



RULES OF THE STATE PERSONNEL BOARD

478-1-.06 Recruiting, Screening, and Hiring

(1) Introduction:

This Rule provides a framework to support effective hiring and compliance with applicable employment laws and statewide policies. Each agency is responsible for developing and maintaining its own procedures for recruitment and selection that adhere to the general requirements of this Rule.

(2) Applicability:

The provisions of this Rule apply when filling any vacant position within an agency covered by the Rules of the State Personnel Board.

(3) Definitions:

For the purposes of this Rule, the following terms and definitions apply in addition to those in Rule 478-1-.02, *Terms and Definitions*:

- (a) “Adverse impact” means a substantially disproportionate rate of selection in hiring, promotion, or other employment decision of individuals of a particular race, color, religion, sex, or national origin.
- (b) “Background check” means third-party verification of background information including credit history checks, criminal history checks, and driving history checks. “Background report” is the actual report resulting from a background check.
- (c) “Business necessity” means a requirement that justifies an employment practice as necessary for effective, safe, or efficient operations.
- (d) “Job-related” means necessary for successful performance of a job.
- (e) “Sensitive government position” means a position for which the law prohibits the employment of individuals with certain criminal convictions or for which the agency head has pre-determined that certain criminal history would be an immediate disqualification from employment.
- (f) “Social Media” means all methods of communication or posting information or content of any sort on the Internet or intranet, including to one’s own or someone else’s web log or blog, personal web site, social networking or affinity web site, web bulletin board or a chat room, as well as any other form of electronic communication.

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- (g) “Vacancy” means a position that is unoccupied, or soon-to-be unoccupied, or in the case of a position with multiple part-time staff, that which is not fully occupied.

(4) Filling a Vacancy:

- (a) Agencies have the following options for filling a vacancy:
 1. Through the promotion, transfer, or demotion of a qualified employee;
 2. Through the competitive selection of a qualified individual; or,
 3. Through direct appointment of a qualified individual, as authorized within agency policy.
- (b) Agencies may fill a vacancy that is currently fully occupied (i.e., double-encumber a position) for a period of time determined reasonable by the agency to allow for the current occupant to provide needed instruction to the incoming successor.

(5) Recruiting:

- (a) Agencies have the authority to determine the scope of their recruitment activities. Any limitations that are imposed on an application process, such as accepting applications only from current State employees or agency employees, must be non-discriminatory and business-related.
- (b) Agencies will refrain from requesting applicants to disclose criminal conviction information on applications for positions that are not designated by the agency head as “sensitive government positions.” Applications for positions designated as “sensitive government positions” may continue to request criminal conviction information from applicants.
- (c) Agencies may establish and include preferred qualifications on vacancy announcements to facilitate the goal of obtaining well-qualified applicants. Any preferred qualification must be job-related.

(6) Screening:

- (a) Criteria used to screen applicants must be job-related. Examples of screening criteria include, but are not limited to: interview questions, skills or knowledge examinations, reference checks, background checks, etc.

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- (b) If an agency identifies screening criteria as having an adverse impact on a protected class, the agency must determine whether there is a reasonable and effective alternative that would reduce the adverse impact. If such alternative is not available, the agency may continue to use the screening criteria only if it is both job-related and consistent with business necessity.
- (c) Prior to hire, agencies are responsible for checking references and sufficiently verifying suitability for hire including, but not limited to, the experience, education, and/or other credentials that contributed to an individual meeting position qualifications.
- (d) Criminal history checks and credit history checks may be conducted only on individuals who have been selected for hire.
- (e) Applicants cannot be required to undergo any pre-employment physical or medical examination or drug testing until after they have received a conditional offer of employment.
- (f) Agencies are to give appropriate consideration to individuals eligible for veterans' preference as defined in Rule 478-1-.18, *Veterans' Preference*.

(7) Background Checks:

- (a) Each agency is to assess its positions to determine those subject to a criminal history check.
- (b) Applicants for positions not designated as "sensitive government positions" will not be asked to disclose any criminal history before the interview component of a hiring process.
- (c) Before accessing criminal history or seeking a background report from a third party (including the Georgia Crime Information Center), agencies will obtain written consent from the applicant and provide notice that the background information might be used for employment decisions.
 1. The notice must be a stand-alone form separate from the job application.
 2. If an agency seeks to obtain an "investigative report" involving interviews about an applicant's character, reputation, personal characteristics, or lifestyle, the agency must also notify the applicant of the right to a description of the nature and scope of the investigation.

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- (d) Upon receiving criminal history or other background information that would prevent employment, agencies are to give the applicant:
 - 1. Notice that information from the background report may prevent employment;
 - 2. A copy of the background report; and,
 - 3. A copy of “A Summary of Your Rights Under the Fair Credit Reporting Act.”
- (e) Agencies are to provide an opportunity to discuss any inaccuracies, content, and relevance of a criminal history record before making an employment decision.
- (f) Agencies may also provide a similar opportunity for an individualized assessment before denying employment due to other background information.
- (g) If it is determined that employment will be denied based on a background report provided by a third party, the agency will inform the applicant that employment was denied because of the report. The notice will also include:
 - 1. The name, address, and phone number of the company that compiled the report;
 - 2. A statement that the company providing the report did not make the hiring decision and cannot provide the specific reasons for the decision; and,
 - 3. Notice that the applicant has the right to dispute the accuracy or completeness of the report and request an additional report within 60 days without cost to the applicant.
- (h) When using background information to make employment decisions, agencies will use the information to make objective determinations about suitability for employment in a position, without regard to race, color, national origin, religion, age, disability, sex, genetic information, political affiliation, protected uniformed service, or other legally protected category.
- (i) If background checks disproportionately exclude applicants of a particular race, national origin, or other protected category from a particular job, the agency must ensure the criteria used to deny the employment are job-related and consistent with business necessity.

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(8) Social Media:

- (a) Agencies that use social media as part of their hiring process should have written policies and procedures in place to support compliance with applicable equal employment opportunity laws.
- (b) An agency that uses social media during the hiring process should disclose to potential applicants, in a manner determined appropriate by the agency, that information found on publicly posted social media accounts may be examined.

(9) Selection:

- (a) The State will not unlawfully consider an applicant's race, color, national origin, religion, age, disability, sex, genetic information, political affiliation, protected uniformed service, or other legally protected category when making selections.
- (b) Any applicants selected for hire must meet the established minimum entry qualifications for the positions, including any required license or certification, no later than the first date of employment in the position.

(10) Post-Offer Requirements:

- (a) Agencies are to ensure the timely completion of the Employment Eligibility Verification Form I-9 and E-Verify process for all hires and transfers between agencies.
- (b) Agencies are to ensure all hires and transfers are reported to the Georgia New Hire Reporting Program.
- (c) Agencies are to confirm each male hire between the ages of 18 and 26 years of age is registered with the Selective Service System or is exempt from registration.
- (d) As a condition of employment, hires and transfers must comply with the requirements of the Medical and Physical Examination Program (MAPEP) to certify they can meet the requirements of the position, with or without reasonable accommodation. (See State Personnel Board MAPEP Rules Section 478-4.)
- (e) Agencies are to comply with additional post-offer employment eligibility requirements that certain State positions may have, such as pre-employment drug testing, in accordance with applicable law, regulation, or policy.

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(11) Recordkeeping Requirements:

- (a) All records related to recruiting, screening, and hiring should be retained in compliance with the State Records Retention Schedule. Such records may include, but are not limited to:
1. Vacancy advertisements and announcements;
 2. All materials submitted by applicants for consideration (applications, resumes, etc.);
 3. References;
 4. Testing materials;
 5. Interview notes and/or records; and,
 6. Background reports.
- (b) When an agency becomes aware of an allegation of discrimination, harassment, or retaliation made by an applicant or an employee, all relevant records must be retained during the investigation and as required by law after the conclusion of the investigation.

Authority:

O.C.G.A. §§ 45-20-3, 45-20-3.1, and 45-20-4 (duties and functions of the State Personnel Board and Department of Administrative Services related to the Rules of the State Personnel Board)

State Law References:

O.C.G.A. §§ 13-10-90, 13-10-91 (verification of new employee eligibility)
O.C.G.A. § 19-11-9.2 (duty of employers to report hires and rehires to Georgia state support registry)
O.C.G.A. § 31-7-350 et seq. (nursing home employee records checks)
O.C.G.A. § 34-1-2 (prohibition of age discrimination in employment)
O.C.G.A. § 34-1-4 (employer immunity for disclosure of information regarding job performance)
O.C.G.A. § 35-3-38 (unauthorized requests or disclosures of criminal history record information; disclosure of techniques used to ensure security or privacy of criminal history records)
O.C.G.A. § 45-2-40 (employees to furnish certificate of physical fitness for employment)
O.C.G.A. § 45-19-20 (fair employment practices)
O.C.G.A. § 45-20-20 (eligible employees must register with Selective Service System; exemptions)
O.C.G.A. § 50-5-83 (definitions; requirements for state purchasing card program)

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Federal Law References:

8 U.S.C. § 1324a and Pub. L. 99-603, Immigration Reform and Control Act, (IRCA)
15 U.S.C. § 1681, et seq., Fair Credit Reporting Act (FCRA)
29 U.S.C. § 621, et seq., Age Discrimination in Employment Act of 1967 (ADEA)
29 U.S.C. § 793, Section 504 of the Rehabilitation Act of 1973, as amended
42 U.S.C. § 2000e, et seq., Title VII of the Civil Rights Act, as amended
42 U.S.C. § 2000ff, et seq., Genetic Information Nondiscrimination Act of 2008 (GINA)
42 U.S.C. § 12101, et seq., Americans with Disabilities Act, as amended (ADA)
29 C.F.R. § 1602.3, Preservation of Records Made or Kept
29 C.F.R. § 1607, Uniform Guidelines on Employee Selection Procedures (UGESP)

Other References:

Ga. Exec. Order No. 02.23.15.03 (Feb. 23, 2015),
http://gov.georgia.gov/sites/gov.georgia.gov/files/related_files/document/02.23.15.03.pdf