



AUDIT AND ADVISORY SERVICES

Non-Voluntary Separation Practices Audit Project No. 12-589

June 28, 2012

Prepared by:

Jennifer Jones
Auditor-in-Charge

Reviewed by:

Approved by:

Jaime Jue
Associate Director

Wanda Lynn Riley
Chief Audit Executive



AUDIT AND ADVISORY SERVICES
Tel: (510) 642-8292

650 UNIVERSITY HALL #1170
BERKELEY, CALIFORNIA 94720-1170

June 28, 2012

John Wilton
Vice Chancellor
Administration and Finance

Vice Chancellor Wilton:

We have completed our audit of Non-Voluntary Separation Practices per our annual audit plan in accordance with the Institute of Internal Auditors, Inc. *Standards for the Professional Practice of Internal Auditing* and the University of California Internal Audit Charter.

Attached is our audit report including observations and management action plans. Thank you to central Human Resources and other departmental staff for their cooperative efforts throughout our audit process.

Please destroy all copies of draft reports and related documents. Also, please do not hesitate to call on Audit and Advisory Services if we can be of further assistance in this or other matters.

Respectfully reported,

Wanda Lynn Riley
Chief Audit Executive

cc: Assistant Vice Chancellor Jeannine Raymond
Senior Vice President Sheryl Vacca
Associate Chancellor Linda Morris Williams
Assistant Vice Chancellor and Controller Delphine Regalia

**University of California, Berkeley
Audit and Advisory Services
Non-Voluntary Separation Practices**

Table of Contents

OVERVIEW	2
Executive Summary	2
Source and Purpose of the Audit	3
Scope of the Audit	3
Background Information.....	3
Summary Conclusion.....	4
SUMMARY OF OBSERVATIONS & MANAGEMENT RESPONSE AND ACTION PLAN	6
Termination of Systems Access.....	6
Separation Action Reviewer Process	7
Records Management.....	8
Department Administration of Recall Rights	9

OVERVIEW

Executive Summary

During the period July 1, 2010 through December 31, 2011, departments initiated 243 non-voluntary separation actions. The largest category of separations was due to layoffs (197 actions), with approximately 75% of these resulting from the campus' Operational Excellence (OE) initiative according to central Human Resources (central HR) estimates.

The overall objective of our audit was to assess campus and department controls designed to mitigate key risks associated with non-voluntary separation actions. Areas of audit focus included: (i) compliance of separation actions with relevant policies and bargaining unit agreement terms, (ii) retention of relevant and sufficient documentation related to the separation action, (iii) return of University property from and timely deactivation of systems access for separated employees, and (iv) monitoring of consistency and appropriateness of separation actions.

Our audit included various categories of non-voluntary separation, including indefinite layoffs, terminations for cause (misconduct and lack of performance), and medical separations. We limited our review to separation practices and actions associated with non-academic career staff. Our detailed testing included separation actions completed during the timeframe July 1, 2010-December 31, 2011. Layoffs related to the campus' OE program were not included in our audit scope, as these actions did not follow the normal campus layoff process because of the exceptional involvement of central HR.

Audit procedures included (i) the review of documented University and campus policies, procedures, and tools, (ii) interviews with central and department/shared service human resources personnel, and (iii) the detailed review of documentation related to a sample of separations. Our sample included separation actions across 20 different departments, including five that are managed by the shared service unit, the Human Resources Center (HRC).

Given the decentralized accountability and review on campus for initiating and executing separation actions, there is an inherent risk that actions may not be consistent or appropriate. We did not note any policy exceptions or violations of bargaining agreement terms in our sample; however, we did identify a need for the campus to strengthen the formal independent review process afforded all career staff who avail themselves of this right. We also identified gaps with regard to the management of separation-related records, the administration of employee recall rights, and procedures for ensuring the prompt termination of access rights to enterprise systems.

We have obtained management action plans in response to our observations that we believe, if implemented, will address the observations we noted going forward.

Source and Purpose of the Audit

Audit and Advisory Services (A&AS) completed our audit of non-voluntary separation practices as part of our annual audit plan for FY 2012. The overall objective of our audit was to assess campus and department controls designed to mitigate key risks associated with non-voluntary separation actions. Potential key risks related to non-voluntary separation actions include: the risk of insufficiently supported terminations or discrimination in non-voluntary separation actions; the risk that employee rights under relevant policies and agreements may not be properly accorded; and the risk that University data or assets may not be safeguarded. Areas of audit focus included: (i) compliance of separation actions with relevant policies and bargaining agreement terms, (ii) retention of relevant and sufficient documentation related to the separation action, (iii) return of University property from and timely deactivation of systems access for separated employees, and (iv) monitoring of consistency and appropriateness of separation actions.

Scope of the Audit

Our audit included the most common categories of non-voluntary separations, including indefinite layoffs, terminations for cause (misconduct and lack of performance), and medical separations¹. We limited our review to separation practices and actions associated with non-academic career staff who have passed probation, given the greater latitude (and therefore lower risk) the campus has with regard to releasing employees serving a probationary period or holding limited, casual/restricted or floater appointments. Our detailed testing included separation actions completed during the timeframe July 1, 2010-December 31, 2011.

Layoffs related to the campus' OE initiative were not included in our audit scope. In order to more closely manage the risks associated with these layoffs given their volume and sensitivity, central HR directly coordinated and oversaw these separations in lieu of their being managed by individual departments. We excluded these layoffs because of the fact that the actions received additional scrutiny by central campus and because our audit was intended to assess typical versus exceptional procedures and controls.

Audit procedures included (i) the review of documented University and campus policies, procedures, and tools, (ii) interviews with campus and department/shared service human resources personnel, and (iii) the detailed review of documentation related to a sample of separations. Our sample included separation actions across 20 different departments. Human resources activities for five of these departments are managed by the shared service unit, HRC.

Background Information

Campus Non-Voluntary Separation Activity

During the period July 1, 2010 through December 31, 2011, departments initiated 243 non-voluntary separation actions. The largest category of separations was due to layoffs (197 actions),

¹ Unlike for other non-voluntary separation types, all medical separations must be reviewed and authorized by central Human Resources (as well as campus Disability Services Management). Our audit scope was limited to an assessment of department procedures and controls, including whether this pre-authorization was obtained. We did not evaluate the effectiveness of the central campus medical separation review and authorization procedures.

with, according to central HR management estimates, approximately 75% of these resulting from the campus' OE initiative.

With the exception of medical separation actions (and OE layoffs, which were not included in our scope), departments have the authority to initiate non-voluntary separations without the review and approval of central HR. Central HR, however, does provide consultation to departments when requested and consultation is encouraged. Central HR also provides documented guidelines and templates for managing separation activities and provides non-mandatory training. In addition, over the past two years, central HR has implemented or expanded programs designed to mitigate the potential risks associated with certain separation actions. Activities include the establishment of a leave review committee to help ensure the timely and appropriate handling of medical separations, as well as the development of a transition services program to assist certain separated employees with the search for a new job.

Relevant Policies and Bargaining Unit Agreements

For purposes of detailed testing, relevant policies and bargaining agreements were identified by the type of separation action and the employee's union affiliation. For non-represented employees, we referred to the relevant section of the University of California Personnel Policies for Staff Members (PPSM) and for represented employees, the relevant bargaining agreement. Policies and bargaining agreements reviewed included: (i) PPSM 60-Layoff, (ii) PPSM 64-Termination of Career Employees-Professional and Support Staff, (iii) PPSM 65-Termination of Career Employees-Managers and Senior Professionals, (iv) PPSM 66-Medical Separation, and (v) the relevant sections of the bargaining agreements for the Clerical and Allied Services Unit, the Research Support Professional Unit, the Service Unit, and the Technical Unit.

Policies and bargaining agreements prescribe allowed circumstances for non-voluntary separation actions, as well as specific protocols and timeframes that must be followed for different action types, including but not limited to: (i) notifying the employee in advance about the planned action and his/her rights to respond, (ii) providing the employee with the right to an independent review of the planned action, and (iii) notifying the employee of the final decision and his/her rights to appeal the decision. For layoffs, protocols for determining the order with which employees will be separated, as well as employee rights to recall and preferential rehire are also prescribed.

Summary Conclusion

Given that accountability and review on campus for initiating and executing separation actions resides with the employee's home department, there is an inherent risk that actions may not be consistent or appropriate across the campus. We did not note any policy exceptions or violations of bargaining unit agreement terms in our sample. However, we did identify a few instances when it appeared that the department did not manage the action and its attendant risks effectively with regard to the clarity and detail of the related notices or the timing and progression of the preceding corrective action. Related to these examples as well as an evaluation of related procedures and controls, we identified a need for the campus to strengthen the formal independent review process afforded all non-voluntarily separated career staff who avail themselves of their right to an independent review.

We also identified gaps with regard to the management of separation-related records, the administration of employee recall rights, and procedures for ensuring the prompt termination of

access rights to enterprise systems.

We have obtained management action plans in response to our observations that we believe, if implemented, will address the observations we noted going forward.

SUMMARY OF OBSERVATIONS & MANAGEMENT RESPONSE AND ACTION PLAN

Termination of Systems Access

Observation

There is no central monitoring to ensure that access to the campus' enterprise systems (such as the financial (BFS), human resources (HCM), payroll (PPS/OPTRS), and procurement systems (BearBuy)) is terminated promptly for all separated employees. Access to enterprise systems is terminated based on department request; however, if the department were to fail to submit an access termination request or if the termination request is otherwise not processed, unauthorized access may not be detected. This risk is partially mitigated by quarterly SAS-115 systems access reviews performed by departments and through the automated termination of access to CalNet (the campus' primary identity management/system authentication tool) 90 days post-separation. However, access to sensitive data and transaction authorization capabilities, especially for non-voluntarily separated employees, should be terminated promptly at separation.

Management Response and Action Plan

Termination of access to the employer's proprietary systems, those mentioned above and electronic mail systems, has been the subject of consideration by the Campus IT Security Office. Current campus policy removes access after 90 days of an inactive appointment. Central HR and IT security discussed alternatives for earlier elimination of access and the IT Security Office is considering a policy change. Noteworthy, at this time, the departments have the authority to implement involuntary termination actions without the involvement of central HR, a consideration in any remedial action. Central HR will take the following actions:

- 1) By September 1, 2012, meet with central IT security to determine whether policy changes will be made that would provide for the immediate termination of access to the cited systems and electronic mail upon implementation of a termination action. If policy changes will not occur, by June 1, 2013, implement a process by which Central HR or Campus Shared Services (CSS) will notify the responsible administrator for critical enterprise systems of separated employees. Details regarding which specific systems will be included in this process and whether this process should apply to all separated employees or only those non-voluntarily separated will be determined with input from central IT and system administrators.
- 2) By August 1, 2012, reiterate department obligations to eliminate systems access to Department Human Resource Managers (DHRMs) through email communication and at the July DHRM meeting. Annual reminder emails will also be sent to CSS thereafter.
- 3) Emphasize obligation to eliminate systems access in the discipline dismissal training module of the Keys to Enhance Your Supervisory Success (KEYS) program scheduled for the CSS group. KEYS materials will be updated by January 1, 2013. Also, this obligation is currently being reinforced with HRC personnel as part of HRC-specific trainings.

Separation Action Reviewer Process

Observation

As was established by a 1975 California Supreme Court ruling (*Skelly v. State Personnel Board*), career state employees may not be involuntarily separated from their employment without due process. As administered on campus, this process entails the right to be noticed in advance of a pending separation action, the right to appeal the planned action to an independent reviewer, and ultimately the right to grieve the final action. Without exception, we observed that employees in our sample received advance notice of the pending separation action and were clearly notified of their right to appeal and review, and to grieve the decision. We did, however, observe opportunities to strengthen the administration of the independent review process on campus, as follows:

- There is no formal training provided to independent reviewers to help ensure the sufficiency and consistency of their review process and decisions. Based on our review of reviewer decision letters, we noted apparent differences in the robustness of the reviewers' analyses in regard to the nature and extent of supporting documentation reviewed, as well as the clarity and comprehensiveness of the explanation for their decision. Guidance and templates for the review process have been recently posted to the central HR website, which should help to mitigate these inconsistencies. However, given the importance of the reviewer process in the non-voluntary separation process, we believe that additional training and oversight of the reviewer process is warranted.
- Procedures for assigning reviewers are informal, creating a risk that reviewer assignments may not meet the stated objectives of a person who is both impartial and has the authority to modify the proposed action. As well, we understand from our interviews with department human resources managers that it can be difficult to find a reviewer, and that they must sometimes leverage their professional relationships to persuade reviewers to accept a case.
- Reviewers are housed within individual departments across the campus, rather than within a central function. Because of privacy concerns and challenges in information-sharing across departments, this exacerbates the risk that review procedures and outcomes will not be consistent across comparable actions.

Management Response and Action Plan

Assuming that the reviewers identified are pre-termination reviewers, instructions and materials are in place to assist reviewers with the process. However, the authority for selection and decision remains with the department and the number of occasions on which a specific reviewer will consider a case is limited, rendering in depth ongoing training a challenge to justify. Some steps have been taken since September 2011 to improve the quality of the review process and to provide additional support. Specifically, reviewers are provided with an assigned advisor from Human Resources who is independent from the case with the following assignments: 1) review the general process with the reviewer; 2) meet with the reviewer to go over intent letters and written submissions; 3) sit with the reviewer during any oral presentations; and 4) review drafts of reviewer decisions. Consonant with the finalization of the Central Shared Services program, the proposed action plan would be to:

- 1) By July 1, 2013, move all pre-discipline/termination review process support to central Human Resources. This move has already occurred for terminations handled by HRC.
- 2) By July 1, 2012, establish and communicate the process identified above as an expectation rather than a service offering.

Records Management

Observation

In approximately 25% (6 of 26) of the non-voluntary cases reviewed, supporting documentation in personnel files related to the separation action was not complete. The missing documents did not call into question the underlying cause for the action or whether relevant policies or bargaining agreements had been followed. However, if the actions had been grieved, certain key supporting documents, such as seniority calculations or details regarding an employee's misconduct or performance issues, for example, would not have been available in the personnel file and may not have been otherwise readily located. The personnel file should stand as a complete and accurate record of the action in case of future reviews in connection with, for example, rehire decisions. Many of the department human resources managers whom we interviewed stated that they felt they could benefit from additional guidance related to what supporting documentation should be retained in the personnel file versus a working file in connection with non-voluntary separation actions. Central HR has developed and posted guidance for what contents should be maintained in the official personnel file; however, this guidance does not specifically address documentation related to non-voluntary separations.

In addition, we noted significant gaps in the personnel files managed by HRC. Personnel files for two of the five HRC non-voluntarily separated employees in our test sample could not be located. Supporting documentation related to the separation action in the remaining three files was incomplete, including one file that did not contain any separation documentation and a second that did not contain the final separation letter. As noted above, personnel files should be complete with regard to employee actions in the event of future grievances or hiring decisions. We understand that HRC has a backlog of filing that is currently being addressed; however, the separation actions in our sample were completed in 2010 and 2011. Given the campus' general movement toward shared service for human resources, identifying the root cause of this records management process gap and ensuring appropriate remediation is critical.

Management Response and Action Plan

The HRC – Administration's efforts have been diligent, but hampered by the work or lack of same work by the operational departments. It is expected that the campus will face a similar challenge as CSS is moved into place. Until such time as a robust electronic records system is put in to place such that it can include documentation related to separation actions, the campus will need to continue to rely upon the paper files. As the new members of CSS are identified, training may be the best approach. Central HR will take the following actions:

- 1) By August 1, 2012, add a section to KEYS training on personnel documents and records; the section will cover what documentation should be maintained, timelines for retention, and other requirements.

- 2) By August 1, 2012, communicate this same information to DHRMs through email communication and at the July DHRM meeting. Guidance will also be posted on the central HR website.
- 3) As well, by February 1, 2013, the process for managing the transition of personnel files from departments to CSS will be evaluated to determine what changes can be made to minimize the risk of lost or incomplete records.

Department Administration of Recall Rights

Observation

Under relevant policies and bargaining agreements, career employees who are laid off are entitled to recall rights; if an active position of the same classification and department becomes vacant or is newly created, the separated employee will have rights to that position. The department human resources managers that we met with generally manage this process based on their recollection of recent separations and through reference to paper files. This manual process may not be sufficient to ensure that recall rights are properly administered. One department manager that we interviewed stated that she used data from the campus' human resource system, HCM, to identify the relevant population; however, it does not appear that other departments were aware of how to use these same HCM reporting tools.

Management Response and Action Plan

At one time, recall right information was maintained centrally in HR, but ultimately was delegated as a part of the decentralization process in the 1990s. By February 1, 2013, a process will be in place with CSS to handle this tracking centrally.