

BACKGROUND CHECK POLICY

HUMAN RESOURCE ADMINISTRATION

What to Expect From Today's Presentation

- ☐ Employers' responsibility to screen applicants
- ☐ Timing of inquiry concerning criminal history
- ☐ Timing of third -party background checks
- ☐ Requirements concerning consent to background checks
- ☐ Procedure when unfavorable information is uncovered
- ☐ Confidentiality requirements
- ☐ Possible EEO issues



Employers' Responsibility to Screen Job Applicants

State law provides for a system of public employment to “attract, select, and retain the best employees based on merit...which will provide technically competent and loyal personnel to render impartial service to the public at all times and to render such service according to the dictates of ethics and morality” (O.C.G.A. § 45-20-1).

Agencies are responsible for “checking references and sufficiently verifying suitability for hire” (State Personnel Board Rule 6, Recruiting, Screening and Hiring).

SPB Rule 6 also directs each agency “to assess its positions to determine those subject to a criminal history check.”

Timing of Inquiries Concerning Criminal History

- “Ban the Box”
 - Policy implemented by Executive Order in 2015.
 - Reflected in SPB Rule 6, Section (7) (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.”
 - Rule 6 defines “sensitive government position” as one “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.”
- Job announcement can state that a background check/criminal history check will be required later in the process.

Timing of Third Party Background Check



- SPB Rule 6, Section (6) (d): “Criminal history checks and credit history checks may be conducted only on individuals who have been selected for hire.”
- The applicant’s consent must be obtained before the background check can be conducted.

Applicant's Consent to Third -Party Background Check

- Under federal law, background checks and credit history checks are types of “consumer reports.” Use of consumer reports in hiring decisions requires compliance with the Fair Credit Reporting Act (FCRA).
- The FCRA and SPB Rule 6 require a stand alone form separate from the job application for an applicant's consent to a background or credit history check.

-



Procedure When Background Check Reveals Unfavorable Information

The employment decision should not be made immediately; the FCRA and SPB Rule 6 require a two -step process.

The applicant must first be given an opportunity to “discuss any inaccuracies, content, and relevance of a criminal history record.”

If employment will be denied based on a background report provided by a third party, the agency must then inform the applicant that employment was denied because of the report.

Required contents of the denial notice are detailed in SPB Rule 6, Section (7) (g).

Confidentiality Requirements Concerning Background Check Information

1

State Personnel Board Rule 9, Records, requires agencies to “make every effort to protect every employee’s privacy rights and interests and to prevent inappropriate or unnecessary disclosures.”

2

State law also specifically prohibits unauthorized or negligent communication of criminal history information (O.C.G.A. § 35-3-38).

3

Access to background check and other confidential information on applicants and employees should be limited to those employees who need the information to complete their job duties.

Possible Equal Employment Opportunity Issues



- A policy of blanket exclusion of applicants with a criminal history may have a disparate impact on some groups of applicants.
- To comply with federal antidiscrimination law, agencies must ensure that screening and hiring policies are “job -related and consistent with business necessity.”



THANK YOU

WE APPRECIATE YOUR ATTENTION