of child bonding leave except that in the case of an employee who is regularly scheduled to work less than the normal full-time workweek for the classification, paid leave shall be granted only for those days, or fractions thereof, on which such an employee would have worked but for child bonding leave. The use of sick leave during child bonding leave shall not be permitted to fathers, domestic partners or adoptive parents unless they are otherwise eligible to use it as provided in Administrative Code Chapter 3-20. These leaves, when eligible, are taken concurrently with FMLA. Reinstatement subsequent to child bonding leave of absence shall be to the same classification from which leave was taken and the Department Head shall make his/her best effort to return such employee to the same geographical location, shift, and where there is specialization within a classification, to the same specialization. Questions as to whether or not the Department Head has made his/her best effort herein, shall not be subject to the grievance procedure.

SECTION 9. BEREAVEMENT LEAVE

A regularly scheduled employee may be granted up to five days of leave of absence with pay by the Department Head because of death in the immediate family. An employee shall be allowed to take such leave within a four-week period. For purposes of this subsection, "immediate family" means mother, stepmother, father, stepfather, husband, wife, domestic partner (upon submission of an affidavit as defined in the appendices), son, stepson, daughter, stepdaughter, children of domestic partner brother, sister, grandparent, grandchild, foster parent, foster child, mother-in-law, and father-in-law, or any other person sharing the relationship of in loco parentis; and, when living in the household of the employee, a brother-in-law, or sister-in-law.

Entitlement to leave of absence under this subsection shall be only for all hours the employee would have been scheduled to work for those days granted, and shall be in addition to any other entitlement for sick leave, emergency leave, or any other leave.

SECTION 10. LEAVE FOR JURY DUTY OR IN ANSWER TO A SUBPOENA

Leave of absence with pay shall be granted to a person while serving on jury duty or answering a subpoena as a witness, including travel time to and from the court. Any jury duty or witness fee awarded to such person, less reimbursement for mileage, shall be deposited with the County Treasury.

SECTION 11. FAMILY AND MEDICAL LEAVE

It is the County's intent to comply fully with any requirements of mandated federal and state Family and Medical Leave laws.

SECTION 12. HOLIDAYS

A. HOLIDAYS DEFINED. Paid holidays shall be:

January 1	Thanksgiving
Third Monday in January (Dr. Martin Luther King, Jr. Day)	Day after Thanksgiving
February 12 (Lincoln's Birthday)	December 25
Third Monday in February (Washington's Birthday)	
Last Monday in May (Memorial Day)	
July 4	
First Monday in September (Labor Day)	
November 11 (Veteran's Day)	

All other days appointed by the President of the United States or Governor of the State of California as a nationwide or statewide public holiday, day of fast, day of mourning, or day of thanksgiving, provided that observance of the day as a paid holiday is approved in writing by three or more members of the Board of Supervisors.

In the event that the date of observance of any of the foregoing holidays which coincide with State holidays, set forth in the California Government Code Section 6700, is changed by statute, said holiday shall be observed on the date so established instead of the date provided in this Section. In no event shall this provision reduce the number of holidays set forth in the Memorandum.

B. FLOATING HOLIDAYS. Each employee hired prior to July 1 of each year shall be entitled to four floating holidays. These holidays are to be scheduled by mutual agreement of the employee and the Department Head and taken within the calendar year. The first four full days (32 hours) of vacation taken during each calendar year shall be charged as floating holidays. Employees hired after July 1 shall not be entitled to these floating holidays for the calendar year in which the employee was hired. Less than full-time employees shall be entitled to prorated floating holidays based upon a proration of the hours the employee is regularly scheduled to work.

C. HOLIDAYS TO BE OBSERVED ON WORK DAYS. For employees, except as specified below:

In the event that January 1, February 12 (known as Lincoln's Birthday), July 4, November 11 (known as Veteran's Day), or December 25, shall fall on a Saturday, said holiday shall be observed on the preceding Friday. In the event that any of said holidays enumerated in this subparagraph shall fall on a Sunday, said holiday shall be observed on the following Monday. A day proclaimed as a nationwide or

statewide public holiday, day of fast, day of mourning, or day of thanksgiving and approved in writing by three or more members of the Board of Supervisors, shall be granted only to those employees who are regularly scheduled to work on the day for which such holiday is proclaimed.

SECTION 13. VACATION LEAVE

Eligible employees in service with the County shall accrue vacation as specified below. Vacation pay shall be granted only for those days or fractions thereof on which employees would have been regularly scheduled to work and would have worked but for the vacation period. An employee who is regularly scheduled to work less than the normal work week for the job classification shall accrue vacation leave accordingly, except that the vacation accrual shall be prorated each pay period based upon a proration of the hours worked within that pay period to the normal full-time pay period for the job classification.

A. VACATION ACCRUAL

1. **For persons employed on or after January 1, 1956.** Each employee in the service of the County who has been continuously employed since a date after January 1, 1956, shall accrue vacation leave as follows:
 - a. **Two weeks accrual** - .385 working days for each biweekly pay period on paid status until completion of 104 full-time biweekly pay periods (4 years) of continuous employment.
 - b. **Three weeks accrual** - .577 working days for each bi-weekly pay period on paid status after completion of 104 full-time biweekly pay periods (4 years) of continuous employment and until completion of 286 full-time biweekly pay periods (11 years) of continuous employment.
 - c. **Four weeks accrual** – .770 working days for each biweekly pay period on paid status after completion of 286 full-time biweekly pay periods (11 years) of continuous employment and until completion of 520 full-time biweekly pay periods (20 years) of continuous employment.
 - d. **Five weeks accrual** - .962 working days for each biweekly pay period on paid status after completion of 520 full-time biweekly pay periods (20 years) of continuous employment.

B. CASH PAYMENT IN LIEU OF VACATION LEAVE.

1. An employee who accrues vacation leave pursuant to subsections 13.A and who leaves the County Service for any reason shall be paid at the biweekly or hourly rate for each classification as set forth in Appendix A, for unused vacation accrued to the date of his/her separation provided that such entitlement shall not

exceed the employee's applicable maximum accrual vacation balance as set forth in subsection 13.C.

2. Employees shall have the primary responsibility to schedule and take sufficient vacation leave to reduce their accrued vacation leave balances to a level which will avoid a downward adjustment. The Department Head shall make a reasonable effort to accommodate written vacation leave requests submitted by employees which state that the purpose of such request is to reduce accrued vacation leave balances to a level which can avoid a downward adjustment.

C. LIMITATION ON UNUSED VACATION LEAVE BALANCES. Maximum vacation leave balances allowable prior to the pay period containing January 1 of each year beginning the year 2002, and ending December 31, 2009, shall be no more than two times the employee's vacation accrual rate, and shall be as follows:

Vacation Accrual Rate In Pay Period Prior to January 1	Maximum Balance in Pay Period Containing January 1
2 weeks	4 weeks
3 weeks	6 weeks
4 weeks	8 weeks
5 weeks	10 weeks

D. DATE WHEN VACATION CREDIT STARTS. Vacation credit shall begin on the first day of employment.

E. MAXIMUM ALLOWABLE VACATION BALANCE. As of the pay period containing January 1 of each year, and every such pay period containing January 1 thereafter, until December 31, 2009, the vacation leave balance of any employee which exceeds the maximum accrual will be adjusted downward to the maximum vacation balance level (by placing the excess vacation in a Departmental catastrophic sick leave pool) and the County will thereafter have no obligation with respect to the vacation leave affected by the adjustment.

F. MAXIMUM VACATION LEAVE. An employee shall be allowed to take one and one-half times his/her annual vacation accrual during any calendar year, provided that he/she has accumulated sufficient unused vacation leave. An employee, with the permission of the Department Head may take vacation in excess of one and one-half times his/her annual vacation accrual during any calendar year, if he/she has accumulated sufficient unused vacation leave.

G. DEFINITION. For the purpose of this Section, "working day" shall mean any day upon which an employee would normally be required to work.

H. EFFECT OF ABSENCE ON CONTINUOUS SERVICE. Absence on authorized leave with or without pay, and time during which an employee is laid off because his/her services are not needed, and time during which an employee is temporarily not employed by the County, if followed by re-employment within three years, shall not be considered as an interruption of continuous service for the purpose of this Section, but the period of time such employee is absent on authorized leave without pay or so laid off or so temporarily not employed shall not be counted in computing such years of continuous employment for the purpose of this Section, provided, further, that, for purposes of qualifying for fifteen (15), twenty (20), or twenty-five (25) working days of vacation leave, where a person has been employed by the County without interruption for the past ten years, all service of such employee shall be deemed to have been continuous.

I. WHEN VACATION MAY BE TAKEN. Paid leave may be granted up to a maximum of 80 hours in a pay period only for those days or fractions thereof on which an employee would have been regularly scheduled to work and would have worked but for the vacation leave.

Vacations will be scheduled by mutual agreement between the Department Head and the employee. An employee shall be allowed to divide his/her vacation leave in any calendar year into two segments. The Department Head, at his/her discretion, may grant an employee additional segments of vacation.

J. PERSONAL LEAVE. An employee shall be allowed two days in any calendar year from his/her regular vacation allowance for personal leave. The Department Head shall not deny a request for this leave except for reasons critical to the operation of the Department.

K. RATE OF VACATION PAY. Compensation during vacation shall be at the rate of compensation as set forth for each classification in Appendix A which such employee would have been entitled to receive, including premium pay, while in active service during such vacation period.

L. VACATION TRANSFER. Married couples or domestic partners, employed by the County, may elect to transfer up to five days of their accrued vacation leave balances to their spouse or domestic partner (as defined in Appendix B) per each event of maternity, paternity and adoption.

M. EMPLOYEE ENTRY INTO BARGAINING UNITS COVERED BY THIS MOU.

Employees who enter a bargaining unit covered by this Agreement after January 1, 2007 shall have two full calendar years to reduce his/her vacation balance to the maximum allowable, unless the employee is coming from a bargaining unit where the "maximum allowable vacation accrual cap" is already applicable. After two full calendar years, the vacation leave balance of any employee which exceeds the maximum balance allowable will be adjusted downward to the maximum balance

allowable level (by placing the excess vacation in a Departmental catastrophic sick leave pool) and the County will thereafter have no obligation with respect to the vacation leave affected by the adjustment. The Department Head shall make a reasonable effort to accommodate written vacation leave requests submitted by employees which state that the purpose of such request is to reduce accrued vacation leave balances to the level which can be paid for in cash upon termination or to avoid a downward adjustment.

- N. LONG TERM DISABILITY INSURANCE POLICY.** A long term disability insurance policy will be made available for the employee only. Coverage can be purchased through the use of vacation sellback. Long term disability insurance can be purchased through payroll deductions. This policy is subject to premium costs, eligibility requirements, age limitations, coverage exclusions, conversion rights, and all other provisions set forth in the applicable insurer contracts.
- O. VACATION PURCHASE PLAN.** All full-time employees subject to this MOU may elect to purchase one or two additional weeks of vacation over and above their regular entitlement as set forth in this MOU. Employees eligible for vacation purchase may elect to purchase either one or two weeks of vacation under the Vacation Purchase Plan during Open Enrollment. On the first pay period of the calendar year, the employee's vacation balance will be updated with the additional amount of vacation purchased. Employees may then use the vacation time purchased, scheduled by mutual agreement between the employee and the Department Head. Employees will then pay for the vacation purchased in equal installments during the calendar year. Should an employee use their purchased vacation time, and leave the employment of the County prior to paying for the additional vacation, the County will recover the cost from the employee.

Effective Plan Year 2007, the following conditions shall apply to vacation purchase:

1. Employees eligible for vacation purchase may elect to purchase either one or two weeks of vacation under the Vacation Purchase Plan during Open Enrollment.
2. On the first pay period of the calendar year, the employee's vacation balance will be updated with the additional amount of vacation purchased. Employees may then use the vacation time purchased, scheduled by mutual agreement between the employee and Department Head. Employees will then pay for the vacation time purchased in equal installments during the calendar year.
3. To be eligible to purchase vacation, an employee must have completed payment for any previous vacation purchased.
4. To be eligible to purchase one week of vacation, an employee must have no more than one week of unused purchased vacation as of the third pay period prior to the start of Open Enrollment.

5. To be eligible to purchase two weeks of vacation, an employee must have used all previously purchased vacation leave as of the third pay period prior to the start of Open Enrollment.
6. In the event that an employee uses purchased vacation and leaves County service prior to paying for it, the County reserves the right to recover the cost from the employee, including deducting any sum owed from the employee's final pay warrant.
7. In the event that an employee is unable to cover the cost of the purchased vacation in any pay period(s) due to insufficient pay, the County reserves the right to adjust the future pay period amount.
8. In the event that a participating employee moves between a 40-hour per week position and a 37.5-hour per week position, s/he shall carry over his/her purchased vacation balance in the same number of days and fraction of days.
9. In the event that an employee becomes ineligible for this program, the County reserves the right to adjust the purchased vacation balance and/or deductions.
10. In the event that an employee experiences a pay rate change during the plan year, the total annual cost will remain the same as at the time of enrollment.
11. For purposes of cash payment of vacation leave, vacation purchased pursuant to this section shall be combined with vacation accrued. Said combined vacation balance shall be subject to the cash payment in lieu of vacation leave as set forth in Section 13.B of this MOU.

SECTION 14. MEDICAL AND DENTAL PLANS

A. MEDICAL PLAN COVERAGE

1. Medical Plan Coverage for Full-Time Employees

- a. For coverage through the remainder of the term of this Memorandum of Understanding the County shall contribute towards the monthly provider's charge for a comprehensive group Medical Plan by a health maintenance organization (HMO) or toward an indemnity Medical Plan for eligible full-time employees, as well as their spouses/domestic partners (as defined in Appendix B) and eligible dependents up to but not exceeding the actual monthly charges established by the lowest cost health care provider for an employee; or for an employee with one dependent, or for an employee with two or more dependents. In no event shall the County contribution exceed the premium of the options selected. The County contribution toward the provider's charge shall be the full-time contribution provided that the employee is on full-time paid status. If the employee is on paid status on less than a full-time basis, the

County contribution shall be the full-time contribution prorated each pay period based on the proportion of the hours on paid status within that pay period to the normal full time hours for the job classification, provided further that the employee is on paid status at least fifty percent of the normal full-time pay period for the job classification. This contribution shall apply to the employee's Medical Plan options listed below.

b. The County shall provide the following health plan options:

1. Indemnity Options

- a. PPO
- b. PPO Spousal

2. Two HMO Options

2. Medical Plan Coverage for Employees Regularly Scheduled to Work Less than the Normal Work Week. Any employee who is regularly scheduled to work less than the normal work week for the job classification shall be entitled to elect coverage under either the comprehensive group medical plan by a health maintenance organization or one of the PPO/indemnity options for full-time employees; as provided in Section 14.A.1 for full time employees; provided, however, that the employee is scheduled at least fifty percent of the normal full-time work week for the job classification.

The County's contribution toward the provider's charge for such plan shall be the full-time contribution prorated each pay period based upon a proportion of the hours the employee is on paid status within that pay period to the normal full-time pay period for the job classification, provided the employee is on paid status at least 50% of the normal full-time biweekly pay period for the job classification.

3. Duplicative Coverage: This section applies to married County employees or employees with domestic partners when both are employed by the County. The intent of this section limits County employees who are married or in a domestic partnership from both covering each other within the same medical plan. Married County employees or employees with a domestic partner, (as defined in the appendices) both employed by the County, shall be entitled to one choice from the following list of health medical plan coverages:

- a) Up to one full family Indemnity PPO membership.
- b) Up to one full family HMO membership.
- c) Up to one full family Indemnity PPO membership with up to one Full family Indemnity PPO spousal membership
- d) Up to one HMO membership with up to one full family Indemnity membership (excluding spousal).

- e) Up to one full family HMO membership with up to one full family Indemnity membership.

4. Effect of Authorized Leave Without Pay on Medical Plan Coverage:

Employees who were absent on authorized leave without pay, and whose medical plan coverage was allowed to lapse for a period of three months or less, will be able to re-enroll as a continuing member in the same plan under which they had coverage prior to the authorized leave by completing the appropriate enrollment cards within thirty (30) calendar days of the date they return to work. The deductibles, maximums, and waiting periods shall be applied as though the employee had been continuously enrolled. The effective date of coverage will be based on guidelines established by the County.

Those whose medical plan coverage was allowed to lapse for a duration greater than three months will be able to re-enroll within thirty calendar days of the date they return to work in the same manner as is allowed for new hires; however, employees re-enrolling in an indemnity plan may be subject to medical review to determine evidence of good health and effective date of coverage will be determined by the indemnity plan carrier after all medical information is received and reviewed. Such employees will be subject to new deductibles, maximums, and waiting periods.

- 5. **30-Day Re-Enrollment:** For employees who are enrolled in the indemnity spousal plan, an employee whose spouse's or domestic partner's medical plan coverage is no longer available, may, within thirty (30) calendar days of such loss of coverage, enroll in one of the County's Medical Plans.
- 6. **Open Enrollment:** Eligible employees may choose from among any plan offered by the County during the open enrollment period in the Fall of each year as indicated in Section 14.A.1.b.

B. DENTAL PLAN OPTIONS

1. Dental Plan Coverage for Full-Time Employees:

- a. For coverage during the term of this Memorandum of Understanding, the County shall contribute the full cost of the provider's charge for a dental plan for full-time employees and their dependents, including domestic partners (as defined in Appendix B) and their dependents provided that the employee is on paid status at least fifty percent (50%) of the normal full-time pay period for the job classification. Eligible full-time employees may elect any one of the following dental plan options. This contribution shall apply to the dental plan options listed below.

These benefit options shall be available as listed to the extent that the carrier continues to offer these benefits. The County shall give notice to the Union of such benefit changes. Upon receiving such notice, the Union may request to meet and confer regarding the effect of such benefit changes.

1. An indemnity dental plan
2. A pre-paid closed panel dental plan
3. A supplemental spousal plan option
4. Married County employees or employees in domestic partnerships both employed by the County, shall be entitled to one choice from the following list of dental plan coverages:
 - (a) Up to one full family Delta Dental plan with up to one supplemental Spousal Delta Dental plan.
 - (b) Up to one full family Delta Dental plan with up to one full family Delta Care plan.
 - (c) Up to one full family Delta Care plan.
 - (d) Up to one full family Delta Dental plan.

2. **Dental Plan Coverage for Less than Full-Time Employees and Services-As-Needed Employees:** For coverage from October 22, 2006 through the remaining term of this Memorandum of Understanding, the County shall contribute the full cost of the provider's charge for a Dental Plan for Services-As-Needed and less-than-full-time employees and their dependents, provided, however, that the employee is on paid status at least fifty percent of the normal full-time work week for the job classification.

The dental plan shall provide for less than full-time employees the same benefit coverage as was in effect during the 2006 fiscal year for full-time employees as contained in B.1 above. To participate, an employee working in a classification normally subject to a 40-hour work week must be scheduled at least forty (40) hours in each and every biweekly pay period.

3. **Effect of Authorized Leave Without Pay on Dental Plan Coverage:** Employees who are absent on authorized leave without pay, and whose dental plan coverage was allowed to lapse for a period of three months or less, will be able to re-enroll as a continuing member under which they had coverage prior to the authorized leave by completing the appropriate enrollment cards within thirty (30) calendar days of the date they returned to work. The deductibles, maximums, and waiting periods shall be applied as

though the employee had been continuously enrolled. The effective date of coverage will be based on guidelines established by the County.

Those whose dental plan coverage was allowed to lapse for a duration greater than three months will be able to re-enroll within thirty (30) calendar days of the date they return to work in the same manner as is allowed for new hires. Such employees will be subject to new deductibles, maximums, and waiting periods.

4. **30-Day Re-Enrollment:** For employees who are enrolled in the Spousal Plan, an employee whose spouse's or domestic partner's dental plan coverage is no longer available, may, within thirty (30) calendar days of such loss of coverage, enroll in a County indemnity plan as a new member.
5. **Open Enrollment:** Eligible employees may choose from among these options a Dental Plan during the annual Open Enrollment period held annually in the Fall of each year. Premiums of all County dental plan options will be paid according to dependent and enrollment status (single, two-party, or family).
6. **Dental Plan Premium Payment on Final Paycheck Before Authorized Leave Without Pay or Employee Separation:** The County shall make a dental plan premium payment on a final paycheck, provided that an employee is on paid status at least one-half of the scheduled hours in that pay period.

C. MEDICAL AND DENTAL COVERAGE. The County and Union agree that this Memorandum of Understanding shall be reopened at the County's request to meet and confer to discuss and mutually agree upon possible changes related to the medical and dental plans, benefits, and contribution rates.

SECTION 15. WAGES

- A. Effective October 22, 2006 salaries for represented classifications shall be increased by 7.12%.
- B. Effective July 1, 2007 salaries for represented classifications shall be increased by 3%.
- C. Effective June 29, 2008 salaries for represented classifications shall be increased by 3%.

SECTION 16. MANAGEMENT BENEFITS

Employees eligible to participate in the Management Benefits shall continue to participate in such plan as may be amended from time-to-time at the sole discretion of the Board of

Supervisors, except that M-designated benefits contained in Article 7 of the Salary Ordinance will be maintained during the term of this Agreement. The County's contribution toward M-designated benefits shall be no less than \$2,300 per calendar year for the Cafeteria Benefits Plan as outlined in Article 7 of the Salary Ordinance.

SECTION 17. GRIEVANCE PROCEDURE

- A. DEFINITION.** A grievance is defined as an allegation by an employee or group of employees, or the Union that the County has failed to provide a condition of employment set forth in this Memorandum of Understanding, as adopted by ordinance, in a written Departmental policy, or in the annual Salary Ordinance, provided that the enjoyment of such right is not made subject to the discretion of the County, and provided further that the condition of employment which is the subject matter is within the scope of representation as defined in California Government Code Section 3504.
- B. EXCLUSION OF CIVIL SERVICE MATTERS.** The grievance procedure herein established shall have no application to matters over which the Civil Service Commission has jurisdiction pursuant to the County Charter or rules adopted thereunder.
- C. DEPARTMENTAL REVIEW AND ADJUSTMENT OF GRIEVANCES.** The following is the procedure to be followed in the resolution of grievances.
1. **Step One:** Any employee who believes he/she has a grievance shall first discuss it with his/her immediate supervisor and endeavor to work out a satisfactory solution in an informal manner with such supervisor. An authorized representative of the Union, if requested by the employee, may assist in the presentation of a grievance at any level of the grievance procedure. The immediate supervisor shall have five (5) working days from the date of the informal discussion to verbally respond to the employee.
 2. **Step Two:** If a satisfactory solution is not accomplished by informal discussion, the employee shall have five (5) working days following the supervisor's verbal response or ten (10) working days from the date of the informal discussion, whichever is later, to file the grievance in writing with the Chief Assistant Public Defender. The Chief Assistant Public Defender shall have seven (7) working days in which to review and answer the grievance in writing. Although no hearing is required at this step, the employee and his/her representative may be present at, and participate in any such hearing as may be convened. If the grievance is not resolved at this level, the employee shall have seven (7) working days after receipt of the answer within which to file an appeal to the Public Defender.
 3. **Step Three:** The Public Defender shall have fifteen (15) working days in which to review, hold a hearing, and answer the grievance in writing. Unless waived

by the mutual agreement of the employee or his/her representative and the Public Defender, a hearing is required at this step, and the employee, and his/her representative, shall have the right to be present at, and participate in, such hearing. The time limit at this step may be extended by mutual agreement between the Public Defender and the employee or his/her representative.

- D. UNION GRIEVANCE.** The Union may in its own name file a grievance alleging that the County has failed to provide it some organizational right which is established by this Memorandum of Understanding, provided that such right is not made subject to the discretion of the County. Such Union grievances shall be filed with the Public Defender and heard and determined pursuant to the provisions of the third step of the grievance procedure.
- E. BINDING ARBITRATION OF GRIEVANCES.** In the event that the grievance is not resolved at Step 3 of subparagraph C herein, the grievant or his/her representative may, within fifteen (15) working days after receipt of the decision of the Public Defender made pursuant to said subparagraph C, request that the grievance be heard by an arbitrator.
- F. INFORMAL REVIEW BY HUMAN RESOURCES DIRECTOR.** Prior to the selection of the arbitrator and submission of the grievance for hearing by said arbitrator, the Director of Human Resource Services or his/her designee shall informally review the grievance and determine whether said grievance may be adjusted to the satisfaction of the employee. The Director or designee shall have ten (10) working days in which to review and seek adjustment of the grievance.
- G. SELECTION OF ARBITRATOR.** The arbitrator shall be selected by mutual agreement between the Director of Human Resource Services and the employee or his/her representative. If the Director and the employee or his/her representative are unable to agree on the selection of an arbitrator, they shall jointly request the State Mediation and Conciliation Service to submit a list of five (5) qualified arbitrators. The Director of Human Resource Services and the employee or his/her representative shall then alternately strike names from the list until only one name remains, and that person shall serve as arbitrator.
- H. DUTY OF ARBITRATOR.** Except when an agreed statement of facts is submitted by the parties, it shall be the duty of the arbitrator to hear and consider evidence submitted by the parties and to thereafter make written findings of fact and a disposition of the grievance which shall be final and binding upon the parties. The arbitrator shall have no power to amend this Memorandum of Understanding, a Resolution of the Board of Supervisors, the Charter, Ordinance, State law, or written agency/departmental rule, or to recommend such an amendment.
- I. PAYMENT OF COSTS.** Each party to a hearing before an arbitrator shall bear his/her own expenses in connection therewith. All fees and expenses of the

arbitrator and of a reporter shall be borne one-half by the County and one-half by the grievant.

- J. EFFECT OF FAILURE OF TIMELY ACTION.** Failure of the employee to file an appeal within the required time limit at any step shall constitute an abandonment of the grievance. Failure of the County to respond within the time limit at any step shall result in an automatic advancement of the grievance to the next step.
- K. LIMITATION OF STALE GRIEVANCES.** A grievance shall be void unless presented within sixty (60) calendar days from the date upon which the County has allegedly failed to provide a condition of employment or an organizational right. In no event shall any grievance include a claim for money relief for more than a 60-day period. This provision does not establish any limit for liability accruing after a grievance is filed.
- L. EXCLUSION OF NON-RECOGNIZED ORGANIZATIONS.** For purposes of this Section, the provisions of Section 1 (Recognition) of this Memorandum of Understanding shall be construed to limit the employee's right of selection of a representative to the extent that agents of any other employee organization which is not a party to this Memorandum of Understanding, are specifically excluded from so acting. In those cases in which an employee elects to represent himself/herself or arrange for other representation, the Union shall have the right to participate in the resolution procedure for the purpose of protecting the interests of its members in negotiated conditions of employment.
- M. GRIEVANCE RIGHTS OF FORMER EMPLOYEES.** A person who because of dismissal, resignation, or layoff is no longer a County employee may file and pursue a grievance at the Department Head level and may also pursue such grievance through the remaining levels of the grievance procedure provided that the grievance is timely filed as provided in subsections 17.D and E hereof, that the grievance is filed no later than thirty (30) calendar days from the date of issuance of the warrant complained of, that the issue would otherwise be grievable under this subsection and provided further, however, that under no circumstances may a former employee file or pursue any grievance unless it relates solely to whether such person's final pay warrant(s) correctly reflected the final salary, or fringe benefits taken in the form of cash owed to such person.

SECTION 18. CATASTROPHIC SICK LEAVE PROGRAM

An employee may be eligible to receive donations of paid leave to be included in the employee's sick leave balance if s/he has suffered a catastrophic illness or injury which prevents the employee from being able to work or from being able to work his/her regularly scheduled number of hours. Catastrophic illness or injury is defined as a critical medical condition considered to be terminal, or a long-term major physical impairment or disability.

Eligibility:

1. The tenured recipient, recipient employee's family, or other person designated in writing by the recipient employee must submit a request to the Human Resource Services Department.
2. The recipient employee is not eligible so long as s/he has paid leaves available, however, the request may be initiated prior to the anticipated date leave balances will be exhausted.
3. A confidential medical verification including diagnosis, prognosis and estimated date of return to work must be provided by the recipient employee.
4. A recipient employee is eligible to receive 180 working days of donated time per employment.
5. Donations shall be made in full-day increments of 8 hours and are irrevocable. Employees whose vacation balance exceeds the amount, for which they can be paid off, may donate unlimited amounts of vacation to a departmental catastrophic sick leave pool.
6. The donor employee may donate vacation or in-lieu holiday time which shall be converted to the recipient employee's sick leave balance and all sick leave provisions will apply. Time donated in any pay period may be used in the following pay periods. No retroactive donations are permitted.
7. The donor's hourly value will be converted to the recipient's hourly value and then added to the recipient's sick leave balance on a dollar-for-dollar basis.
8. The recipient employee's entitlement to Personal Disability Leave will be reduced by the number of hours added to the recipient's sick leave balance.
9. The determination of the employee's eligibility for Catastrophic Sick Leave donations shall be at the County's sole discretion and shall be final and non-grievable.
10. Recipient employees who are able to work but are working less than their regular schedule will integrate Catastrophic Sick Leave donations with time worked and their own paid leaves, which must be used first, not to exceed 100% of the employee's gross salary.

SECTION 19. NO STRIKE – NO LOCKOUT

During the term of this agreement, the Union, its members and representatives agree that it and they will not engage in, authorize, sanction, or support any strike, slowdown, stoppage of work, sickout, withdrawal of services, or refusal to perform customary duties.

Failure to comply with this Section shall result in the termination by the County of the collection of Union membership dues without jeopardy to the County or to employees in classifications represented by the Union.

The County will not lockout employees during the term of this Memorandum of Understanding.

SECTION 20. SAVINGS CLAUSE

If any provision of this Memorandum of Understanding shall be held invalid by operation of law or by any court of competent jurisdiction, or if compliance with or enforcement of any provision shall be restrained by any tribunal, the remainder of this Memorandum of Understanding shall not be affected thereby, and the parties shall enter into negotiation for the sole purpose of arriving at a mutually satisfactory replacement for such provision.

SECTION 21. RENEWAL OF AGREEMENT

At any time within ninety (90) days before expiration of this Memorandum of Understanding, the parties agree to meet in an effort to achieve a successor Memorandum of Understanding.

SECTION 22. ENACTMENT

It is agreed that the foregoing shall be jointly submitted to the Alameda County Board of Supervisors by the Director of Human Resource Services and the Union for the Board's consideration and approval. Upon approval, the Board shall adopt an Ordinance which shall incorporate this Memorandum in full or by reference. Upon such adoption, the provisions of this Memorandum shall supersede and control over conflicting or inconsistent County Ordinances and Resolutions.

SECTION 23. SCOPE AND TERM OF AGREEMENT

Except as otherwise specifically provided herein, the Memorandum of Understanding fully and completely incorporates the understanding of the parties hereto regarding the provisions contained in this Memorandum of Understanding. Neither party shall, during the term of this Memorandum of Understanding, demand any change herein, provided that nothing herein shall prohibit the parties from changing the terms of the Memorandum of Understanding by mutual agreement. This Memorandum of Understanding shall become effective upon the approval of the Board of Supervisors and shall remain in full effect to and including June 27, 2009.

Signed and entered into this 15th day of October 2006:

FOR COUNTY OF ALAMEDA

**FOR INTERNATIONAL
FEDERATION OF PROFESSIONAL
TECHNICAL ENGINEERS, LOCAL
21 FOR ALAMEDA COUNTY
PUBLIC DEFENDER CHAPTER**

**DENISE EATON-MAY, DIRECTOR
HUMAN RESOURCE SERVICES**

Approved as to Form:
RICHARD E. WINNIE, COUNTY COUNSEL

By:_____

APPENDIX A

Listed herein are the Alameda County job classes in Representation Units R68 and 069 represented by The International Federation of Professional and Technical Engineers, Local 21, Public Defender Units. The wage rates shown are established by the Alameda County Board of Supervisors and are effective on dates shown. Each Job Class has a work week of 40 hours.

ITEM	MC TITLE	EFFECT		
1590	PA Associate Dependency Attorney			
		10/22/2006	2668.80	3512.80
		07/01/2007	2748.80	3618.40
		06/29/2008	2831.20	3727.20
3110	PA Associate Deputy Public Defender			
		10/22/2006	2668.80	4028.00
		07/01/2007	2748.80	4148.80
		06/29/2008	2831.20	4273.60
3126	SM Asst Public Defender			
		10/22/2006	5362.40	7064.00
		07/01/2007	5523.20	7276.00
		06/29/2008	5688.80	7494.40
3105	PA Dependency Attorney			
		10/22/2006	3684.80	4473.60
		07/01/2007	3795.20	4608.00
		06/29/2008	3908.80	4746.40
3125	PA Deputy Public Defender			
		10/22/2006	4157.60	5754.40
		07/01/2007	4282.40	5927.20
		06/29/2008	4411.20	6104.80

All classes listed are “deep classes,” that is, classes with a minimum/maximum pay range. Movement through the range is defined in the Alameda County Salary Ordinance.

APPENDIX B

DOMESTIC PARTNER DEFINED

A "domestic partnership" shall exist between two persons, one of whom is an employee of the County, covered by this Memorandum of Understanding, regardless of their gender and each of them shall be the "domestic partner" of the other if they both complete, sign, and cause to be filed with the County an "Affidavit of Domestic Partnership" attesting to the following:

- a. the two parties reside together and share the common necessities of life;
- b. the two parties are not married to anyone; eighteen years or older; not related by blood closer than would bar marriage in the State of California; and mentally competent to consent to contract;
- c. the two parties declare that they are each other's sole domestic partner and they are responsible for their common welfare;
- d. the two parties agree to notify the County if there is a change of circumstances attested to the affidavit;
- e. the two parties affirm, under penalty of perjury that the assertions in the affidavit are true to the best of their knowledge.

Termination. A member of a domestic partnership may end said relationship by filing a statement with the County. In the statement, the person filing must affirm, under penalty of perjury, that: (1) the partnership is terminated, and (2) a copy of the termination statement has been mailed to the other partner.

New Statements of Domestic Partnership. No person who has filed an affidavit of domestic partnership may file another such affidavit until six months after a statement of termination of the previous partnership has been filed with the County.

APPENDIX C

Chapter 3.48

EMPLOYMENT DISCRIMINATION COMPLAINT PROCEDURES

Sections:

- 3.48.010 Purpose.**
- 3.48.020 Scope.**
- 3.48.030 Application to civil service matters and grievance procedures set forth in memorandums of understanding.**
- 3.48.040 Objectives.**
- 3.48.050 Definitions.**
- 3.48.060 Filing of FEPC and EEOC complaints not prohibited.**
- 3.48.070 Informal and formal procedures.**
- 3.48.080 Costs of hearing.**
- 3.48.090 Representation.**
- 3.48.100 Freedom from reprisal.**

3.48.010 Purpose.

The purpose of this procedure is to provide a uniform and effective system for resolving certain allegations and complaints of employment discrimination. (Prior admin. code 2-18.01)

3.48.020 Scope.

This procedure pertains to allegations made by aggrieved persons of discrimination in regard to recruitment, appointment, training, promotion, retention, discipline or other aspects of employment because of race, religion, color, sex, handicap, sexual orientation, age, national origin, political affiliation or any other factor which applicable state or federal law or regulation prohibits as the basis for discrimination in employment. Complaints which do not allege discrimination based upon one or more of the foregoing factors will not be handled under this procedure.

Where applicable, this procedure supersedes the grievance procedure set forth in Chapter 3.44 of this code. This procedure does not confer upon non-tenured employees the right to a good cause hearing upon the imposition of disciplinary action. (Prior admin. code 2-18.02)

3.48.030 Application to civil service matters and grievance procedures set forth in memorandums of understanding.

This procedure shall not apply to complaints relating to matters within the jurisdiction of the civil service commission under the Charter until and unless the commission elects to make this procedure applicable to such complaints. In such event, the findings and decision of the hearing officer or arbitrator shall be made to the commission for final determination. This procedure shall apply to complaints of

discrimination pursuant to grievance procedures set forth in memorandums of understanding only in the event that such memorandums specifically provide for its application to such complaints. In the event that the use of this procedure is not adopted by the commission or specified by the applicable memorandum of understanding, an aggrieved person who elects to pursue an appeal through procedures provided by the commission or the memorandum of understanding may not pursue the same allegations of discrimination under this procedure. (Prior admin. code 2-18.03)

3.48.040 Objectives.

The objectives of this procedure are: to provide an efficient means of resolving individual or group problems of a sensitive nature quickly and with a minimum of formal procedural requirements; to decrease significantly formal complaints which are expensive, time consuming and detrimental to good employee relations; and to sensitize managers and supervisors to the needs of individual employees or groups and to improve their capability of handling problems before they become complaints (Prior admin. code 2-18.04)

3.48.050 Definitions

“Affirmative action coordinator” means the agency/department affirmative action coordinator or other person in close reporting relationship to top management who is assigned the responsibility of managing the procedure for handling discrimination complaints.

“Complainant” means an aggrieved person who has filed a formal complaint.

“Discrimination in regard to age” means disparate treatment of persons who are at least forty (40) years of age but less than seventy (70) years of age, as prohibited by the U.S. Age Discrimination in Employment Act of 1967, or of persons who are at least forty (40) years of age, as prohibited by the California Fair Employment Practice Act.

“Discrimination in regard to handicap” means disparate treatment of persons having a physical or mental handicap not related to employment needs or the person’s ability to perform the duties of the job.

“Equal employment opportunity counselor” means an employee trained in equal employment opportunity procedures and counseling techniques to provide informal counseling on matters pertaining to discrimination.

Factors Which Applicable State or Federal Law or Regulation Prohibits as the Basis for Discrimination in Employment. These factors are those personal or social characteristics which are unrelated to either the needs of the position or to employment in general. Such factors as poor personal hygiene, unwillingness or inability to take direction, to work in harmony with supervision, peers, or the public, or to work without excessive absenteeism are examples of factors which normally are related to the needs of the position and to employment.

“Formal complaint” means written complaint which states clearly the basis for an allegation of discrimination and the relief requested. (Prior admin. code 2-18.05)

3.48.060 Filing of FEPC and EEOC complaints not prohibited.

This procedure is not intended to and does not interfere with the rights of an aggrieved person to file a complaint with the Fair Employment Practice Commission, the Equal Employment Opportunity Commission, the courts, or, except as specifically provided herein, any other available source or redress. (Prior admin. code 2-18.07)

3.48.070 Informal and formal procedures.

A. An aggrieved person may contact the designated equal employment opportunity counselor no later than thirty (30) days from the alleged discrimination, except that when the action complained of is a specific personnel action, of which the employee has notice, such as a promotion, demotion, rejection for appointment, or disciplinary action, the contact with the designated equal employment opportunity counselor may be made no later than ten days from the alleged discrimination. The equal employment opportunity counselor shall consult with the aggrieved person and, after making necessary inquiries, shall counsel him on the issues of the case, and seek informal resolution of the problem. The equal employment opportunity counselor shall keep a record of counseling activities and shall advise the aggrieved person of the formal complaint process and of his or her right to file complaints thereunder, under civil service rules, under an applicable memorandum of understanding, or pursuant to state and federal statutes. The equal employment opportunity counselor shall complete the informal pre-complaint counseling within fifteen (15) working days of being contacted by the aggrieved person.

B. Resolving Formal Complaints.

1. Departmental Review. If informal resolution of the problem through conciliation and negotiation cannot be effected, an aggrieved person may file a formal complaint with the Departmental Affirmative Action Coordinator or other designated official. Such a complaint must be filed on a form provided for this purpose and within five working days after the attempted resolution of the problem by the equal employment opportunity counselor or within twenty-five (25) working days after the date of the alleged discriminatory action, whichever shall first occur. The affirmative action coordinator will decide whether the complaint falls within the jurisdiction of the procedure and accept or reject it. Upon acceptance of the complaint, the affirmative action coordinator shall obtain the notes on the case from the equal employment opportunity counselor; may conduct a prompt, impartial investigation if he deems it necessary; shall explore the possibility of resolving the problem through negotiation or conciliation; shall present findings and recommendations on resolving the complaint to the agency/department head; and within forty-five (45) working days from the date the formal complaint was filed, shall present his written decision, as approved by the Agency/Department Head, to the complainant, with a copy of the complaint and decision to be forwarded to the director of personnel.

2. Appeal from Decision of Department Head. The decision of the Department head shall be final unless appealed by the complainant to the

director of personnel within ten working days of the date of mailing or personal delivery of the decision to the aggrieved person.

3. Review County Affirmative Action Officer. The director of personnel shall forward a copy of the decision and appeal to the county affirmative action officer who shall have ten working days from the date of filing of the appeal in which to determine whether to conduct his or her own investigation of the problem. In the latter event, the county affirmative action officer shall have twenty (20) additional working days in which to complete his or her investigation, counseling or settlement efforts.

4. Setting of Hearing. If the county affirmative action officer decides not to conduct his own investigation or if his or her efforts to settle the problem are unsuccessful, the director of personnel shall set the appeal for hearing before a State Hearing Officer or, by mutual agreement of the complainant and the agency/department head, before an agreed-upon arbitrator.

5. Exclusion of Frivolous or Vague Appeals and Appeal There from. In the event that the director of personnel shall determine that the complaint is frivolous, vague, or that the facts alleged in the complaint, even if true, would not substantiate a claim of discrimination, or that the appeal claims discrimination based upon a factor for which state or federal law or regulation does not prohibit discrimination, he or she shall not schedule the appeal for hearing. The aggrieved person may, within ten working days of the mailing to him or her of notice that the complaint has been rejected by the director of personnel, request that the director's action be reviewed by an impartial practicing attorney selected by the civil service commission. If the aggrieved person makes such an appeal, the director of personnel shall forward to the impartial attorney a copy of the complaint, the written decision of the Agency/Department Head, and of his or her determination which is the subject of the request for review. The impartial attorney, after reviewing the foregoing documents and without a hearing, shall determine whether the action of the director of personnel in refusing to schedule the appeal for hearing was correct. The determination of the impartial attorney in this regard shall be final, but a determination by the impartial attorney that the appeal should be scheduled for hearing shall not preclude the hearing officer or arbitrator from determination, upon the evidence adduced at the hearing, that the factor upon which the disparate treatment was based was related to the needs of the position or to employment in general.

6. Hearing of Appeal. The hearing officer or arbitrator shall fully hear the complaint and make written findings of fact as part of its decision. The decision of the hearing officer or arbitrator, on matters of employment discrimination within the scope of this procedure, shall be binding on the Department/Agency Head. The director of personnel shall notify the Merit Systems Services of the California State Personnel Board regarding the disposition of all formal complaints received and of all heard by a hearing officer or arbitrator. (Prior admin. code 2-18.07)

3.48.080 Costs of hearing.

The cost of the hearing officer or the arbitrator, as well as of any reporter required by the hearing officer or arbitrator, shall be paid by the county. In the event, however, that the aggrieved person is represented in his or her appeal by a recognized employee organization or is furnished counsel by said organization, the costs of the hearing officer or the arbitrator as well as of the reporter shall be shared equally by the county and the organization. (Prior admin. code 2-18.08)

3.48.090 Representation.

The aggrieved person/complainant has a right to be accompanied, represented and advised by a person of his or her own choosing at all stages of the process, but no recognized employee organization shall be obligated to furnish such representation or advice except upon such basis as the aggrieved person/complainant and the recognized employee organization shall mutually agree. (Prior admin. code 2-18.09)

3.48.100 Freedom from reprisal.

An aggrieved person/complainant, his or her representative, and witness shall be free from restraint, interference, coercion, discrimination or reprisal at all stages in presenting and processing a complaint, including the informal counseling state. (Prior admin. code 2-18.10)

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