

		Policy # 206
Subject: Confidential Designation		
Responsible Department: Personnel Services		
Effective Date: 4/1990		Revision Date: March 20, 2023
Ann Edwards County Executive		
David Villanueva Deputy County Executive		
Sylvester Fadal Director of Personnel Services		

1. Purpose

To set forth the instructions and criteria necessary for a confidential designation.

2. Authority

Employee Relations Ordinance, Section 2.79

3. Scope

This applies to County employees.

4. Policy

Confidential designations of selected positions protect the confidentiality of the County's bargaining position and strategy, both in general contract negotiations and in day-to-day dealing with County employee unions through processing grievances and other employee/labor relations matters. The employees who occupy designated confidential positions serve as essential members of the County's management team and their allegiance is secured by exclusion from bargaining units that include non-confidential employees.

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Consistency and control of confidential designations requires that they be deliberately restricted and not approved for the convenience of Departments or for the benefit of employees. The decision to designate a position confidential, notwithstanding employee organization appeal rights detailed in the Employee Relations Ordinance, Section 2.79.110, resides exclusively with the Office of Labor Relations.

DEFINITION:

The term confidential employee designates only those employees who are required to regularly assist County managers responsible for developing and effecting County policies within the area of County employee/labor relations. A "confidential employee" means an employee who normally participates or assists in making County policies affecting the County employees' wages, hours, and working conditions; or an employee who regularly has advance knowledge of decisions which affect employee/labor relations; or who processes information relating to the County's confidential labor relations matters.

GUIDELINES FOR CONFIDENTIAL DESIGNATION:

The following are factors in considering whether a position might appropriately designated as confidential (note that negotiations refers to impact bargaining in addition to contract negotiations):

- Is the employee directly involved in labor negotiations, grievance handling, or other employee/labor relations matters?
- Does the employee have access to negotiations notes, potential management proposals, closed session reports, bargaining strategies, bargaining research that might tend to reveal strategy, draft salary surveys, departmental positions on negotiable items, etc.?
- What is the nature of employee's access to the above information?
- Does the employee report to someone responsible for employee/labor relations matters? What is that person's role in employee/labor relations matters?
- Is the employee preparing negotiations material?

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- Is the employee routinely included in communications that effect negotiations/grievance handling?
- Is the employee aware of management's position concerning grievance disposition?
- Is the employee typically in attendance at management meetings that would involve discussion of employee/labor relations?
- Does the employee serve as a note taker at negotiations?
- Is the employee involved in drafting contract proposals?
- Is the employee involved in costing of proposals and "supposals" and would knowledge of this information potentially compromise management's bargaining position?
- Does the employee gather salary information and other data related to negotiations, and would the knowledge of such data gathering compromise management's position in negotiations or grievances?
- Is the information the employee has access to publicly available information?
- Are the employee/labor relations matters the employee has access to truly confidential or is the information known to both parties (executing settlement agreements as an example)?
- What percentage of time is the employee involved in these types of matters?
- What is the size of the department? How many bargaining units are within the department?
- Does the department have a history of many grievances and frequent negotiations?
- How many confidential positions are within the department?

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- How is the confidential work organized? Is it routed to a specific employee(s) or is it handled in a pooled fashion? Would reorganization of the work allow for fewer such designations?
- Are the confidential duties primary to the individual, or is the individual performing as a backup?
- Is the employee only temporarily assigned confidential duties? (Note that the designation itself can be time-limited.)

SPECIFICALLY EXCLUDED FROM THE "CONFIDENTIAL" DESIGNATION ARE:
Employees who do not work for a management position including employees who work for persons responsible for furnishing to management factual or statistical data but who are not designated management.

Employees who merely substitute for or assist confidential employees, or open mail for management, or who merely handle or have occasional or indirect access to confidential County labor relations information, shall not be designated "confidential" on that basis alone. Managers should instead route labor relations matters directly through another available confidential employee.

Employees who regularly spend only a small portion of their time (less than 25%) on such duties shall not be considered confidential. This does not mean that an employee who spends more than 25% of their time on confidential duties will automatically be considered confidential. Generally, the lower the percentage time an employee spends on confidential duties the more significant those duties must be for the position to be designated confidential.

The following list provides a few examples of activities that, by themselves, typically do not meet the requirements for confidential designation status. Exclusions may apply when the position is *performing "confidential" duties* as described in the Guidelines for Confidential Designation section above:

- Processing grievance settlements
- Processing wage changes resulting from negotiated agreements

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- Program budget analysis not related to developing management's bargaining position
- Access to confidential information unrelated to employee/labor relations
- Maintenance of executive management calendars or other private information that is not related to employer-employee relations

PROCEDURES:

Where a Manager believes a position may be appropriately designated confidential, Managers should obtain, complete and return a request form (add hyperlink) from the Labor Relations Office which includes:

- The incumbent's name, class title and reporting relationship
The percentage of time the employee spends processing confidential labor relations material
- What the confidential labor relations duties consist of
- An explanation of why these duties cannot be handled by another (existing) confidential designee
- The impact upon management if the request is denied

Upon receipt and review of the initial request, the Office of Labor Relations may distribute to the current incumbent a position description questionnaire (PDQ) which must be completed and returned within four weeks.

Following a review of the PDQ, a desk audit may be conducted.

If the position is found to be confidential, the Office of Labor Relations will inform the requesting department and, consistent with Section 2.79.110 of the Employee Relations Ordinance, send notice to the Recognized Employee Organization representing the class. If there is no protest of the designation under Section 2.79.110, or if a protest results in award upholding the confidential designation, the Office of Labor Relations will advise Employment Services to initiate an amendment to the annual salary ordinance. The requesting department will be informed and is responsible for promptly having the employee execute the Confidential Position Signature and Location form (add hyperlink).

If the request is denied, either by the Office of Labor Relations or as a result of an arbitration award, the department will be notified.

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Department of Personnel Services, Position Control will flag all positions designated as confidential. When confidential positions become vacant, the Payroll team will notify the Office of Labor Relations of such vacancy.

The Office of Labor Relations will determine if the vacant confidential position requires a complete review of the reason and retention of the designation prior to filling the vacant position.

If the Office of Labor Relations determines that the position warrants continuance of the confidential designation, Department of Personnel Services, Position Control, along with the department housing the position, will be notified.

If the review results in removal of the confidential designation, Department of Personnel Services, Position Control, will take action to re-designate the position to the parallel non-confidential class. Department of Personnel Services, Employment Services will initiate an annual salary ordinance amendment.

5. Review Not Applicable