

MINUTES

REGULAR MEETING TASK FORCE ON INVENTORYING EMPLOYMENT RESTRICTIONS

**Thursday, January 17, 2013 at 1:45 p.m.
James R. Thompson Center, Room 2-025, Chicago, Illinois
Stratton Building, Room 511, Springfield, IL**

Call to Order and Roll Call

Jeffrey Shuck, Deputy General Counsel for Personnel at Central Management Services (CMS) and Chairman of the task force, welcomed task force members and guests to the regular meeting of the Task Force on Inventorying Employment Restrictions. Mark Myrent, Associate Director of Research for the Illinois Criminal Justice Information Authority, acting as staff to the task force, called the roll.

Task force members in attendance were:

Chairman Jeffrey Shuck
Rep. Mary Flowers
Mr. Jack Cutrone, ICJIA
Mr. Chimaobi Enyia, CMS
Ms. Shelia Riley, on behalf of Ms. Michelle Jackson, DCFS
Ms. Karen Helland, SBHE
Mr. Daryl Jones, IDOC
Mr. Hector Villagrana, IDHR
Ms. Elizabeth Sarmiento, DHS
Ms. Ellen Andres, ICCB
Mr. Jason Boltz, IDPH

Approval of the minutes from the December 12, 2012 meeting

With a quorum in place, Chairman Jeffery Shuck announced that the first order of business was a vote to approve the December 12, 2012 meeting minutes, and asked for a motion to approve. Mr. Cutrone made a motion to approve the minutes, and Mr. Boltz seconded. Chairman Shuck called for a voice vote approving the minutes. Hearing no objections, the motion passed.

Chairman's Remarks

Chairman Shuck began by previewing the agenda. He noted that the first order of business would be a presentation by representatives from CMS regarding the current hiring process for agencies under the Personnel Code [80 IL Adm. Code: 301], particularly at what point consideration of employment restrictions comes into play.

**Presentation on the state hiring process by Christina Griffin, Chief of Staff,
Bureau of Personnel, CMS**

Chairman Shuck introduced Ms. Griffin and Ms. Debbie Hensey, also of CMS. Ms. Griffin began her presentation on the process of filling a state vacancy by stating that she would be covering the process both from an agency perspective seeking to fill a vacancy, and from an applicant's perspective in seeking state employment.

She began with the agency perspective. The first step in filling a vacancy is confirming that there is funding available for the position, and whether the position is covered by a union contract. The filling of a vacancy language in the American Federation of State, County and Municipal Employees (AFSCME) union contract governs the majority of vacancies in state government. Agencies post their vacancies on the Work.Illinois.gov website, which gives individuals the opportunity to see what positions are available. Current state employees have the right to bid on those job openings, and persons not currently employed by the state can apply for those jobs through CMS.

Ms. Griffin continued to explain that AFSCME-covered positions are posted for 10 work days. If the agency receives bids from current state employees, these are sorted according to the language in the Master union contract – based on seniority, job title, and work location. The bids are further sorted by job assignments and shift preference, whether there are any laid off workers subject to recall, promotion, or transfer from another state agency with the same job title at the same pay grade.

She continued that these bids must all be considered before candidates without bid rights can be considered. Those without bid rights might include current state employees not covered by the applicable bargaining unit, those employees not in a union or covered by another union, or former state employees seeking reinstatement. After these candidates are considered, then the agency can move on to considering an open competitive eligible list.

Ms. Griffin stressed that each agency is responsible for its own hiring. CMS does not hire on behalf of any other agency; any hiring done by CMS is to fill its own vacancies. CMS is responsible for grading applications for job titles used by all other agencies under the Governor's jurisdiction.

She continued that if a hiring agency has worked its bid records through all the union contract specifications and still does not have a viable candidate, it can request an open competitive eligible list from CMS. This is a list of those who have applied for that job title and received an eligible grade. It is sorted by veteran preference status in alphabetic order. The first list received by an agency is the "blinded" list – candidates are identified only by race, gender, and coding for education and experience; their names are not included at this point.

Ms. Griffin continued that agencies are statutorily mandated to comply with absolute veteran's preference over any other candidates. The hiring agency highlights the

veteran candidates, or in the case of no veterans on the list, the top most qualified candidates, and send the list back to CMS. The agency then receives the candidate eligible list which now includes the chosen candidates' contact information, to enable the hiring agency to set up interviews. Positions in the state are mostly covered by the Rutan interview process, which is a structured, consistent, documented process. After successful completion of that interview process, the hiring agency may conduct background checks and verifies other conditions of employment. At that point, a candidate selection is made. This is the generalized hiring process on how a vacancy is filled from an agency perspective.

Ms. Griffin continued to explain the state hiring process from the applicant's perspective. Prospective candidates should monitor posted vacancies on the www.Work.Illinois.gov website. The postings include instructions in terms of contact and application information, whether the position requires a test administered by CMS at its assessment centers, or whether the title is graded solely by education and experience. Once the candidate goes through this initial application and testing process, they receive a grade. Candidates found to be qualified in the grading process are included on an open competitive eligible list, which hiring agencies can request once they have exhausted any candidates with bid rights to the job, as explained previously.

She continued that applicants should take advantage of the resources available on the Work.Illinois.gov website, which lists all posted vacancies, and all job classifications that are available in state employment. They have the opportunity to schedule an appointment with a CMS Assessment Center career counselor at one of the five centers in the state (Chicago, Springfield, Marion, Rockford and Champaign), with a veteran's outreach or diversity enrichment counselor.

Chairman Shuck asked at what point in the hiring process an agency would typically look at a candidate's criminal history. Ms. Griffin replied that criminal history is not a consideration until the candidate is scheduled for an interview, when they are asked to bring their CMS 100 application and any supporting documents. It does not factor into the grading process that gets the applicant onto the eligible list.

Mr. Boltz asked how agencies actually acquire information on candidates' prior criminal history, and whether it comes from the answers on the CMS 100. Ms. Hensey replied that the version of the CMS 100 sent to the agency ahead of any candidate interviews is not the same document filled out by the candidate. Answers regarding criminal history would only become known when the candidate supplies their CMS 100 to the interviewing agency. It is the agency's responsibility to make sure that all required attachments, including explanations of any prior criminal convictions, are included at that time. Also, many agencies use a background check form that allows the applicant to acknowledge any convictions and provide a statement.

Rep. Flowers asked if CMS has any authority over minority participation, similar to the Dodd-Franks Act at the federal level. For example, IDOT is required to have so many minority-filled positions. This is separate from each agency's affirmative action plan, but

a consideration of women and minority inclusion balanced across the state. Chairman Shuck replied that he was aware of the bill introduced by Rep. Flowers to that effect, but that the only current effort in that regard is the agency data collected by the Dept. of Human Rights on the race and gender of staff performing various categories of work or professions, in order to report on underutilizations of women and minorities within those categories. It would then be incumbent upon that agency to attempt to address any underutilization through its recruiting and hiring. Mr. Enyia added that CMS has a diversity enrichment plan, including the African-American, Hispanic and Asian Employment Plans established by statute, where underutilizing agencies are assisted with their recruitment strategies.

Rep. Flowers stated that it was her understanding that each agency was supposed to have a department of minority and women inclusion, which would proactively seek out qualified candidates to fill any underutilized positions. The agency would be in violation of federal law if these efforts were not properly documented.

Chairman Shuck added that Title VII places rather stringent restrictions on the efforts that state agencies can take to further their affirmative action obligations. The Supreme Court has recently ruled that agencies may not make explicitly race-conscious hiring decisions. Rep. Flowers replied that Rep. Maxine Waters added an amendment to the Dodd-Franks bill in response to that ruling, to allow inclusion practices.

Ms. Riley asked about the CMS grading process, whether it is by position or job classification, and the impact on the grading process on the chances of being hired. Ms. Griffin replied that the grading is done by job classification. CMS works with the agency to determine the appropriate education and experience requirements for each job classification. Minimum qualifications are set in the class specification document. A candidate meeting those minimum qualifications would be considered “minimally qualified” by CMS. Education and experience greater than the minimum would qualify the candidate for an A or B grade. In addition, there may be a performance test for the job classification which will help determine the candidate’s grade. Only candidates who are at least minimally qualified are eligible to take those additional tests.

Ms. Riley commented that she has seen job classifications with the minimum qualifications stated as “a bachelor’s degree or the mental equivalent”. How is that equivalency determined? Ms. Griffin replied that those standards are sometimes determined by statute, which may state that work experience cannot substitute for a degree. Generally, CMS works with the agency to determine what the equivalent professional work experience might be to substitute for a minimum degree. There is a lot that goes into the analysis of the grading scale, and these are standardized by job classification, not by agency or individual candidate. CMS grades the application according to the standards set through the original agency consultation process and its own validation process. Once the standard is set, all future applications are graded against that standard.

Rep. Flowers inquired about the number of minority staff that was involved in the actual grading process at CMS, and their locations. She added that it was important that the graders not be biased by the information about the candidate that may be revealed on their application, especially when dealing with more subjective aspects of grading. Chairman Shuck answered that there are certain aspects of the testing process that are “blinded” as to the demographics of the candidate, so that they cannot influence the grader, although he did not know if that was true for the entire grading process. Mr. Villagrana added that certain performance tests developed by CMS are automated via computer, and that the candidate receives their grade notice immediately upon finishing the test. Ms. Griffin clarified that there are other job classifications where the candidate’s training and experience are reviewed to determine their grade.

Ms. Riley asked how a candidate can challenge a grade based on education and experience, if the grade notice come back as less than an A. Ms. Griffin replied that the applicant needs to submit a written challenge request to the Division of Examining and Counseling within 90 days of receiving the grade. A counselor from the department will contact the candidate to address their concerns, or the candidate can resubmit their CMS 100 for reconsideration during that time frame.

Ms. Griffin continued that not all job classification tests are offered on a continuous basis. Jobs that are not filled on a regular basis will have the exam closed until the agency begins the process to fill a vacancy. Information on the Work.Illinois.gov website would inform applicants whether an exam is currently open or not. Group A exams are continuously open, while group B exams are opened only when an agency seeks to fill that job through an open competitive eligible list (after all candidates with bid rights to that job are deemed unsuitable). Since grades are only valid for one year, there is no reason to offer exams for positions that do not have anticipated vacancies within that time frame. Chairman Shuck clarified that applications for a closed exam position will not be graded until such time as an agency calls to open that exam to hire from outside of current bargaining unit obligations.

Ms. Riley asked if Ms. Griffin, based on her knowledge and experienced at CMS, had any thoughts about changing the questions on the CMS 100 related to prior criminal convictions. Ms. Griffin replied that the utility of asking those questions on the CMS 100 is dependent upon the particular agency requirements and job titles. Chairman Shuck added that these requirements may even vary within an agency, depending on the setting and specific job duties, so that it is not easy to generalize across all state agencies.

Mr. Myrent, Research Director of ICJIA, asked whether it was possible to determine which job classifications require testing. Ms. Griffin replied that CMS works with the agencies to determine appropriate testing at the time the class specification is developed and a class study is conducted by CMS. While the final testing requirements are applied in a standardized manner across all agencies that hire that job classification, agencies do have the ability to work with CMS to create options within a job class that are more specifically tailored to their organizational needs. Mr. Villagrana added that

agencies could create specialized options, such as a Spanish-speaking option. In addition, diversity enrichment counselors at CMS are available to review applications and suggest various options within a broader job classification. Mr. Enyia also added that signs are posted at the testing centers and on the CMS website telling applicants about optional counseling services. Counselors are also available during outreach events and mobile assessment centers.

Mr. Todd Belcore of the Shriver Poverty Law Center asked if there are any agencies that consider criminal history information before an interview takes place. Chairman Shuck replied that those agencies that start with large classes of candidates, such as Department of Human Services, the Department of Corrections, and the Department of Juvenile Justice, expressed concern that moving the consideration of criminal background to later in the process would negatively affect their ability to efficiently fill vacancies.

Mr. Belcore asked whether there would be a reason for any other agency outside of those to consider criminal history ahead of the job interview phase. Chairman Shuck replied that such a question was too specific to answer, since each agency is responsible for their own hiring process and would make an internal determination as to when it was most workable in their particular needs and circumstances. Mr. Belcore reiterated that according to the state hiring process described in the presentation, the information on the CMS 100 did not become available to the hiring agency until the interview phase, so there did not appear to be a reason why that application should include a question about criminal background at the very outset of the application process. Chairman Shuck replied that this issue had been discussed when Rep. Ford introduced his bill to remove question 9 from the CMS 100 in the last legislative session.

Mr. Cutrone asked whether agencies should be including questions about a candidate's criminal history in the Rutan interview process, since only pre-determined questions can be asked of all candidates during the interview, and only answers to those questions can be used to determine the most successful candidate. Ms. Hensey replied that a criminal background should be considered outside of the interview process, as a condition of employment, instead of a weighted factor during the interview. The presence of a relevant criminal background should be considered a yes or no factor. In order to receive official criminal history information, the agency would have the candidate sign a "Consent to Release" form, which is forwarded to the State Police or whatever entity is involved in the relevant background factor. For some agencies, that may be the IRS or Dept. of Revenue for a check on the candidate's tax status.

Rep. Flowers suggested that the best approach regarding employers' consideration of a criminal background is to weigh the sensitivity of the job against the person's criminal background in determining their suitability (such as not hiring a bank robber to work in a bank), and offering the person counseling as to which other jobs they might be qualified. It should be made clear to employers that a criminal background does not create a blanket permanent lifetime ban from ever being hired. Ms. Sarmiento added that the State Hiring Workgroup has discussed providing information on the initial job posting

regarding any particular criminal history restrictions the hiring agency will be considering when filling the vacancy.

Rep. Flowers suggested that career counseling should be made mandatory for persons seeking state employment at a CMS Assessment Center, similar to such services offered by the Department of Employment Security to persons seeking unemployment benefits. Such a procedure will prevent time and money from being wasted on applying for positions for which persons are not qualified due to criminal background factors. Chairman Shuck replied that it is important to encourage potential applicants to engage in career counseling, although it is important to keep in mind the sheer number of applications that CMS processes and grades, which can reach hundreds of thousands each year. If counseling was mandatory for each of those applicants, CMS would need a substantial increase in the number of counselors to accomplish that. Ms. Hensey added that CMS offers counseling by job classification as a whole, not by specific positions within hiring agencies, where many restrictions may come into play. For example, someone with a prior criminal conviction for theft may not be deemed eligible to work as an administrative assistance at the Department of Revenue, although that particular criminal conviction may not be a factor for the same job title in another agency that does not deal with financial matters.

Rep. Flowers reiterated her question of how applicants would know those details if they don't get the career counseling. Is it appropriate to state that information in the job description? Chairman Shuck replied that one difficulty agencies would face in adding the criminal background restriction directly to the job description is the creation a comprehensive list all crimes that would be disqualifiers for the specific job. In addition, the criminal statutes are always changing, making the task even more daunting. Rep. Flowers agreed that career counseling would be the more efficient way to go about educating potential applicants, for those people who had time for such a session when they were applying for state employment.

Ms. Riley asked whether a solution might be to place a more general statement about criminal background on the job description, such as "certain criminal convictions prohibited; job counseling available at [phone number]." Such a statement would put the impetus on the applicant to contact a counselor for more information and direction. Mr. Belcore replied that he was concerned about such a generalized statement, since according to EEOC guidelines, a determination of the relevance of a particular applicant's criminal background should be based on more than just the charge. Such a determination should also include the length of time that has elapsed and the harm done in the actual incident. In this scenario, a person who robbed a bank in 1970 should not be denied a job in a bank in 2013, if there has been no criminal activity in the intervening years.

Mr. Belcore asked about the standardization of the state hiring process. Do all agencies conduct criminal background checks on all applicants for all positions? Ms. Griffin replied that each agency conducts its own background checks based on its statutorily and procedurally mandated policies. For example, DCFS would check several systems

when vetting the background of a candidate, including the criminal history database in LEADS, the Child Abuse and Neglect System (CANS) for any verified cases, and the Sex Offender Registry. The types of inquiries that constitute a “background check” will depend on the type of population that the worker will deal with, and the nature of the job duties.

Mr. Belcore clarified that he was trying to understand the utility of asking a question about a prior criminal conviction on the initial CMS 100, if a background check was going to be run on candidates anyway. Chairman Shuck replied that an agency does not necessarily disregard the information on the CMS 100, that it can make its own use of it. There is no expectation that there will be uniformity in this regard. Ms. Riley reiterated that some sort of notice about the relevance of a prior criminal history should be made at the beginning of the hiring process, since there is a lack of understanding on the part of the applicants about this issue. However, such a notice would not be a substitute for the individualized assessment called for by the EEOC Guidance.

Mr. Belcore made the suggestion that the notice should actually be more along the lines of the EEOC Guidance – that applicants should be aware that their prior criminal history will be subject to an individualized assessment, taking into consideration the factors of relevance and severity of the offense, the length of time since the offense, etc. Ms. Riley replied that she would expect that level of detail to be brought up in a career counseling session, not in a brief notice place on a job description. Mr. Belcore added that he was concerned about the possible ‘chilling effect’ of general language regarding prior criminal history on an application or job description. Those with a history might not even apply, assuming that they are already disqualified because of their conviction, whether it is relevant to the particular job or not.

Rep. Flowers stated that she thought the Task Force had already decided to recommend the removal of the “box” on the CMS 100. Chairman Shuck replied that the issue was still under consideration in the State Hiring workgroup. Ms. Riley added that there was no way to legislate against a chilling effect or perception of discrimination on the part of applicants with a prior criminal history, and that notice about that factor being a condition of employment would benefit rather than harm those applicants.

Mr. Belcore reiterated that he wanted the whole policy and thought process of asking applicants about their prior criminal history on an initial application to be changed. He stated that the current practices have led to injustices and indignities to hundreds of thousands of people who no longer feel motivated to take leadership positions in their own state as a result. Nine other states have already removed the “box” from their application. His recommendation is to remove the “box” and have a clear articulation by each agency as to how applicants’ prior criminal records are relevant to its own jobs. He is trying to create clarity and transparency, and eliminate sources of miscommunication between applicants and hiring agencies. Besides removing the “box”, he recommended adoption of DCFS’ policies on individualized assessment as standard practice in the state.

Process for collating employment restrictions materials

Chairman Shuck called on Mark Myrent, Research Director at ICJIA, to provide a report on the progress made to collate the various sources of information on the criminal background employment restrictions imposed by statute and agencies' administrative rules. Mr. Myrent displayed a spreadsheet holding all the Illinois statutes initially compiled by American Bar Association (ABA) staff in 2009 for purpose of creating a state-by-state inventory of collateral consequences of a criminal conviction. The core activity of the Task Force is to compile and describe the nature of these statutory restrictions and policies on state employment and occupational licensing and certification.

He continued that the Task Force legislation had provided that the primary source for this information was to be obtained from reports submitted from state agencies. However, the Task Force had voted at a previous meeting to allow that information to be supplemented by other reputable sources, including the compilation begun by the ABA and the various documents on mandatory and discretionary disqualifications prepared by the Legislative Research Unit (LRU).

Mr. Myrent continued that ICJIA staff now has sufficient information to begin compiling the information into a useable framework for the Task Force, and has committed to making substantial progress by the next Task Force in February. He wanted to take this opportunity to present to members how staff proposes to organize the materials and get their feedback.

Referring to the ABA spreadsheet, Mr. Myrent explained that the ABA had recorded information standardized information on all statutes identified, including the statute citation, the affected occupations or job titles, and the language articulating the restriction and its consequences. However, since the focus of the ABA project was *all* collateral consequences related to a criminal conviction, the spreadsheet contains statutes that may not be relevant to the Task Force focus on state agency employment restrictions. Therefore, one of the first tasks is to extract those statutes that pertain to the work of the Task Force.

He continued to describe the collation process. Staff added columns to the spreadsheet to capture the additional specific requirements of the Task Force on Inventorying Employment Restrictions Act [20 ILCS 5000]. These were to be addressed by each agency in its report to the Task Force. Based on internal legal review of the Act, 12 categories were added: type of candidate (new hire/existing employee/licensee); job title/occupation; year of restriction; disqualifying offense(s); restriction type (mandatory/discretionary; criteria for discretionary offense; time limit; point time limit begins; whether based on arrest or conviction; background information source; background decision process; waiver/relief process. A handout listing these, and a copy of the Act, were provided to meeting attendees, and will be posted on the Task Force website (<http://www.icjia.org/IERTF/>).

Mr. Myrent requested that Task Force members take some time between now and the next meeting to review the Act and be prepared to make suggestions for the inclusion or exclusion of categories of required information identified by staff. Staff has already begun to reconcile differences between the ABA and LRU information, and will look at the state agency reports next. Ultimately, the findings of the Task Force should be a combining of this core restriction information with the work group recommendations regarding current hiring and licensing procedures, and a further consideration of public safety.

Rep. Flowers commented that the Task Force should go over the Task Force on Inventorying Employment Restrictions Act as a reminder to the group of its purpose and mission, as specified in the Act. She pointed out that the Act's language states "a less restrictive approach is preferred if it both furthers public safety and preserves employment opportunities" [20 ILCS 5000/5-1-6]. Chairman Shuck agreed that the statute bears review by all to make sure the work is focused on the intended end result.

Ms. Riley commented that many state agencies have background check candidates that are employees of entities that contract with the state agency, as in the case of DCFS and its unlicensed service providers. These will need to be accounted for in the spreadsheet categories, since they are not DCFS employees, nor are they DCFS licensees. Mr. Myrent replied that it is clearly part of the Task Force charge to look at these positions, but that little has been mentioned in the Task Force meetings to date due to lack of information in the state agency reports.

Workgroup reports

Chairman Shuck called on each of the work group chairs to report on progress since the December 12th regular task force meeting.

State Hiring Workgroup

Chairman Shuck called on workgroup chair, Ms. Sarmiento, to report on progress. She reported that the group will be meeting during the first week of February and she will report out at the next Task Force meeting.

Licensing Work Group

While not official work group chair due to his agency (the Department of Financial and Professional Regulation) not being named to the Task Force, Mr. John Lagattuta of IDFP reported that he and his staff person, Ms. Tiffany Kay, have begun to look at model rules for rehabilitation and licensing. In IDFP administrative rules, the medical rules have a rehabilitation section that is promising as a model rule to be applied to all professions under the jurisdiction of IDFP. He has also been looking into whether any rules have been set regarding Certificates of Good Conduct or Certificates of Rehabilitation. So far, he has found little, if anything.

Ms. Kay did research on the Department of Public Health process of waivers for Certified Nurses Assistants (CNAs). They are looking at making this a model rule that could be added to the Administrative Practice Act that could be applied across the board.

Lastly, they are looking at IDFPR rules to find any requirements for agencies to look at an applicant's arrests, not just convictions. The Private Detectives Act is the one instance they found. They are looking into determining why this requirement is necessary, and perhaps recommend a legislative change for its elimination if no compelling reason is found.

Chairman Shuck indicated that Michelle Jackson of DCFS was appointed chair of the licensing workgroup, and IDFPR staff should coordinate with her efforts to hold another meeting of the workgroup.

Human Rights Workgroup

Mr. Villagrana, chair of the workgroup, reported that the group had not met since the last meeting in December.

Education Workgroup

Chairman Shuck reported that Mr. Evans, chair of the Education workgroup has been ill, and did not have the opportunity to convene a workgroup meeting.

Adjournment

Chairman Shuck reminded the group that the next meeting was set for Friday, February 22, 2013, at the JRTC in Chicago and Stratton Building in Springfield. With no other business, the Chairman asked for a motion to adjourn. Mr. Cutrone so moved and Rep. Flowers seconded. Hearing no objection, the motion was passed by voice vote.