

University of WI-Superior
Employee Criminal Background Check Policy

Policy subject: Employee Criminal Background Check
Cabinet Division: Administration & Finance
Effective Date: December 1, 2007

I. Background and Purpose

The University of Wisconsin Superior is committed to providing a high quality, safe and secure environment for its workforce, partners, students and clients.

II. Policy Statements

Except as otherwise provided in the UW System Criminal Background Check Policy or in this policy, UW-Superior shall conduct a criminal background check on each new hire for a University position.

- 2.1) A “new hire” in a faculty or academic staff position shall be defined as any prospective employee that is not currently a UW-Superior employee or an employee of another UW System institution. A “new hire” in classified service shall be defined as any prospective employee that is not currently a UW System or other State of Wisconsin agency employee. Current UW-Superior employees or employees of other UW System institutions who are moving to a position within UW-Superior, through transfer, promotion, or otherwise, will not be subject to a criminal background check unless such a check is otherwise required by law (e.g., the fiduciary responsibility law or caregiver law) the majority of the position’s duties will be performed within residential facilities, or it is the practice of UW-Superior to conduct criminal background checks on current UW-Superior and UW System employees who are candidates for certain positions of trust. Factors to consider in determining “position of trust” include, but are not limited to, job duties, location, access, and the make-up of the population in which the position works (See attached guidelines). The Office of State Employment Relations (OSER) must approve a classified position being designated a “position of trust.”
- 2.2) Criminal background checks conducted on foreign nationals will be subject to the following provisions:
A criminal history check will be conducted covering time in the United States if the period of time that the individual has been in the United States exceeds six months. A criminal history check in the individual’s prior country(ies) of residence will be conducted only if their country(ies) of residence provides criminal background information. Media searches are not considered a criminal background search.
- 2.3) Criminal background checks shall be conducted on candidates recommended for hire, either prior to the extension of an offer of employment, or as part of an offer of employment that is made contingent upon a successful criminal background check. Individuals may not commence employment until they have successfully completed a criminal background check, except under special circumstances.
- 2.4) If an individual being considered for a position has a criminal conviction or pending charge, UW-Superior will apply the factors listed in Section 3.3, below, to determine if there is a substantial relationship between the offense and the new job responsibilities.

If a substantial relationship exists, UW-Superior may decide that the individual should not be employed in that position. If an offer has already been extended or, due to the presence of special circumstances as described in Section 2.2 or otherwise, employment has commenced, the offer will be rescinded and the appointment terminated.

- 2.5) Information collected in connection with the background check will be treated confidentially to the extent permitted by the Wisconsin Public Records Act and other applicable laws. Failure in maintaining confidentiality may result in a violation of a work rule which may lead to discipline up to and including termination. An individual or individuals in Human Resources will be designated as responsible for all aspects of conducting criminal background checks. Appropriate training will be provided. The individual(s) responsible for maintaining records will be asked to sign a confidentiality agreement.
- 2.6) The University will comply with the Wisconsin Fair Employment Act and other applicable laws to ensure individuals are not discriminated against because of arrest or conviction records.
- 2.7) The University will conduct background checks for all new hires, including temporary or limited term employees, student employees, interns, graduate assistants and positions filled by a vendor or contractor, in accordance with this policy. If a former employee is being rehired following an absence of one year or less, Human Resources will determine whether another criminal background check will be completed.

III. Policy Procedures

3.1) Hiring Process

UW-Superior will incorporate the following steps into its hiring process. This will apply to all new hires.

a) Announcing a Vacancy

All vacancy announcements (including ads) must contain the following statement:

“Employment will require a criminal background check.”

The following language is optional and may be added to vacancy announcements and ads:

“A pending criminal charge or conviction will not necessarily disqualify an applicant. In compliance with the Wisconsin Fair Employment Act, the University does not discriminate on the basis of arrest or conviction record.”

b) Offering a Position

Criminal background checks may be completed prior to making an offer of employment. If a check is not completed before an offer is made, the check must be completed prior to commencement of employment, except in special cases approved by the Director of Human Resources or designee. In most cases, only the applicant being offered the

position will be checked. However, there may be circumstances where more than one applicant is checked.

c) Appointment Letters

If an appointment is offered contingent on the successful completion of a criminal background check, or an employee is permitted upon approval of the Director of Human Resources or designee to commence employment pending completion of a check, the appointment letter must state the appointment will be withdrawn or terminated if the individual's criminal background check results are unacceptable. The following statement may be used in the appointment letter.

“This appointment is conditional pending the results of a criminal background check. The appointment will be withdrawn or terminated if the results are unacceptable.”

d) Consent Form

Prior to conducting a criminal background check, the University will have the candidate sign a consent form. The form will specifically ask a candidate to self-disclose if he or she has ever been convicted of a crime or is currently facing criminal charges. Individuals who decline to sign the consent form will no longer be considered a candidate for the vacancy. A candidate must submit the consent form directly to Human Resources where it will be maintained in confidence to the extent permitted by the Wisconsin Public Records Act and other applicable laws.

3.2) Conducting Criminal Background Checks

Criminal background checks will be performed by the Human Resources Office to include checks of records in all jurisdictions deemed prudent. The following process will be used:

- a) Human Resources will identify at least one employee to perform criminal background checks. This individual(s) will be responsible for all activities involved with the checks including determining the scope, conducting checks, referring checks to outside vendors, and forwarding findings of criminal convictions or pending charges to the decision makers as identified in Section 3.3 of this policy. A key component of this role involves keeping information confidential except on a need-to-know basis or as required by the Public Records Act.
- b) The employing unit or department is responsible for notifying Human Resources that a check needs to be conducted. Human Resources will obtain the completed consent form directly from the candidate. Any available resume/vita/employment application also should be provided to Human Resources. Human Resources will take the information and determine the scope of the check. All costs associated with conducting the background check will be incurred by the employing department.
- c) If a final candidate has lived only in Wisconsin and has no employment history outside of the state, Human Resources may conduct the check in-house by using the

Wisconsin Department of Justice (DOJ) State of Wisconsin Criminal Background Check process and the Wisconsin Sex Offender Registry, as well as any other similar on-line databases. In the alternative, the University may use a private, commercial background check vendor to conduct these checks. The University may also choose to use a hybrid approach that involves performing a social security number trace and sex offender check through a vendor. If the result of the social security number trace is residence only in Wisconsin, the University may complete the background check by using the DOJ and the Wisconsin Sex Offender Register check process.

- d) Out-of-state checks must be done if the final candidate has an employment history outside of Wisconsin or has lived outside the state. Human Resources can conduct these checks in-house by utilizing information the candidate has provided (resume/vita, reference check information, past employment information, consent form, etc.) and accessing available criminal records in other states. In the alternative, the University may utilize the services of a private, commercial background check vendor like HireRight, Inc. which is currently under contract with the University.

The standard package for out-of-state criminal background checks conducted through HireRight, Inc. shall include:

- Social Security Number Trace – Authenticates applicant’s information and generates a list of addresses the applicant has lived at for the last seven years; as part of the trace, the University may verify that the social security number is valid and appropriately assigned to the applicant.
- Criminal Felony/Misdemeanor by county of residence - superior and municipal court records in any county in the US.
- Sex Offender Registry – sex offender search by state.

Additional criminal and non-criminal checks (e.g., motor vehicle, etc.) may be run when appropriate in relation to the position.

The University is required to comply with the federal Fair Credit Reporting Act (“FCRA”) when using a private vendor.

3.3) Making the Decision Regarding Substantial Relationship

Once the criminal background check is completed, the University will need to make a decision based on the information gathered. Wisconsin’s Fair Employment Act states that employers cannot discriminate against prospective or current employees based on past or pending arrests or convictions. There are exceptions to this requirement if a “pending criminal charge” or “conviction record” is determined to be “substantially” related to the “circumstances of the particular job.” To determine if there is a relationship, the University will review the circumstances of an offense, where it happened, when, etc., compared to the circumstances of a job – where is the job typically done, when, etc. The more similar the circumstances, the more likely a “substantial relationship exists.

Accordingly, if the check uncovers a pending charge or criminal conviction, the University's Provost (or designee) or the University's Vice Chancellor for Administration & Finance (or designee), as appropriate, will consult with Human Resources, the University's legal counsel, the Affirmative Action Officer, and in the case of faculty hires, the Chair of the Faculty Senate, or in the case of academic staff hires, the Chair of the Academic Senate, to determine whether the criminal activity is substantially related to the functions of the position. The University's Provost or designee shall be the decision-maker for all faculty positions, as well as all academic staff positions or other positions that are within divisions, departments or other administrative structures that ultimately report to the Provost. The University's Vice Chancellor for Administration & Finance or designee shall be the decision-maker for all classified positions, as well as academic staff positions or other positions that are within divisions, departments, or other administrative structures that ultimately report to the Vice Chancellor. On behalf of the Provost or the Vice Chancellor for Administration & Finance, Human Resources may consult with other offices and individuals inside and outside of the University (including the University Campus Security Department), as appropriate to determine whether a substantial relationship exists while maintaining strict confidentiality. Search and screen committees and hiring departments will not have access to the criminal background information.

In reviewing the results of a criminal history background check on an individual applicant, the University will review each applicant on a case-by-case basis and consider the following factors in order to determine whether there is a substantial relationship between the pending charge or conviction and the position and whether the applicant should be further considered for the position:

- a) **The Offense.** The nature, severity and intentionality of the offense(s) including but not limited to:
 - 1) The statutory elements of the offense (rather than the individual's account of the facts of the offense);
 - 2) The individual's age at the time of the offense(s);
 - 3) Number and type of offenses (felony, misdemeanor, traffic, other);
 - 4) Time elapsed since the last offense;
 - 5) The individual's probation or parole status;
 - 6) Whether the circumstances arose out of an employment situation; and
 - 7) Whether there is a pattern of offenses.

- b) **The Position.** The duties, responsibilities and circumstances of the position applied for, including but not limited to:
 - 1) The nature and scope of the position, including key access to residential facilities, key access to other facilities, access to cash and access to vulnerable populations, including minor children
 - 2) The nature and scope of the position's student, public or other interpersonal contract;
 - 3) The nature and scope of the position's autonomy and discretionary authority;

- 4) The amount and type of supervision received in the position or provided to subordinate staff;
- 5) The sensitive nature of the data or records maintained or to which the position has access;
- 6) The opportunity presented for the commission of additional offenses; and
- 7) The extent to which acceptable job performance requires the trust and confidence of the employer, the University or the public.

Using these and other appropriate factors, the Provost or the Vice Chancellor for Administration & Finance (or their respective designees) in consultation with Human Resources, legal counsel and affirmative action, will make the final determination on whether to appoint or reject the candidate on the basis of a criminal background check. Human Resources will be responsible for documenting the basis for decision to appoint or to refuse to appoint a candidate based on a criminal background check review.

3.4) Candidate Notification of Negative Results.

If an applicant is not selected based on the criminal background check results, the results will be provided and the applicant will be given a three working day time period to refute the information. Additional time extensions may be provided to the candidate at the sole discretion of the University. If a private, commercial background check vendor is used, the University and the vendor will need to ensure compliance with the FCRA.

3.5) Keeping Records

Records gathered as a result of a criminal background check will be kept by Human Resources in separate, sealed files segmented by the applicant/employee's name. The files will be maintained separately from an applicant/employee's general personnel records. These records should include:

- Consent Form
- Information collected from the check
- Analysis and decision whether criminal activity (if any) was substantially related to position
- Correspondence related to criminal background check

The records will be securely maintained for a period of seven years after the position has been filled, and may be accessed only on a need-to-know basis or as required by applicable law.

3.6) Other Background Checks/Evaluations

As noted previously, other types of background checks and/or evaluations may be utilized due to the nature of particular positions. Examples include checks required under Wisconsin's Caregiver Law (Wisconsin Statutes, Chapters 48 and 50) and Fiduciary Responsibility Law (Wisconsin Statutes, Section 230.17(3)). Additionally, the nature of certain positions could involve the need to conduct non-criminal background checks such as drug analyses, psychological evaluations, and credit checks. Nothing in this policy

precludes the University from conducting position specific checks (criminal and non-criminal) on an as-needed basis.

Any questions related to this policy, including interpretations and resource locations, should be directed to the Human Resources Office.

IV. Authority: Regent Policy #20-19, Resolution 9276, Adopted 12/08/2006.

V. Attachments

- 7.1) Guidelines: Factors to Consider in Positions of Trust Determination
- 7.2) Confidentiality Agreement
- 7.3) Job Application supplement for Finalists
- 7.4) Letter to Notice to Finalists

GUIDELINES

Factors to Consider in Position of Trust Determination

- Positions in a teaching and/or training capacity
- Camp counselors or those who travel with students or teams
- Cash handling with access to safes, cash depositions, or authorization for refunds
- Handle, receipt for, or have custody of cash, checks or securities, or account for supplies or other property; authorize (or make appropriations for) expenditures; approve, certify, sign or countersign checks, drafts, warrants, vouchers, orders or other documents providing for the paying over or delivery of money, securities, supplies or other property, or serve process
- Positions that maintain or audit accounts of money, checks, securities, time records, supplies or other property, or take physical inventories of money, checks, securities, supplies or other property.
- Positions that set up checking or credit card accounts, make payments to vendors, sign procurement contracts, or global access to electronic files
- Significant inventory control responsibilities, including the receipt and release of inventory
- Positions that have unsupervised access to University, employee, or student property, including positions located in the University's residence halls with access to the rooms of students
- Positions that set up, have access to or maintain central personnel records/information, create personnel appointments, process payroll payments, or global access to electronic files
- Positions that set up, and have access to or maintain academic records/information of any kind
- Positions that set, up, have access to or maintain medical or health care records/information of any kind.
- Master or sub-master key holders who may have access to equipment, vehicles, central warehouses, and equipment storage
- All public safety related duties.
- Positions that set up or maintain the University's server, university-wide databases, or campus-level application-specific software editing and modifying
- Other functions for which, upon consultation between Human Resources, legal Counsel, and the Hiring Authority, a criminal conviction records investigation is determined to be required.

**CONFIDENTIALITY AGREEMENT
(FOR EMPLOYEES WITH ACCESS TO
INFORMATION ON BACKGROUND CHECKS)**

Name: _____

Classification/Job Title: _____

UW Institution: _____

Department: _____

I understand that in the course of conducting a criminal background check, I may have access to information including, but not limited to, the results obtained from the criminal background check.

I understand that the information listed above, as well as other information to which I have access, is special or confidential information that could either improve or injure the prospects or chances of persons in the recruitment process. I agree to keep this information confidential and not to copy the materials, discuss them with anyone not specifically authorized by the Human Resources Specialist, Manager, or Representative, or allow any unauthorized person access to them. Failure to keep the information confidential may constitute insubordination and/or may result in a violation of a work rule both of which could lead to discipline up to and including termination.

By signing below, I acknowledge that failure to adhere to the requirements set forth in this statement would be a violation both to the public trust and as a condition of my continued employment with the State of Wisconsin.

Signature

Date

Letter of Notice to Finalists

Name
Address
City, State

RE: Criminal History Background Check

Dear Candidate:

I am pleased to inform you that you are a final candidate for the position of (Job Title) in the Department of (Department name) at UW-Superior. The University conducts criminal history background checks on final candidates. In order to complete the review and make a final hiring decision, it is necessary for you to fully complete and return the attached Job Applicant Supplement to the University's Human Resources Office. Your response should be faxed (715-394-8171) or hand delivered to the Office of Human Resources no later than (date).

Upon completion of a criminal background check, a final hiring decision will be made. As you can understand, we are motivated to make a timely hiring decision. To that end, please know that if you do not complete and return the enclosed form by the due date, you may not be considered further for this position.

If you have any questions regarding the application supplement, the criminal history background check or the recruitment process, please call the Office of Human Resources at (715) 394-8220.

Sincerely,

Peggy Fecker
Director of Human Resources

**JOB APPLICATION SUPPLEMENT FOR FINALISTS:
CONVICTIONS AND/OR PENDING CRIMINAL CHARGES**

CONFIDENTIAL

NOTE TO FINALISTS: The University conducts criminal background checks for all new hires. A criminal conviction or pending criminal charge may be a factor in the hiring decision.

The information requested below is required to conduct a criminal history background check. Discrimination on the basis of age, gender, race or any other protected class status under federal or state law is prohibited by University policy.

A record of conviction and/or pending criminal charges is not an absolute bar to employment. Such information will be considered only if there is a substantial relationship between the circumstances of the conviction and/or pending charge and the position being applied for. Your completion of this form is part of your application process. You must fill out the form accurately and completely, disclosing all convictions and/or pending criminal charges for any felony or misdemeanor. Applicants who fail to timely complete and return the form will not be further considered for employment. An applicant's failure to accurately and completely disclose his or her criminal conviction history may be grounds for removal from further consideration for a position.

Please print (for identification purposes only):

Name: _____			
First	Middle	Last	
Other Names You Have Used:			

Current Address:			

Street	City	State	Zip
Previous Addresses (most recent*)			

Street	City	State	Zip
(*Only if you have not lived at your current address for seven years).			
Phone Number: _____		Email: _____	
Social Security Number _____		Date of Birth: _____	
		Month/Day/Year	
Gender: (Circle one)		Female	Male

Have you ever been convicted of a felony or misdemeanor? Note: Failure to disclose a conviction for any crime (meaning a felony or misdemeanor) may be considered an intentional omission.

Yes _____ No _____ If yes, indicate below:

1. Nature of the Offense: _____

Date of Conviction: _____

Name and Location of the Court: _____

2. Nature of the Offense: _____

Date of Conviction: _____

Name and Location of the Court: _____

3. Do you have any criminal charges pending against you? Yes _____ No _____

If yes, please indicate the nature of the charges: _____

Name and Location of the Court of Jurisdiction: _____

Additional Information: _____

Attach additional sheets if necessary.

I agree that the University may conduct a criminal history background check. To the best of my knowledge, the information provided on this form is true and complete. I understand that falsification or omission of information constitutes grounds for not hiring me or for dismissal.

Signature

Date