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# MEMORANDUM

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Date: June 21, 2022

To: The Honorable Chair and Members  
Pima County Board of Supervisors

From: Jan Leshner   
County Administrator

Re: **Update on Merit Commission Hearings Heard for Employees Who Failed to Obtain a Vaccination When Working with Vulnerable Populations**

On December 7, 2021, the Board of Supervisors adopted a policy, which required employees who worked with vulnerable populations to be vaccinated against COVID-19, effective January 1, 2022, or face involuntary termination. Employees who were eligible for an accommodation due to a medical contraindication/disability or for a sincerely held religious belief, were allowed an additional 30 days, or until January 30, 2022, to locate another position to which they could be reappointed.

Twenty (20) employees who were involuntarily terminated under the vaccine mandate filed an appeal to the Merit Commission. Of the 20 former employees, 19 were Corrections staff at the Sheriff's Department and one (1) employee was an Environmental Health Specialist I, with the Health Department. Human Resources scheduled hearings for the 20 employees. The Merit Commission heard eight (8) cases; seven (7) Sheriff Department and one (1) Health Department and continued 12 cases, though no hearing dates are scheduled.

Specific to the Sheriff's Departments cases, in six (6) of those cases, the Merit Commission overturned the termination, finding:

Appellant (Corrections staff) knew that failure to get vaccinated would result in termination, but that in our judgment, the termination was not justified under the circumstances. Employee is to be reinstated upon becoming vaccinated or when the vaccination mandate ceases, not to include back pay or benefits, during the period of suspension.

The Merit Commission made a specific finding that as an Elected Official the Sheriff had the discretion whether or not to implement the Board of Supervisors policy, and that the Sheriff was acting on his own authority and in his own discretion by enforcing the policy. Therefore, the Merit Commission decided to review whether the Sheriff's action to terminate was reasonable or not and found it was not reasonable for the Sheriff to terminate the Appellant(s), finding termination "too severe."

In the remaining Sheriff's Department case, the Merit Commission upheld the termination, finding:

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Appellant (Corrections staff) knew that failure to get vaccinated would result in termination. Appeal action affirmed and there was just cause for the termination. Employee is eligible to reapply to the Sheriff's Office in the future.

In this instance, it is unclear as to the alternate finding; however, the Merit Commission noted that the Appellant left employment in a manner in which the Sheriff would not want to take the Appellant back in employment.

Lastly, the Merit Commission overturned the termination and returned the former Health Department employee back to work, with full back pay, finding:

The termination shall be sustained and the action be revoked and she be reinstated to her position with full back pay for the reason that the Appointing Authority was unable to establish that there was just cause for the action imposed. Back pay and benefits are to be paid which is the amount of income she would have received had she not been terminated, minus any amount earned.

Here, the Merit Commission found that the Health Department erroneously identified the Appellant as an employee who interacts with vulnerable populations and that it was "wrong" to identify her as such.

JKL/anc

c: The Honorable Chris Nanos, Pima County Sheriff  
Francisco García, MD, MPH, Deputy County Administrator for Health & Community Services and Chief Medical Officer  
Cathy Bohland, Director, Human Resources