

# Staff Hiring Practices – Working Across Functional Divides to Build Strength and Reduce Risk



# Welcome to UC Merced!



UC Merced opened Sept. 5, 2005, as the 10th campus in the University of California and the first American research university of the 21st century.

# Objectives of the Presentation

The following is information we will cover during the presentation:

- How poor hiring processes can put an organization at risk
- Compliance risks related to staff hiring
- The role of the Office of Federal Contracts Compliance Program (OFCCP)
- Internal Audit Involvement
  - Results of Audits
  - Management Corrective Actions
- Management solutions to the issues



# Employment in the Merced Area

- Merced is a small city in the San Joaquin Valley. Many employees at UC Merced are long-time residents of the area.
- High unemployment as the city was devastated by the 2008 recession and collapse of housing
- UC Merced is one of the main employers in the region



# What the Department of Labor Expects

The Department of Labor has specific expectations of organizations that receive Federal money.

## **1. Affirmative Action – Campus Affirmative Action Plan (AAP)**

“UC Merced employees or applicants for employment shall be treated equitably and fairly in all matters related to employment, including recruitment, appointment, transfer, promotion, reclassification, separation, compensation, benefits, training and education, and social and recreational programs. No employee or applicant for employment shall be discriminated against, harassed or differentially treated on the basis of race, color, national origin, religion, sex, gender, gender expression, gender identity, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), ancestry, marital status, age, sexual orientation, citizenship, or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994).”

## **2. Equal Opportunity for job seekers and wage earners**

# The role of the OFCCP

- The Office of Federal Contracts Compliance Programs (OFCCP) is the enforcement arm of the Department of Labor

“The purpose of the Office of Federal Contract Compliance Programs is to enforce, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government.”

- The Federal Contract Compliance Manual (537 pages) is a guide for OFCCP auditors
  - Outlines the various steps to be completed during a desk review and on-site visit

# OFCCP's Enforcement Procedures (From DOL Website)

In carrying out its responsibilities, the OFCCP uses the following enforcement procedures:

- Offers technical assistance to federal contractors and subcontractors to help them understand the regulatory requirements and review process.
- **Conducts compliance evaluations and complaint investigations of federal contractors and subcontractors personnel policies and procedures.**
- Obtains Conciliation Agreements from contractors and subcontractors who are in violation of regulatory requirements.
- Monitors contractors and subcontractors progress in fulfilling the terms of their agreements through periodic compliance reports.
- Forms linkage agreements between contractors and Labor Department job training programs to help employers identify and recruit qualified workers.
- Recommends enforcement actions to the Solicitor of Labor.
- **The ultimate sanction for violations is debarment - the loss of a company's federal contracts. Other forms of relief to victims of discrimination may also be available, including back pay for lost wages.**

# Summary of OFCCP Compliance Review

- Review recruitments and determine whether **objective criteria** are consistently utilized to evaluate job candidates
  - Compliance manual discusses the difference between objective criteria and subjective criteria (“the candidate was a good fit”)
- Look for discriminatory recruitment and promotion practices
- Follow up on complaints from candidates (“Do you feel like you were given a fair opportunity to be hired?”)
- Review whether the Federal Contractor has an Internal Audit function that is helping to monitor compliance

# Dangers of an Unfair Hiring Process

- Enforcement by the Office of Federal Contract Compliance Practices (OFCCP)
  - Painful audit
  - Potential Fines and Debarment
- The reputation for unfair hiring practices – “You have to know someone to be hired at X”
  - Qualified candidates will stop applying
  - Hurts the morale of current employees when they believe there is really no opportunity when a position opens

## Equal Employment Opportunity is **THE LAW**

### Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

#### RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

#### DISABILITY

Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

#### AGE

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

#### SEX (WAGES)

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

#### GENETICS

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

#### RETALIATION

All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

#### WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED

There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected:

The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (toll-free) or 1-800-669-6820 (toll-free TTY number for individuals with hearing impairments). EEOC field office information is available at [www.eeoc.gov](http://www.eeoc.gov) or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at [www.eeoc.gov](http://www.eeoc.gov).

# Staff Hiring – Former Processes

## Overview of the hiring steps at UC Merced

1. Contact Human Resources regarding position
2. Verify that Job Description is accurate
3. Human Resources posts the advertisement for the position and sets up access in Personnel Application Web System (PAWS)
4. A Hiring Manager for the position is assigned in PAWS who sets up a hiring committee for the position
5. Candidates apply for the position by completing the online information and submitting resumes and cover letters

# Staff Hiring – Former Processes

## Overview of the hiring steps at UC Merced (cont.)

6. The Hiring Manager reviews candidate information in PAWS and decides whether the candidate is Qualified (Meets or Exceeds Qualification) or Not Qualified
7. From the pool of qualified candidates, the Hiring Manager selects candidates to interview
8. The selected candidates interview with the hiring committee
9. One of the candidates is selected for hire
10. Human Resources works with the Hiring Manager to put together an offer letter
11. The candidate accepts the offer
12. The new employee is hired at UC Merced

# Promoting Fair Hiring Practices

Human Resources recommends some ways to promote a fair (nondiscriminatory) hiring process (the following information was posted on their webpage for hiring managers):

## Recommendations for Hiring Committees

- The recommended number of committee members is at least 3 but no more than 5; an odd number is recommended.
- All members should be present at all meetings and all interviews.

## Screening Criteria

- Develop screening criteria that can be measured via an application *based on position requirements*. *Clearly define required and preferred qualifications.*
- Compile interview questions. Each specialized skill and ability listed on the announcement is typically measured.

# Documenting a Compliant Hiring Process

Properly documenting the recruitment process is crucial!

- UC Merced's key to proving non-discriminatory hiring practices is the disposition process in our applicant tracking system, PAWS
- Based upon the job requirements, the hiring manager should accurately determine whether a candidate is qualified or not qualified
- Best case – For the statistics generated as part of the Affirmative Action Plan, there should be a pool of qualified candidates

# Factors Contributing to Audit Need

There are many difficulties which tends to hurt UCM's hiring processes (identified during a 2013 internal audit):

- Lack of resources in HR recruitment
  - Formerly, only two HR employees to provide support for staff hires
- Hiring managers are told to review the hiring requirements on the HR website but are given very little guidance by Human Resources
- Sometimes many months after hire, the hiring manager would attempt to complete the disposition process in PAWS
  - Risk - If a hiring manager completes the disposition months later, sometimes the manager will mark many qualified candidates as "Not Qualified"
    - Results in inaccurate data and often looks like discriminatory hiring practices
- No control over offer letters – Departments sometimes make offers before discussing with Human Resources; HR not enforcing policy that requires HR sign off on offer letter before presenting to candidate

# Hiring Audits of Facilities and Housing

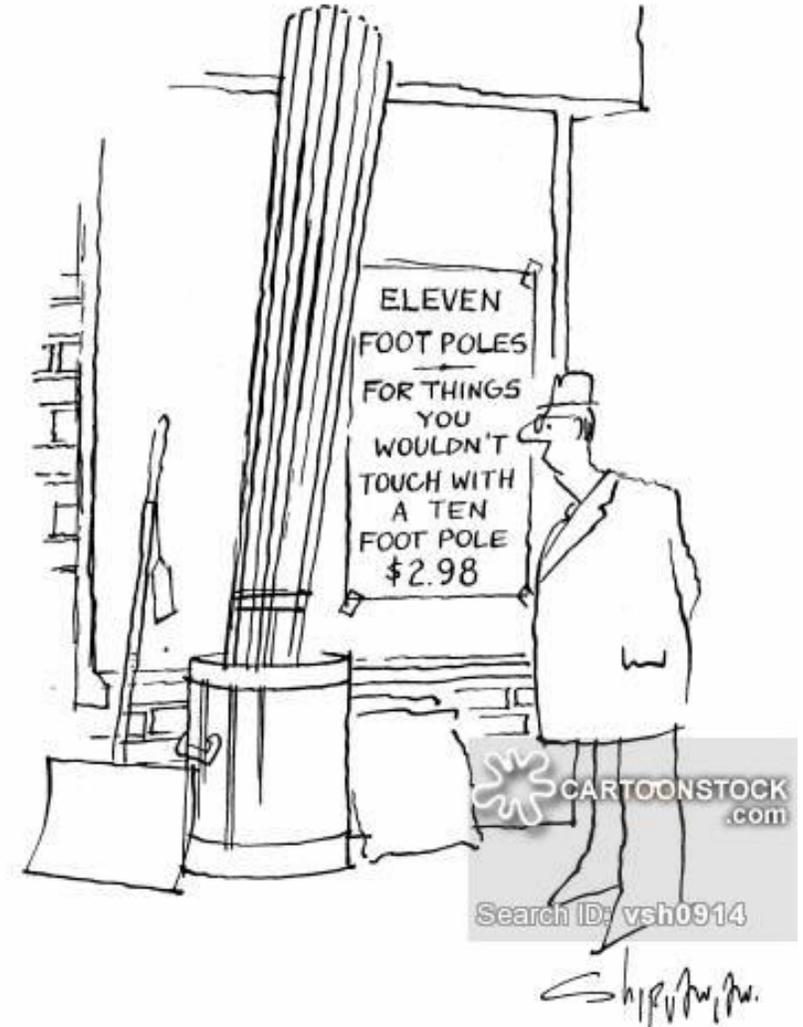
- Many complaints about the hiring of custodians in Facilities and in Housing and Residence Life
- In October 2014, the Campus Ethics and Compliance Officer (CECO) requested an audit of these two departments
- CECO and EEO Officer had special knowledge about the specific complaints but purposefully withheld information from Internal Audit as means of independently testing their findings

# Audit Hiring Practices?!!!?

Difficult area to audit as so much of hiring is a matter of judgment

People tend to hire someone because the person “is a good fit”. How are you going to evaluate this?

- The OFCCP compliance guide specifically discusses the role of Internal Audit at Federal Contractors
- Internal Audit is expected to periodically audit hiring practices at organization that receive Federal awards
  - The OFCCP wants to see that we identify issues and that the university is taking corrective actions based upon what we find



# Audits of Facilities and Housing

- What we audited
  - Selected a sample of custodial recruitments from 2012 – 2014
  - Each department had their own separate custodial staffs
- Reviewed all details related to the recruitments (job descriptions, resumes, cover letters, hiring committees) and looked for unusual trends
- Reviewed whether Human Resources' recommended practices were followed
  - Who was on the hiring committee? Of the employees listed, did they really participate in the hiring?
- Compared candidates' skills and backgrounds and compared them with the requirements on the job descriptions

# Audits of Facilities and Housing

## Some things we noted

- A significant number of candidates selected for interview were related to current UC Merced employees
  - Relatives seemed to have an advantage at getting to the interview stage
- Some candidates did not meet the minimum requirements but were interviewed and sometimes hired
- Sometimes 75 – 100 candidates would apply
  - Hiring managers were sometimes marking a large portion of the candidates as “Not Qualified” after certain number of candidates applied

# Facilities and Housing – Audit Results

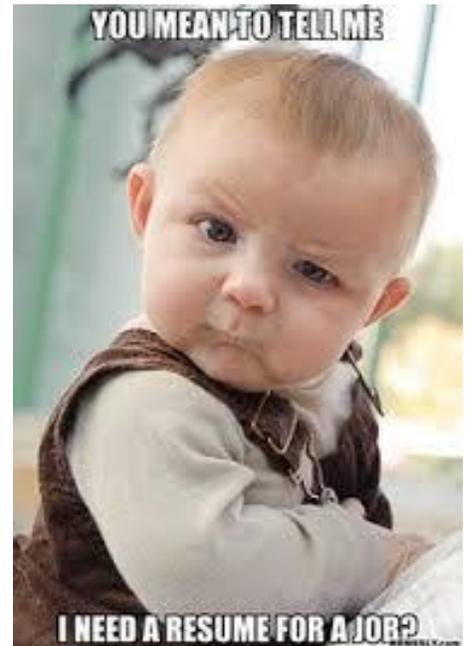
## Issues we identified

- A hiring manager had hired a relative and was now supervising the relative
  - Last names were not the same so the relation was not disclosed
  - The candidate had mentioned the relationship in her cover letter
- While various employees were listed as being on the hiring committee in PAWS, really only the same two employees made up the hiring committee for most recruitments

# Audits of Facilities and Housing

Met with leadership in the departments to come up with management corrective actions

- Housing leadership was new to the University and was eager be compliant
- Unusual response from Facilities Leadership
  - “It’s more efficient to just hire people we know”
  - Human Resources involvement in hiring takes more time and we end up with employees who aren’t a “good fit”



# Results of these audits

What we learned from these first audits:

- There is very little oversight over hiring and departments/hiring managers do their own thing
- Human Resources had very little involvement in most recruitments
  - Different people mentioned how HR involvement only slowed down the hiring process

The Vice Chancellor requested an immediate campus wide audit of hiring practices as a new AVC Human Resources was scheduled to begin in February 2015 (the next month)

# Recruitments from Divisions Selected

| Campus Division                                       | Number of Recruitments Reviewed |
|---|---------------------------------|
|   |                                 |
| Business and Administrative Services                  | 10                              |
| Chancellor's Office                                   | 1                               |
| Development and Alumni Relations                      | 4                               |
| Provost's Office (including Library, IT, and Schools) | 9                               |
| Planning and Budget                                   | 5                               |
| Student Affairs                                       | 8                               |
| Office of Research                                    | 2                               |
|   |                                 |
| Total recruitments reviewed                           | 39                              |

# Overall Results of Campus-wide Audit

- In the campus wide audit, we noted the same issues we noted in the first audits
  - Hiring Managers would often mark qualified candidates as not qualified (and vice versa)
  - Departments would sometimes interview unqualified candidates while qualified candidates were not contacted
- This possibly high risk issue resulted from a seemingly harmless administrative task – Disposition of the hiring process
- We identified hiring issues in almost every campus division we reviewed
  - Multiple issues noted in a couple trouble divisions

# Some of the interesting side issues

- Conflicts of Interest – Relatives and Significant Others
- In many recruitments, disposition of the hiring process was never completed or completed many months after the candidate was hired
- Never received hiring candidate information from recruiting firms
- “Pro forma recruitments” – The recruitment process was completed but it was apparent that someone known by the hiring manager was selected from the beginning.
- Positions where employees are hired without ever going through the recruitment process (long term contract positions and selections from the continuous recruitment pool)

# The Audit: Core Findings/Potential Effects

## Core Findings

- Dispositioning deficiencies
  - Candidates who aren't minimally qualified (what this means and doesn't mean)
  - Incomplete dispositioning of the applicant pool
- Training and documentation deficiencies
- Lack of internal compliance controls

## Potential Effects

- Large fines and penalties
- Debarment from federal funding
- An OFCCP audit could be a long and costly process as auditors interview unsuccessful candidates and complainants
- UC Merced's reputation in the local labor market
  - Living our values: poor hiring practices disproportionately impact women and underrepresented minorities.
  - Correcting past practices is more than regulation and compliance; it is an expression of our commitment to living our values and doing the right thing.

# Reporting Audit Results to Leadership

Presented results of campus wide audit to campus leadership during April 2015

- Financial, legal and reputational risks discussed
- Individual reports showing each division's results shared with the Provost and to each Vice Chancellor
- Chancellor's Response – **Tasked Human Resources and Compliance Office to work together to address issues as quickly as possible**



# Timeline of Audit Process

- October - December 2014
  - Audits of Hiring in Facilities and Housing
- January – April 2015
  - Campuswide Hiring Audit
- February 2015
  - New Assistant Vice Chancellor of Human Resources arrived at UCM
- May – June 2015
  - Finalizing management corrective actions and report issued
- December 2015 – April 2016
  - Getting buy in from Leadership and Departments
- July 1, 2016
  - New staff hiring processes implemented

# Management: Mitigation Strategies

- HR Responsibilities
  - Each recruitment effort will have an assigned recruiter to provide consultation and oversight of the recruitment effort
  - Intakes and Hiring Packets
  - Training for Hiring Department & for Search Committees
    - Note: Search Committees are NOT required
  - Positioning Services, if requested
- Departmental Responsibilities
  - Designate an Identified Hiring Authority (IHA)
    - Responsible and accountable party for compliance integrity
    - On-boarding responsibilities
    - Off-boarding responsibilities

# Management: Mitigation Strategies

- Departmental responsibilities (continued)
  - Disposition certification
    - The assigned HR recruiter must certify the dispositioning of the applicant pool
    - Must occur prior to contacting anyone in the pool for interviews
  - Submission of all recruitment effort documents prior to offer (oral and/or written)
    - Completed interview questions/notes/rating sheets
    - Completed references
    - Completed disposition in the applicant tracking system (PAWS)
    - Background check questionnaire
    - Finalist application packet –app, resume and cover letter
    - Draft Offer Letter or Contract
    - (If applicable) Policy compliance:
      - Near Relative Hire exception
      - PPSM 30 Exception
      - Rehire Retiree

# Management: Mitigation Strategies

- Compliance responsibilities
  - EEOC and Affirmative Action Training Support
  - Ongoing audit to assess and ensure integrity of the recruitment process
- Effective Date: all recruitments opened on or after July 1, 2016
- Offers that are not properly approved by HR may be subject to deemed failure and may require a new search
- Each division will designate one or more people as their Identified Hiring Authority (IHA) to work with HR to ensure pool certification, completion of training as identified above, and pool disposition
- The IHA's have individual accountability, and the recruiting departments will be held accountable for ensuring that each recruitment is in compliance with these hiring requirements

# Follow up Audit

- During October and November 2016, UCM Internal Audit completed a follow up audit to review that new procedures and controls are effective in fixing the identified issues
- Human Resources has set up an internal review process to verify that procedures are properly followed
- Internal Audit reported that formerly identified risks are now managed



# Questions?

- Luanna K Putney, Associate Chancellor – [lputney@ucmerced.edu](mailto:lputney@ucmerced.edu)
- Todd Kucker, Internal Audit Director – [tkucker@ucmerced.edu](mailto:tkucker@ucmerced.edu)
- Brian Powell, AVC of Human Resources – [bpowell2@ucmerced.edu](mailto:bpowell2@ucmerced.edu)