

Policy on Employee Criminal Background Screening

Purpose

This policy is to promote the safety and security of our campus community, with specific attention to the special risks associated with providing programs for children on University campuses and centers. The policy is also intended to acknowledge mandates set forth by Pennsylvania law and policies of the Pennsylvania State System of Higher Education's (PASSHE's) Board of Governors, requiring the establishment or modification of standards and processes for initiating and evaluating prescribed background checks and their associated document management.

Scope

This policy covers all University faculty, administrators, coaches, staff, student employees, summer camp employees, independent contractors, and volunteers in both University-sponsored and non-University-sponsored programs, conducted on all University-owned or leased properties.

Policy

West Chester University sets forth the following policy provisions to satisfy the dual purposes of promoting the safety and security of the campus community through responsible employee applicant and employee screening, as well as to satisfy the mandates set forth in the in PA Act 153 of 2014, amending the Child Protective Services Law and the Pennsylvania State System of Higher Education's Board of Governors' Policy 2009-01, relating to Criminal Background Investigations, and Policy 2014-01-A, relating to Protection of Minors:

Exclusions

Staffing of events on University campuses and centers not subject to this policy are those:

- Open to the public which may be attended by minors at the sole discretion of their parents or legal guardians,
- Private events where minors may attend under parental or legal guardians' supervision,
- Other programs as may be designated by the President or the President's designee in advance and in writing,
- Temporary guest speakers, presenters, and other individuals who have no direct contact with program participants other than short-term interactions supervised by program staff; and fellow students whose only role is as a participant in education, services, or programs offered, also fall outside the purview of this policy.
- A student employee or WCU student volunteer who has no direct contact and/or routine contact with a minor/child during the course of their employment/volunteer duties; except for the university departments that the Office of Human Resources has deemed mandatory for clearances to be obtained for student employment/volunteer work.

Criminal Background Screening

All current employees, including student employees, and volunteers are required to obtain criminal background clearances on a cycle of every five years. New employees and volunteers must initiate criminal background clearances at the time of hire. Offer letters, official offers, and start dates will be provided contingent with the successful completion of criminal background

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clearance processes. No employee, volunteer or contractor is permitted to begin work without the successful completion and review of all clearances.

- **Criminal Background Clearances:**

In all cases, clearances must include three levels of screening:

- Pennsylvania State Police (PSP) Criminal History search,
- Pennsylvania Child Abuse History search, and
- Federal Criminal History search, including a fingerprinting requirement.

- **Convictions:**

Only felony and misdemeanor convictions may be considered with respect to general suitability for employment and suitability for employment in the specific position for which he or she is being considered.

- **Refusal:**

Applicants refusing to submit to the criminal background screening will be considered to have removed themselves from the applicant pool by failing to complete this portion of the search process. If an employee refuses to submit to a criminal background screening process required or authorized by this policy, that failure will be considered grounds for immediate disqualification from continued employment.

- **Costs:**

All costs associated with applicant, employee, and volunteer background check screenings required to comply with the provisions of this policy will be paid by the University provided the screenings follow the standard process outlined by the Compliance Department.

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Costs associated with camps and conferences may be charged back to the offering program.

- **Emergency Provisional Employee Status:**

Some clearances may take as long as 4-6 weeks to process. When emergency staffing needs require the University to hire an employee prior to all required clearances being returned, a provisional status may be assigned to permit the employee to work. Provisional status may be carried for a maximum of forty-five (45) days for new employees, prior to receiving the required clearances – and only under the following conditions:

- The University has documented proof that the clearances have been requested,
- The University has no knowledge or information to suggest the applicant should be disqualified
- The applicant swears in writing that he or she has not committed offenses that would disqualify him or her from employment under the terms of this policy.

Emergency Provisional Status requires written approval from the CHRO. Approval is based on an emergency basis and would result in failure of the University to meet a critical and immediate University mission. It is assumed by the nature of the emergency request that there are no other alternatives available beyond the emergency hire.

While in a provisional status, neither an employee may work alone with minors. At a minimum, a regular employee must always work in the

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immediate vicinity to satisfy this restriction. If previously undisclosed information that disqualifies employment is obtained by the University from the criminal background screening process, the provisional employee status may be immediately terminated and barred from all future employment opportunities at West Chester University.

Criminal Background-Related Records

All records resulting from criminal background investigations are classified as confidential and must be maintained by the Office of Human Resources in a location separate from employee personnel files, and inaccessible to supervisors and others who might otherwise have access to an individual's personnel records. Criminal background records are not subject to Pennsylvania's Right-to-Know law (P.L. 6, No.3), and may only be released to third parties by court order from a competent jurisdiction. The Office of Human Resources shall also serve as the repository for volunteer criminal background documents with the same access and confidentiality requirements as employee criminal background records. Criminal background records must be maintained for a minimum of 25 years from creation of the record. Disposal of records must be through secure means, including shredding of paper documents and erasing electronic files. If both exist, the shredding and erasing will be done as close to simultaneously as possible. Erasure of electronic files must be done in such a way that they cannot be recovered.

Certifications Requirements Prior to Use of University-owned or Leased Facilities by Program Administrators, Non-University Groups, and Independent Contractors' Employees for University-Sponsored and Non-University-Sponsored Programs or Services

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Proof in the form of a written certification must be provided to a University designee that criminal background checks have been conducted, and a determination of the fitness has been made for all adults and program staff who will be present for the program must be received by a University designee prior to the commencement of the program. Recertification of the above-mentioned groups will be required every five years. However, the University reserves the right to require annual recertification if deemed necessary.

Job Announcements

All West Chester University vacancy announcements must contain notice to all applicants that the criminal background screening requirement is a pre-condition to any offer of employment at the University.

- **Employment Application Disclosure Requirements:**

University employment applications must contain a section soliciting disclosure of all criminal convictions, including both felonies and misdemeanors. As further guidance to completing that section of an employment application accurately, a conviction is defined as an adjudication of guilt before a court, district justice or magistrate, for a violation of law resulting in a fine, sentence or probation. A plea of nolo contendere (no contest) is considered a conviction for purposes of disclosure on the University's employment application. Minor traffic violations, offenses committed before an applicant's 18th birthday adjudicated in juvenile court under a Youth Offender Law, and any charges that have been expunged by a court or after successfully completing an Accelerated Rehabilitation Disposition Program may be disregarded. Failure to disclose criminal convictions on one's employment

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application or making false statements during the screening or interview process will result in disqualification from employment, regardless of when the falsification is discovered by the University.

- **Employee and Volunteer Reporting Requirements Relating to Arrests or Convictions:**

Any current employee or volunteer who is arrested for or convicted of a violation of the *Pennsylvania Crimes Code*, The Controlled Substances, Drugs, Devices, and Cosmetics Act of Pennsylvania, or who has been named as a perpetrator in a reported or indicated incident of child abuse, or is listed on a statewide data base for child abuse, must provide actual, written notice to the Chief Human Resources Officer within seventy-two (72) hours. Failure to do so is grounds for discipline, up to and including termination of employment or volunteer status.

- **Procedures:**

- **Background Checks Program Accountability**

All University employee and volunteer criminal background screening will be conducted by the WCU Office of Human Resources through its criminal background screening vendor. All costs will be paid by the University provided the standard screening process outlined by the Compliance Department is followed.

- **Standards for Evaluating Criminal Convictions for Employees not Working Directly with Minors:**

- **General Review Standard:**

Criminal convictions will be reviewed for the purpose of

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determining whether or not they constitute grounds for employment disqualification and non-suitability for volunteer status.

The following criteria will be used:

- How recent was the offense(s)?;
- How severe was the offense(s)?; and
- How relevant was the offense(s) to the risks posed by the position for which the applicant is being considered?

- Specific Reportable *Title 18, Pennsylvania Crimes Code (2010)*

Violations Which, By Their Nature, Constitute Immediate

Disqualification from University Employment or Volunteer Status:

- criminal homicide (Chapter 25)
- aggravated assault (Section 2702)
- stalking (Section 2709.1)
- kidnapping (Section 2901)
- unlawful restraint (Section 2902)
- rape (Section 3121)
- statutory sexual assault (Section 3122.1)
- involuntary deviate sexual intercourse (Section 3123)
- sexual assault (Section 3124.1)
- aggravated indecent assault (Section 3125)
- indecent assault (Section 3126)
- indecent exposure (Section 3127)
- incest (Section 4302)
- concealing the death of a child (Section 4303)
- endangering the welfare of children (Section 4304)

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- dealing in infant children (Section 4305) (trading, bartering, or selling infant children)
- prostitution and related offenses [Section 5902(b)]
- dissemination of obscene and other sexual materials to minors and performances [Section 5903© and (d)]
- corruption of minors (Section 6301)
- sexual abuse of children (Section 6312)

- **Specific Drug-Related Felonies under Pennsylvania's *The Controlled Substance, Drug, Device and Cosmetic Act of 1972* (P.L. 233, No. 64)**

committed within the five years preceding application for employment are also bars to University employment or volunteer status.

- **Pennsylvania Child Abuse History:**

A founded or indicated child abuse report reflected on the statewide database maintained by the Pennsylvania Department of Human Services is also a bar to University employment.

Review of Adverse Reports

The Chief Human Resources Officer is responsible for determining if a conviction under Section V. of this policy is a bar to University employment or volunteer status. In the absence of the Chief Human Resources Officer, the Director for Labor Relations is his or her designee for these determinations. The Chief Human Resources officer will consult with University Legal Counsel and University division heads, as necessary, when making these determinations. If an applicant, employee or volunteer seeks information regarding a criminal conviction or child

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abuse history report that has been used as a basis for disqualifying the applicant, employee or volunteer, the background checks vendor will provide a copy of the report or reports to the requestor. The applicant, employee or volunteer will then have a statutory period to contest any adverse information contained in the report(s). However, the University is not required by statute to suspend a search or hold an employment or volunteer decision in abeyance until the appeal is heard.

Notice of Rights and Release Authorization Requirements

Criminal background-related reports are subject to the Fair Credit Reporting Act (FCRA). The University's background check vendor will provide all related notices and obtain completed authorization forms before starting the clearance process. When the Office of Human Resources receives notice from the vendor of substantial address discrepancy falling under the Fair and Accurate Credit Transactions Act of 2003 (FACTA)'s "*Discrepancy Rule*", the Office of Human Resources will compare the vendor-supplied address information with the information provided to the University by an applicant, employee or volunteer. If the discrepancy cannot be resolved by that means, the Office of Human Resources will request a copy of the applicant, employee or volunteer's current state driver's license or other bona fide proof of residency from the holder to verify the address in order to reach a reasonable belief that the background check reports relate to the applicant, employee or volunteer.

References

Board of Governors' Policy 2014-01-A: "Protection of Minors"; Board of Governors' Policy 2009-01: "Criminal Background Investigations"; Board of Governors' Policy 1991-04-A: "Volunteerism"; Pennsylvania Acts 33 and 153 of



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2014, amending the Child Protective Services Law; *Title 18 of the Pennsylvania Crimes Code (2010)*; the *Pennsylvania Controlled Substances, Drugs, Device, and Cosmetics Act of 1972*; the U.S. *Fair Credit and Reporting Act (FCRA)*; and the *Fair and Accurate Credit Transaction of 2003 (FACTA)*.

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