

POLICY AND GUIDELINES FOR USE OF ACTING UP

A. GENERAL CONSIDERATIONS

The City and the Hiring Monitor have worked to create a process to guide departments in administering acting up into Shakman-protected titles. *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.

These guidelines relate to Shakman-protected titles. Because of this, it is never appropriate for political considerations to play any part in determining whether an employee will act up.

Please note that no individual is permitted to act up in any position or positions, for more than 520 hours in any calendar year, unless they have received an approved waiver from the Commissioner of the Department of Human Resources. See section G below.

Each department must also maintain a copy of this documentation in accord with its document retention policy. Copies of all documentation described in this policy should also be submitted to the Department of Human Resources and the Department of Law Compliance and Internal Audit Division.

These guidelines and instructions are by necessity general. It is each department's responsibility to disclose any operational problems with implementing this policy and seek guidance and approval before taking any action not in compliance with this policy. Any such requests must be made to:

Theresa Hill, Asst. Commissioner
Department of Human Resources,
Division of Workforce Compliance

City Hall, Room 1100
(312) 747-8961
Theresa.Hill@cityofchicago.org

B. DEFINITIONS

For the purposes of this acting up policy, the following terms have the meaning noted below:

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-level Shakman-protected title.

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.

Hour – An hour is any incident of acting up regardless of duration within a working hour, whether paid or unpaid. For instance, acting up in a 30 minute increment would count as an hour under this policy.

Hiring Official – A hiring official is the manager who has final authority to select which employee shall act up.

Relevant Pool – A relevant pool is a list of employees and their seniority dates in a bargaining unit who are eligible to act up in a higher rated title. Generally, this includes all employees in the title directly below the acting up title. However, please consult any applicable collective bargaining agreements in determining which employees must be included in a relevant pool.

Screening and Eligibility List – A Screening and Eligibility List is a listing of all employees who expressed interest in acting up and it describes which employees are actually eligible to act up in the higher rated title.

Shakman Certification – A Shakman Certification is a certification that political considerations played no role in the decision to act up.

C. USE OF ACTING UP FOR NON-BARGAINING UNIT EMPLOYEES

If the employee is in a Shakman-protected position, which is **not in a bargaining unit**:

- 1) If an employee will act up for a period of 168 hours or less, the hiring official may select an employee to act up in the position at his/her discretion. Departments **MUST** report all acting up, including those who will act up less than 168 hours.
- 2) If an employee will act up for a period of greater than 168 hours but less than 520 hours, the hiring official must do the following:
 - a) Inform all employees eligible to act up in the higher position of the opportunity to act up *in writing*. The notice must include the criteria used to evaluate applicants

for a permanent position. The notice must also include a date certain for submitting materials and the amount of time the eligibility list will be active, which is not to exceed one calendar year. The notice must request that interested employees submit a resume and a statement of their interest in the position. Save a copy of the notice.

- b) The notice of the opportunity to act up should be communicated electronically to employees within the hiring department who have a City email account via the City's email system when feasible. In addition, the notice must be posted in a conspicuous and accessible place in or about the workplace where all eligible employees perform their duties.
- c) Collect the materials from interested employees. Employees must be screened to determine if they have the present ability to do the job without further training. The screening must be based on criteria previously approved by the Department of Human Resources. Save a copy of all materials submitted by employees and all records of the screening.
- d) Record the results of the screening on the attached form entitled, "Employees Acting Up in Higher Position – Screening and Eligibility List" (see **Attachment A**). Any person who did screening must also complete a "Shakman Certification – Employee Acting Up in Higher Position" form (see **Attachment B**). Save copies of all documents relating to the screening.
- e) Interview those employees whom, based on the screening, have the present ability to do the job without further training. Record that the employee has been interviewed on the "Employees Acting Up in Higher Position – Screening and Eligibility List" form (see **Attachment A**). In addition, each interviewer must complete a Shakman Certification – Employee Acting Up in a Higher Position" form (see **Attachment B**). Save copies of all documents relating to the interview process.
- f) The hiring official may select from a candidate from the "Employees Acting Up in Higher Position – Screening and Eligibility List" for the acting up position. The hiring official must prepare a memo to their Department Head and the Department of Human Resources that explains why the candidate was chosen. (see **Attachment C**) Once the decision is made, complete the Checklist to Accompany Shakman Certifications (see **Attachment D**) and send it and all other selection documentation to the Department of Human Resources Division of Workforce Compliance.

3) As an alternative to the process described in subsection 2 above, the hiring official may use the bargaining unit process described in Section D below. If the hiring official elects to use this alternative, "seniority" shall mean the continuous service date of the employees. Also, in the case of a non-bargaining acting up, relevant pools may and often will consist of more than one job classification. Where a relevant pool consists of more than one job classification, the hiring official must describe in the explanatory narrative that accompanies the relevant pool how the rotation among the multiple job classifications will occur. Based on a review of the relevant pool and explanatory narrative, the Department of Human Resources Workforce Compliance Division may require changes to the relevant pool or require that the hiring official use the standard non-bargaining unit process.

D. ACTING UP FOR BARGAINING UNIT EMPLOYEES

If the employee is in a Shakman-protected position that is **in a bargaining unit**:

- 1) If the collective bargaining agreement contains specific provisions detailing the use of acting up, follow those procedures. That means that any specified process or limitation in that contract controls. For example, certain agreements (e.g. AFSCME, Laborers) require rotation of acting up opportunities among those qualified. However, if the contract does not prescribe a particular approach or is otherwise silent, the following procedures must be followed.
- 2) If the collective bargaining agreement is silent:
 - a) If an employee will act up for a period less than 520 hours, the hiring official must do the following:
 - a1) Identify all those employees who would be eligible to act up in the higher position. Normally this will be the classification immediately below the title where the employee will be acting up. Compile the names and the dates of seniority for each employee listed into a relevant pool. The hiring official may restrict the relevant pool by shift and geographic subdivision.
 - a2) The hiring official must attach to the relevant pool an explanatory narrative stating how the hiring official selected which employees make up the relevant pool. The narrative must also state how the hiring official intends to rotate the acting up opportunity and under what circumstances he/she normally uses actors. Save a copy of the relevant pool and explanatory narrative.
 - a3) The hiring official must send the relevant pool to his/her departmental personnel liaison. The departmental personnel liaison must then forward the relevant pool to the Department of Human Resources Workforce Compliance Division for approval. Upon approval, the relevant pool is valid until all names on the list have been exhausted or one year has passed since the list was created whichever comes later. Any necessary edits to the relevant pool because employees have begun or ended their employment or assignment must be submitted to the Department of Human Resources Workforce Compliance Division for approval.
 - a4) Eligible employees should be reviewed on the basis of seniority. If a position is filled with the most senior employee in the relevant pool, then no further justification is necessary.
 - a5) If the hiring official selects an employee other than the most senior employee, the hiring official 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 to the selected employee. The department head must concur with the hiring official's decision and sign the memorandum noting his or her approval. A sample memorandum is attached (see **Attachment E**). Save a copy of the memorandum.

- b) Once the decision is made, the person who created the relevant pool and, if applicable the hiring official who selected a person not the most senior for the position, must complete a Shakman Certification – Employee Acting Up in a Higher Position” form (see **Attachment B**) and send it and all other selection documentation to the Department of Human Resources Division of Workforce Compliance. The person selected to act up should complete an Attachment B as well.
 - b1) A separate attachment B must be completed by the department head attesting that no political considerations factored into the creation of the relevant pool. When preparing the department head's attachment B, the employee name and employee job title fields should be left blank and “ – relevant pool” should be placed after the name of the acting title.
 - b2) A separate attachment B must be completed by the employee acting up each time the employee is selected to act up.
- 3) As an alternative to the process described in subsection 2 above, the hiring official may use any preexisting hiring list for the acting up position to select a member to act up. The hiring list must have been created pursuant to a Department of Human Resources approved hiring or promotional process. A referral list or other pre-selection list is not sufficient. If the hiring official elects to use this alternative, the department must seek approval from the Department of Human Resources Workforce Compliance Division to use the preexisting hiring list as its relevant pool. The hiring official must attach an explanatory narrative as with a relevant pool.

For example, certain departments (e.g. Fire Department) maintain promotional lists for positions where there is a need to act up. In those situations, the department may select individuals to act up from that list without further screening; however, the department must make the selection in order of seniority and rotate the opportunity in order of seniority as with a relevant pool. If a selection is made using this alternative, send a copy of the promotional list and all applicable Shakman Certifications (Attachment B) to the Department of Human Resources Division of Workforce Compliance.

E. REPORTING OF ACTING UP

All acting up into Shakman protected titles **MUST** be reported, regardless of duration or whether it was paid. For example, if an individual acts up for one hour in a given month, that individual must be included on the department's monthly report of acting up.

On the 6th of each month (or the next week day after the 6th) submit to the Department of Human Resources and the Department of Law Compliance and Internal Audit Division, the attached "Report of Employees Acting Up in Higher Position" form (see **Attachment F**) or your department's PRE-APPROVED modification. This form **must be submitted by all departments** irrespective of whether any employees have acted up within the last month.

Departments may modify acting up reporting forms to ADD information relevant to your operational needs. Departments shall not SUBTRACT anything from the acting up reporting forms, nor shall departments modify the Shakman certification.

F. ROTATION OF ACTING UP OPPORTUNITIES

In general, Acting Up opportunities must be offered to other qualified employees after the first selected employee has served 520 hours in the acting up position. If the department has compiled an eligibility list or relevant pool list for acting up, a hiring official 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. In those cases, all persons who participated in the process of acting up any such employee shall complete a Shakman Certification – Employee Acting Up in a Higher Position" form (see **Attachment B**) and send it to the Department of Human Resources Division of Workforce Compliance and the Department of Law Compliance and Internal Audit Division.

In addition, departments may and are encouraged to rotate acting up opportunities in increments of less than 520 hours (for example 168 hours), where appropriate.

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 title.

G. ACTING UP OVER 520 HOURS

Occasionally, it may be necessary for a department to have an employee act up in excess of 520 hours. Departments should allow all qualified and willing employees an opportunity to act up prior to allowing any employee to act up in excess of 520 hours in a calendar year. The prohibition against acting up for 520 hours applies to acting up hours worked both consecutively and incrementally. This prohibition is a limitation to the employee, not the job title, which means that an employee may not act up in excess of 520 hours in ANY job title or combination of job titles. However, this 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 position in excess of 520 hours in any calendar year unless:

