

## ACTING UP POLICY

### PURPOSE OF POLICY

Acting Up is defined in the City of Chicago Hiring Plan as an employment action where an employee is directed to, and does perform, or is held accountable for, substantially all of the responsibilities of a higher-graded, covered Class. Acting Up may only occur when there is a budgeted Position that is either vacant or whose incumbent is absent; when an employee is in the process of being reclassified to a higher-graded, non-budgeted Position; or if a higher-graded position is needed temporarily due to seasonal work.

The City of Chicago Hiring Plan and Executive Order No. 2009-3 prohibit the City from basing Acting Up and all other employment actions related to Covered Positions on Political Reasons or Factors or other Improper considerations. To ensure compliance with this prohibition as well as City policies and Collective Bargaining Agreements (“CBAs”), City Departments must adhere to the rules and procedures outlined in this policy when administering Acting Up.

### DEFINITIONS

**Acting Up** - Acting Up is where an employee is directed to, and does perform, or is held accountable for, substantially all of the responsibilities of a higher-graded covered Class.

**Acting Up Certification** – An Acting Up Certification is a certification that no Political Reasons or Factors or other Improper considerations played a role in the decision to act up.

**Bargaining Unit Employee** - A bargaining unit employee is any employee whose terms and conditions of employment are governed by a collective bargaining agreement between the City and a labor union.

**Class of Positions** – A Class of Positions is a category of Position(s), each of which is sufficiently similar in respect to duties and responsibilities such that the same word(s) may be used to designate each Position in the group, the same salary range may be equitably applied, the same qualifications required, and the same examination used to select qualified employees. A Class of Positions is equivalent to a job title.

**Day** – A day is any incident of Acting Up in a working day regardless of duration, whether paid or unpaid. For instance, Acting Up for one hour in a working day would count as a full day under this policy.

**Department Manager** - A Department Manager is the manager who has final authority to select which employee shall act up.

**Eligible Employee** - An Eligible Employee is an employee who has the present ability to perform the duties of a higher-graded title. Usually this includes all employees in the Class of Positions directly below the Acting Up title.

**Improper** - Improper describes a consideration constituting preferential treatment which is not job related.

**Incremental Acting Up** – Incremental Acting Up is an Acting Up assignment that occurs due to an absence of fewer than 30 calendar days of the Position’s incumbent.

**Long Term Leave Acting Up** – Long Term Leave Acting Up is an Acting Up assignment that occurs due to an absence of 30 or more calendar days of the Position’s incumbent. This includes Acting Up into a position whose incumbent is acting into a position whose incumbent is on a long term leave.

**Political Reasons or Factors** – Where this Acting Up Policy refers to Political Reasons or Factors this shall include:

1. Recommendations for hiring, promotion or any other employment term for specific persons from public office holders (and/or their staffs) or political party officials that are not based on actual knowledge of the person’s work skills, work experience or other job-related qualifications.
2. Recommendations for hiring, promotion or any other employment term based on the fact that the person worked in a political campaign or belongs to a political organization or political party; or the fact that the person chose not to work in a political campaign or to belong to a political organization or a political party. The mere fact that a person worked for a political campaign for elective office does not prohibit consideration of a recommendation related to that person insofar as the basis for that recommendation relates to the person’s relevant work experience.
3. Recommendations for hiring, promotion or any other employment term based on the fact that the person contributed money, raised money, or provided something else of value to a candidate for public office or a political organization; or the fact that the person chose not to contribute or raise money for a candidate for public office or a political organization.
4. Recommendations for hiring, promotion or any other employment term based on the fact that a person is a Democrat or a Republican or a member of any other political party or group; or the fact that the Applicant is not a member.
5. Recommendations for hiring, promotion or any other employment term based on the fact that the person expressed views or beliefs on political matters such as what candidates or elected officials he or she favored or opposed, what public policy issues he or she favored or opposed, or what views on government actions or failures to act he or she expressed.

**Position** – A Position is a job to be performed by the full or part time employment of one individual. A Position exists whether it is filled or unfilled.

**Relevant Pool** - A relevant pool is a list of Eligible Employees in a bargaining unit and their seniority dates. Generally, this includes all employees in the title directly below the Acting Up

title, unless otherwise required by the CBA. The department may limit the relevant pool to work shift, location, or only those employees possessing a required license or certification if operationally necessary.

**Vacancy-based Acting Up** – Vacancy-based Acting Up is an Acting Up assignment that occurs due to a budgeted vacancy. This includes Acting Up into a position whose incumbent is acting into a budgeted vacancy.

**Waiver Request** – A Waiver Request is a request submitted by a Department Head to DHR requesting that an employee be allowed to exceed the 90-day limitation on Acting Up.

### **RULES GOVERNING ALL ACTING UP**

1. Acting Up Is the Exception, Not the Rule. Acting Up for temporary periods is sometimes unavoidable. However, it should never be the option of first resort, and departments are expected to take every reasonable step to ensure that vacancies are filled in a timely and appropriate fashion. Violating the Acting Up Policy may result in disciplinary action, up to and including discharge and ineligibility for future hire.
2. No Political Considerations. The Acting Up Policy relates to Covered Positions. Because of this, Political Reasons or Factors or other Improper considerations cannot play any part in determining whether an employee will act up.
3. Violations of Law or Rules and Regulations. No person may be selected to act up to the extent that the selection would violate any City ordinance, rule, or regulation, including the Governmental Ethics Ordinance. For example, no person may be selected to act up if selecting that employee would cause them to exercise supervisory authority with respect to a relative.
4. Reporting. All departments must fully report all Acting Up into covered Classes on a monthly basis to the Department of Human Resources (“DHR”).
5. Time Limit. Acting Up is a temporary assignment. No employee may act up for more than 90 days due to a budgeted vacancy or a long term leave of the Position’s incumbent without an approved waiver from DHR.
6. Acting Up Experience. Experience gained while Acting Up shall not be counted when considering whether an employee meets the minimum qualifications for a permanent Position.

## **ACTING UP FOR BARGAINING UNIT POSITIONS**

If the Position to be acted into is covered by a collective bargaining unit, the following procedures shall be followed, unless otherwise provided by the applicable CBA.

1. The Department Manager shall create the relevant pool by identifying all Eligible Employees. He or she shall sign an Acting Up Certification for the creation of the relevant pool.
2. After the creation of a new relevant pool and/or at the beginning of a new calendar year, each employee in the relevant pool shall be asked if they are interested in the opportunity to act up in the calendar year. Each employee must sign a departmental form indicating whether or not they are interested in opportunities that arise throughout the calendar year. If the employee indicates that he or she wants to be considered for Acting Up opportunities, he or she shall also sign an Acting Up Certification that will be attached to their acceptance form. Departments may elect to collect the employee's acting up interest form and Acting Up Certification as they rotate the relevant pool instead of at the time of creation. Occasionally, departments may only have one Eligible Employee therefore eliminating the need to distribute acceptance and declination forms. In these instances, the Eligible Employee shall sign an Acting Up Certification on the first day of their Acting Up assignment in a calendar year.
3. Departments may implement procedures regarding Eligible Employees' rights to reverse their initial decision to accept or decline the opportunity to act up, so long as the policy is applied uniformly and does not violate the terms of any applicable CBA.
4. The Department Manager shall send the relevant pool and all the signed acceptance and declination forms (if collected at time of relevant pool development) to DHR with an explanatory narrative attached stating how the Department Manager selected which employees make up the relevant pool. The narrative must also state how the Department Manager intends to rotate the Acting Up opportunity (i.e. 30-day, 60-day, or 90-day rotation).
5. Relevant pools and supporting documentation for each calendar year shall be submitted to DHR by January 31<sup>st</sup>. For vacancies arising during the year, departments must submit relevant pools and supporting documentation within fourteen (14) days of becoming aware of the need to act up.
6. Eligible Employees in the relevant pool shall be offered Acting Up opportunities on the basis of seniority. If the next employee in the Acting Up rotation declines to act up, is unable to act up, or becomes ineligible to act up, the Department Manager may proceed to the subsequent employee in the rotation. However, if the Department Manager intends to skip an employee in the Acting Up rotation who is available and willing to act up, the Department Manager must provide to

the Department Head a memorandum justifying the decision which includes providing the reasons for not selecting each employee in the relevant pool who is more senior than the selected employee. The Department Head must concur with the Department Manager's decision and sign the memorandum noting his or her approval. The Department Manager and the Department Head must sign an Acting Up Certification. The memorandum and Acting Up Certifications shall be forwarded to DHR.

7. As an alternative to the process described above, the Department Manager may use a Pre-Qualified Candidate or promotional eligibility list as the relevant pool so long as the hiring list was created pursuant to a DHR-approved hiring or promotional process. A referral or bid list is not sufficient. If the Department Manager elects to use this alternative, the department must seek approval from DHR to use the pre-existing hiring list as its relevant pool.
8. If an emergency arises and a department has the need to act up into a Position prior to the development of a relevant pool, the Department Manager must follow the CBA and act up the most senior employee who is available. The Department Manager and selected employee must fill out an Acting Up Certification.

### **ACTING UP FOR NON-BARGAINING UNIT POSITIONS**

A department should make every effort to distribute workload and timely fill vacancies in order to avoid acting up in non-bargaining unit positions. If the Position to be acted into is NOT covered by a collective bargaining unit, the department may only act up if the Position is needed to maintain minimum staffing levels for public safety purposes or unless otherwise approved in advance by DHR.

1. If a department needs to act up into a Position for a period of 30 days or less, the Department Manager may select an employee to act up in the Position at his or her discretion. The Department Manager shall complete an Acting Up Certification for his or her selection.
2. If the department needs to act up into the Position for a period of more than 30 days, the department must work with DHR to establish procedures for selection of acting up candidates in advance of the end of the initial 30-day period unless the position is for public safety purposes and the bargaining unit procedures are followed.

### **REPORTING OF ACTING UP**

All Acting Up into covered titles must be reported to DHR, regardless of duration and whether it was paid or unpaid. All departments must report Acting Up for a given month by the 15<sup>th</sup> of the following month. In addition to the documents that departments are required to submit to DHR,

departments must maintain all documents related to Acting Up and produce them to DHR or the Office of the Inspector General (“IGO”) upon request.

#### Vacancy-based or Long Term Leave Acting Up

Acting Up that occurs due to a budgeted vacancy or due to a 30 day or more absence of the Position’s incumbent must be reported electronically to DHR in an Excel spreadsheet entitled “Report of Employees Acting Up in a Higher–Graded Covered Position” to DHR-actingup@cityofchicago.org. The spreadsheet shall include the department, the month being reported, the employee names, employee numbers, the employees’ current title, the employees’ acting title, acting up days for the current month, and total acting up days for the calendar year.

#### Incremental Acting Up

Acting Up that occurs due to an absence of fewer than 30 days of the Position’s incumbent must also be reported to DHR. However, this short-term, incremental Acting Up may be reported through payroll reports.

#### Departments with No Acting Up

If a department had no Acting Up in a given month, they must still submit a “Report of Employees Acting Up into a Higher-Graded Covered Position”. The department shall type “None” in the spreadsheet and submit it to DHR.

#### Job Reclassifications

In some instances, DHR will conduct a job audit and determine that an employee is actually performing the duties of a higher-graded title. This is considered Acting Up and must be reported on the "Report of Employees Acting Up in a Higher–Graded Covered Position" spreadsheet until the employee is appointed to the higher-graded title.

### **ROTATION OF ACTING UP OPPORTUNITIES**

In general, Acting Up opportunities must be offered to other qualified employees after the first selected employee has served 90 days in the Acting Up assignment. If the department has compiled an eligibility list or relevant pool list for Acting Up, a Department Manager may select the next qualified person from either a non-bargaining unit eligibility list or the next most senior person on a bargaining unit relevant pool list without further justification. Departments may and are encouraged to rotate Acting Up opportunities in increments of less than 90 days so long as the time period is pre-established and applied consistently to the Acting Up assignment of every employee on the eligibility list or in the relevant pool. After being rotated out, employees must be allowed to return to the work location, assignment and shift that they would have held had they not acted up into the higher-graded title.

### **ACTING UP OVER 90 DAYS**

Occasionally, it may be necessary for a department to have an employee act up in excess of 90 days. Departments should allow all qualified and willing employees an opportunity to act up prior to allowing any employee to act up in excess of 90 days in a calendar year. The prohibition against Acting Up for 90 days applies to Acting Up due to a budgeted vacancy or a long term leave of the Position's incumbent. Short-term, incremental Acting Up due to an absence of less than 30 days of the Position's incumbent does not count toward the 90-day limitation. The 90-day prohibition is a limitation on the employee, not the job title, which means that an employee may not act up in excess of 90 days in any job title or combination of job titles. It is important to note that most CBAs have a time limit on Acting Up assignments into a vacancy. Departments must consult the applicable CBA and adhere to any limits imposed. This Policy's prohibition applies only within a particular department and an employee who is permanently transferred to another department within a calendar year may act up within the new department.

No employee may serve in an Acting Up assignment in excess of 90 days in any calendar year unless the department receives prior approval from DHR. The department must submit a Waiver Request in writing signed by the Department Head at least 10 business days *prior* to an employee reaching the 90-day limitation. If the department exceeds 90 days without receiving a granted Waiver Request from DHR, the department will be in violation of this Policy. DHR will examine the following criteria when determining whether to grant a Waiver Request:

1. The department demonstrates that an employee is the only employee eligible to act up. The department must submit documentation showing that all other employees in the relevant pool have either declined or already acted up for 90 days.
2. The department has taken steps toward filling the vacancy permanently.
3. The department demonstrates that the Acting Up assignment is operationally necessary.
4. If applicable, the department has obtained the necessary union agreements to extend the time limitations for acting into a particular vacancy.

The department shall submit supporting documentation in advance with the Waiver Request. If the department fails to do so, DHR's response to the request may be significantly delayed. DHR reserves the right to request additional information not detailed above in order to adequately review the Waiver Request.

### **90 Day Limitation Exceptions**

The 90 day limitation does not apply in the following circumstances:

- 1) Chicago Police Department ("CPD") when CPD is Acting Up the next person on an existing promotional eligibility list prior to the actual promotion
- 2) The Chicago Fire Department ("CFD") when CFD is Acting Up in the Division of Fire Suppression and Rescue per minimum staffing requirements outlined in the Collective Bargaining Agreement.

- 3) When an employee is found to be Acting Up after a DHR job audit and prior to the actual appointment to the recommended higher – graded title.

### Recordkeeping Consistency

When Acting Up results in additional pay for an employee, the department's payroll division must classify this additional pay as an Acting Up element entry in the City's payroll records. Acting Up element entries shall only be used to process pay resulting from Acting Up as defined in this policy. A failure to properly classify Acting Up pay will be a violation of this Policy.

### **COMPLIANCE AND GOVERNANCE**

A strong and effective compliance and governance system is critical to the success of the Acting Up Policy. The City of Chicago Hiring Plan grants oversight for this policy's compliance and governance to the Hiring Oversight Section of the IGO ("IGO Hiring Oversight").

IGO Hiring Oversight reviews, monitors, and audits key processes in the Acting Up Policy and receives complaints regarding the Acting Up process, including allegations of unlawful political discrimination and retaliation and other Improper influences in connection with Acting Up. IGO Hiring Oversight shall, when appropriate, refer complaints and other instances of non-compliance to the Investigations Section of the IGO.

It is the responsibility of every department to ensure that it is in continuing compliance with the terms of this Policy when administering Acting Up, including but not limited to ensuring that their relevant pools and eligibility lists are accurate and rotated appropriately. Any questions or concerns regarding the Acting Up Policy should be addressed to DHR.

Each Department is responsible for designating one employee who is responsible for ensuring that this policy is followed and that Acting Up is reported accurately. DHR shall report any violations (either the procedures or reporting obligations) to IGO Hiring Oversight. IGO Hiring Oversight shall maintain a written record of all violations reported by DHR and those discovered in the audit process.

Violations of the Acting Up Policy may result in discipline, up to and including termination.