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Administrative Order
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DIRECTIVE TO STATE AGENCIES, UPDATING GUIDELINES FOR COMPLIANCE WITH THE *RUTAN* DECISION

This Administration is firmly committed to adhering to the principles articulated in the United States Supreme Court decision, *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990) ("*Rutan*"), and its progeny, as well as Administrative Order No. 1 (1990), No. 2 (1990), and No. 1 (1991) (collectively, the "Prior Administrative Orders"), all of which prohibit consideration of political affiliation or support (or lack thereof) in connection with hiring, promotion, transfer, or recall from layoff, with respect to employment positions covered by the *Rutan* decision ("*Rutan*-covered positions").[1]

It is the intent of this Directive (i) to provide guidance and clarification with respect to certain aspects of the Prior Administrative Orders, all of which are hereby affirmed and shall remain in effect, and (ii) to announce certain new guidelines and procedures relating to personnel transactions for *Rutan*-covered positions. It is not the intent of this Directive to mandate a single, specific set of personnel procedures to be used in connection with every single personnel transaction or to limit the ability of agencies, boards, and commissions to impose job-related requirements and procedures (e.g., background checks, drug testing, residency requirements, job-related driver's license requirements), in addition to those set forth below, prior to making an offer of employment, so long as they are not inconsistent with any policies or procedures described herein, or any applicable laws. Instead, through the guidelines and procedures set forth below, this Directive seeks to ensure that applicable decision-making processes comply with *Rutan* and rely upon politically neutral, merit-based criteria.

I. Scope

This Directive shall apply to all personnel transactions relating to *Rutan*-covered positions of State agencies, boards, and commissions under the jurisdiction of the Office of the Governor ("OOG"), whether or not the positions affected by the personnel transactions in question are under the jurisdiction of the Personnel Code and Rules. That is, this Directive applies to both "code" and "non-code" positions under the jurisdiction of the OOG.

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[1] As used in this Directive, "Rutan-covered" refers to an employment position that is subject to the requirements of *Rutan*.

In the event of a conflict between this Directive and the requirements of a collective bargaining agreement, the collective bargaining agreement shall govern. In the event of a conflict between this Directive and any policies or procedures relating to employment positions or personnel transactions that are set by statute (*e.g.,* the Veteran Preference set forth in 20 ILCS 415/8b.7), the policies and procedures set by statute shall govern.

II. Employment Applications

A. Submission of Applications

1. The Bureau of Personnel in the Department of Central Management Services ("CMS") has served and shall continue to serve as the central point of intake for all employment applications under the jurisdiction of the Personnel Code and Rules ("coded classifications").

2. Each *Rutan*-covered position shall be posted on the Work 4 Illinois website, <http://www.work.illinois.gov>, which can be accessed from home or through public access computers at most public libraries or State offices.

3. Any employee of an agency, board, or commission under the jurisdiction of the OOG who receives a personnel request, referral, or recommendation for a *Rutan*-covered position shall refer the person making the request, referral, or recommendation to CMS Governmental Affairs for disposition.

B. Grading of Applications

1. For coded classifications under the jurisdiction of the OOG, subject to any time limitation on when applications will be accepted and how long an application can remain active, CMS personnel shall grade each application for a classification in the order in which the application has been received and shall not grade any application out of order. Subject to the limitations, above, all other classifications under the jurisdiction of the OOG, but not under the jurisdiction of the Personnel Code and Rules ("non-code positions") shall be graded in the order received by the employing agency, board, or commission.

2. Each application shall have the name of the applicant and any references or any other personally identifiable information redacted so that the grading can be done on a blind basis. CMS personnel shall perform any necessary credential verification in a manner that preserves the integrity of the blind grading process. As soon as practicable, CMS will move towards a fully automated system.

3. The grader shall employ objective, merit-based criteria in his or her grading of applications. Grading shall be free from all political considerations.

4. All documents and data regarding applications for *Rutan*-covered positions shall be available for regular auditing.

C. Creation of Eligibility Lists

In creating an open competitive eligible list, to be utilized by an agency for an open *Rutan*-covered position, CMS shall redact the names of the applicants and other personally identifiable information so that the selection of candidates for an interview pool can be done on a blind basis.

D. Job Descriptions

Job descriptions shall be reviewed and, if necessary, updated prior to any *Rutan*-covered posting, to reflect current duties, responsibilities, and requirements.

III. The Interview, Evaluation, and Selection Process

Administrative Order No. 2 (1990) contains detailed procedures and guidelines for conducting applicant interviews for *Rutan*-covered positions in a manner intended to ensure compliance with *Rutan*. This Directive reaffirms the applicability of the interview, evaluation, and selection guidelines set forth in Administrative Order No. 2 (1990) and supplements that Order with the following additional procedures and guidelines:

A. Training of Interviewers

1. CMS and other State agencies, boards, and commissions have training programs to orient agency employees responsible for making personnel decisions to the State's *Rutan* hiring procedures and corresponding interview and selection methods ("*Rutan* training"). *Rutan* training and certification has proven to be an effective component of the State's *Rutan* compliance program. The current website to register for CMS's *Rutan* training is <http://www.state.il.us/cms/2_servicese_edu>.

2. Any agency employee who participates in the interview of a candidate for a *Rutan*-covered position must have successfully completed *Rutan* training. A non-certified member of an interview panel may only function in a technical expert capacity; he or she may ask specific technical follow-up questions to clarify a response and assist the certified interviewers in

understanding technical responses given by the interviewee, but he or she may not participate in the evaluation and scoring process.

3. As soon as practicable, but no later than six months after the date of this Directive, CMS shall develop a Refresher Course for re-certification of *Rutan* interviewers. The Refresher Course may be offered online or in any other appropriate format. The Refresher Course for interviewers shall review key elements of the State's *Rutan* compliance program, offer updates as to changes or enhancements in compliance policies and practices, and include an evaluative component to ensure that those taking the Refresher Course continue to have an appropriate knowledge of compliance guidelines and procedures. Once the Refresher Course is implemented, each *Rutan* interviewer must successfully complete the Refresher Course and be re-certified at least once every 3 years.

B. Interview Panels

1. *Rutan* interviewers must make their assessments of candidates based upon their responses to a pre-determined and uniform set of job description-related questions that are developed prior to posting and posed during the interview (as outlined in Administrative Order No. 2 (1990)), in an atmosphere where interviewers are free of advance knowledge of candidates and of outside influences. *Rutan* interviewers must be insulated from any attempts to sway their assessments or hinder their objectivity. No interview panel should include, either as interviewers or as technical advisors, any person who is related to, or otherwise would have a conflict of interest in connection with evaluating, any of the applicants for the position.

2. Since multi-member interviewer panels provide greater input and reduce the risk of improper influence in the hiring process for *Rutan*-covered positions, agencies shall utilize such panels rather than single interviewers in the interview and evaluation process. Members of the interview panel must remain consistent throughout the course of the interview process for a position. A technical advisor who has not completed training to be a certified *Rutan* interviewer shall not be considered a member of an interview panel for purposes of determining the numerical composition of the panel. Under limited circumstances, the Director of CMS or his or her designee may approve the use of single interviewers for *Rutan* interviews and evaluations, but only after the director of the requesting agency provides written justification for the use of a single interviewer.

C. Interview, Evaluation, and Selection of Candidates

1. Administrative Order No. 2 (1990) contains appropriate guidelines for the interview and evaluation of candidates, and it is hereby affirmed. In addition to those guidelines, the following guidelines shall also apply to the interview and evaluation process for all *Rutan*-covered positions.

2. To the extent practicable, the agency shall interview all reachable applicants. In situations where it is not practical to interview all reachable applicants, the agency shall use a standardized method to select the names of candidates to interview for a position. Such a method shall be based on: (i) factors related to the merits of the individual applicants, (ii) random selection, or (iii) any other reasonable, impartial, and legally compliant standard. In the event that an agency uses a method other than random selection, however, it shall create a written record, specifically identifying the alternative selection method used and the justification for its use.

3. Prior to commencing interviews for a *Rutan*-covered position, the interview panel shall ensure that the Hiring Criteria and Interview Questionnaire agreed upon for the interviews and developed prior to posting are preserved and made a part of the *Rutan* file for that position. *Rutan* files must be maintained separately from employee personnel files.

4. Copies of the Interview Questionnaire, which shall include the interviewer(s) summary(ies) of a candidate's responses to each question and the weighted score assigned by the interviewer(s) thereto, shall be placed in the *Rutan* file and preserved.

5. A Candidate Evaluation Form, reflecting the interview assessments of the candidate's qualifications against each criterion for the position at issue, should be preserved for each candidate interviewed and made a part of the *Rutan* file for the position. Each member of the interview panel shall sign and date the form and certify that the evaluation was not based on political party affiliation or support (or lack thereof).

6. The Employment Decision Form for the position shall be preserved and made a part of the *Rutan* file for the position. The form shall include a written justification for the agency's decision as to the candidate chosen to be hired for the position. The agency director or his/her designee shall sign and date the form and certify that the employment decision was not based on political party affiliation or support (or lack thereof).

7. In the event that an agency decides to cancel an opening rather than hire any of the interviewed candidates, a written justification for the cancellation decision shall be included in the *Rutan* file.

D. Retention of Records

1. Each agency shall maintain *Rutan* files for each job position number in chronological order, so that hiring decisions can be audited.

2. *Rutan* files shall be maintained for a period of three years from the date of the employment decision or in accordance with agency record retention policies, whichever is longer, at which time the files shall be transferred to the State Records Center for disposition in accordance with the State Records Act, 5 ILCS 160/1 *et seq*.

IV. Savings Clause

Nothing in this Directive shall be construed to contravene the terms of any collective bargaining agreement or any State or federal law.

V. No New Rights Created

Nothing in this Directive is intended to create any new right or benefit, substantive or procedural, enforceable at law by a party against the State of Illinois, its agencies, boards, commissions, officers, or employees, or any person.

VI. Severability

If any provision of this Directive is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

VII. Effective Date

This Directive shall become effective immediately.

Unless otherwise noted, to the extent any new requirements in this Directive are not already fully in place, the responsible State agencies, boards, and commissions under the jurisdiction of the OOG shall have 120 days to become fully compliant.

Pat Quinn

Governor Pat Quinn