



To: Board of Directors
From: Anne Ehresman, Interim Executive Director
Date: June 24, 2024
Re: CONSIDERATION OF EMPLOYEE SEVERANCE PROPOSAL

Introduction and Background

The purpose of this agenda item is for the CHAC Board to consider providing severance to those employees with more than one year of continuous employment with CHAC. The dissolution of CHAC is severely impacting dedicated employees. All employees have to be laid off; no guarantee of employment with Pacific Clinics was included in the net asset transfer. CHAC is unable to extend COBRA medical benefits and will terminate its 401k retirement plan. The purpose of severance is to provide a cash payment to employees who are involuntarily separated to soften the blow and to acknowledge their years of service. In addition, in order to receive severance, employees will sign a separation agreement that includes stipulations that the employee will not disparage or pursue legal action against the organization.

Severance Proposal

The severance proposal recommended by staff in consultation with Board Chair Kevin Duggan, Leona Pearce, Vice Chair, and George Tyson, Treasurer includes two weeks for each continuous year of CHAC employment with a 6-month maximum or cap. Severance would be offered to 23 employees who meet this requirement. In addition to the continuous employment requirement, being a CHAC employee as of May 10, 2024 is also a precondition to the severance. Severance is not dependent upon an offer or acceptance of employment by Pacific Clinics or another employer. Employees who are offered severance must sign a separation agreement in order to receive severance.

MINIMUM	MAXIMUM	ESTIMATED TOTAL
Two-weeks/year	6-month	\$380,000

The severance payments are contingent upon the execution of Net Asset Transfer Agreements by both CHAC & Pacific Clinics.

“Disqualified Persons” Question?

In response to board member Chris Clark’s question whether the proposed severance for CHAC employees could be considered an “excess benefit to disqualified persons” under the Internal Revenue Code (“IRC”) § 4958, staff examined the code provision and regulations.

I consulted with our HR Counsel Sarju Naran at Hoge Fenton to review this matter and its applicability to the list of potential employees who would be offered severance. He reviewed the scope of responsibilities of key employees to determine if they might have “substantial influence” over the organization and ultimately referred us to the Novogradac CPA that prepares our annual 990 tax filing.

I contacted Paul Scudder at Novogradac for additional guidance. Paul provided us with IRS information on “Disqualified Persons” and a Rebuttal Presumption Checklist to guide us on our due diligence. Excerpts from the materials provided by Novogradac:

IRC § 4958 and the Regulations cover “disqualified persons.” These persons are generally the officers and directors of the organization (and possibly a few other influential persons in the organization) holding the positions during the prior five-year period ending on the date of the compensation transaction. The first time you go through the procedure, you may have to ask advice of a lawyer or accountant to determine exactly who in your organization are classified as disqualified persons.

The decision-making body must document the basis for its determination concurrently with the approval. The documentation must contain: (1) the terms of the approved transaction and the date approved; (2) the members of the decision-making body who were present during debate on the transaction that was approved and those who voted on it; (3) the comparability data that was relied on by the decision-making body and how the data was obtained; and (4) any actions by a member of the decision-making body having a conflict of interest

“Disqualified Persons” are defined as “someone who was in a position to exercise substantial influence over the affairs of the applicable tax-exempt organization at any time during a 5-year period ending on the date of the transaction.... Persons who hold certain powers, responsibilities, or interests are among those who are in positions to exercise substantial influence over the affairs of the organization.”

The list of employees recommended for severance with more than one year of continuous employment with CHAC does not include any members of the Board of Directors or executive leadership of the organization (such as Executive Director, Finance Director, Director of Human Resources who are specifically identified as disqualified persons in the federal regulations).¹ These employees are responsible for the day-to-day operations of CHAC and have not participated in any decisions or recommendations related to compensation or severance. Based on my discussion with the HR attorney and the information received from Novogradac, it does not appear any of the CHAC employees being considered to receive severance fall within the definition of “Disqualified Persons.”

Proposed Severance is Reasonable

It is possible to create a rebuttable presumption that the proposed compensation is not an excess benefit transaction. To address any concerns about severance being considered an excess benefit, staff has completed due diligence to present documentation to the Board that the proposed severance is reasonable and the severance complies with IRS requirements. Payments are presumed to be reasonable and at fair market value and a rebuttable presumption is created if three conditions are satisfied. First, the compensation or severance in this case is approved by the Board. Second, the board has obtained and relied upon appropriate data as to comparability prior to making its determination. Third, the Board adequately documents the basis for its determination.

Comparability Data

Staff presents the following data about comparability for the Board to consider in making its decision about the severance proposal. CHAC employee salaries have been historically low compared to similar behavioral health providers in Santa Clara County. The [Fair Pay For Northern California Non-Profits Compensation & Benefits Survey Report](#) was used to analyze CHAC salaries in 2022 and in 2023 to make sure we calibrated compensation near the mid-point for comparable positions for organizations of our size in San Mateo/Santa Clara Counties. Employees did not receive a cost-of-living increase in fall 2023

due to the austere FY23-24 budget so their wages have remained static since fall 2022. The Santa Clara County Grant awarded in October 2023 enabled employees to receive a one-time 5% bonus in January 2024 based on their 2023 annual salary.

I reached out to four nonprofit and government organizations in Santa Clara County who provide behavioral health services to inquire about their severance practices and policies: El Camino Health Care District, Pacific Clinics, The Health Trust, and Children’s Health Council. These entities offer severance ranging from *two weeks per full year of service with a maximum of 12 weeks* to a tiered approach based on years of service and organizational hierarchy *maxing out at 9 weeks with another maxing out at 18 weeks* of severance pay. *One organization adds additional compensation based on age beyond their max of 16 weeks for employees over 40.* Each of these organizations are able to offer access to COBRA benefits and in some instances, they include an additional cash payment to cover one month of health care expenses.

Based on the complete dissolution of CHAC, inability to provide access to COBRA health care benefits, inability to provide employment verification to future employers, and the historical practice of compressed wages, the proposed severance is reasonable. The amount of severance being proposed is commensurate with the information provided from similarly situated nonprofit agencies at a rate of two weeks per year of employment. Extending beyond 18 weeks to a maximum of 26 weeks recognizes CHAC’s unique situation and acknowledges the dedication and commitment of long-time employees.

NUMBER OF EMPLOYEES	SEVERANCE
3	2 weeks
4	4 weeks
1	6 weeks
2	8 weeks
1	10 weeks
1	12 weeks
2	16 weeks
1	20 weeks
8	26 weeks

RECOMMENDATION

Adopt a Resolution Approving Severance to certain CHAC employees.

ATTACHMENT: RESOLUTION 2024-3

List of Employee Job Titles Recommended for Severance

CHAC (Community Health Awareness Council)

Decisional Unit: All Company

Reason for layoffs: Asset sale of Company

Layoff selection criteria: All Employees

Severance criteria: >1 Continuous years of employment

Title
Director of Quality Assurance
Database Analyst
Director of Development
Fundraising Program Assistant
Office Manager
Director, Family Resource Centers
Family Engagement Coordinator
Program Associate (Administrator)
Childcare Coordinator
Director – School-Based Services
Program Director, School-Based Psychoeducation Groups
School Based Services Administrator
APA Training Supervisor
APA Clinical Supervisor/Director, Latinx Training
Clinical Supervisor, Doctorate Practicum
Director CHAC/arts + MVLA Coordinator
Clinical Supervisor
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NOTE: CHAC Board of Directors receive no compensation and the executive leadership services are currently provided by independent contractors who will receive no additional compensation beyond the scope of their contract. For these reasons, neither the board nor the contractors would fall within the definition of “disqualified persons.”