

HR/LR Policy #1421
Background Checks

Issued 03/26/2013
Revised 12/01/2014
Authority Enterprise Human Resources

OVERVIEW

Objective	To ensure that state agencies conduct lawful and consistent background checks when considering candidates for employment with the State of Minnesota.
Policy Statement	<p>Agencies conducting background checks shall implement an effective background check system to ensure employee selection decisions are supported by lawful and thorough background research.</p> <p>The background check system must be designed to ensure that:</p> <ol style="list-style-type: none"> 1. Background checks are conducted in compliance with all applicable rules, regulations and laws, including, but not limited to, the Minnesota Government Data Practices Act (M.S. 13), the Minnesota Human Rights Act (M.S. 364A), Title VII of the Civil Rights Act, and, whenever applicable, the Fair Credit Reporting Act (FCRA), Access to Consumer Reports (M.S. 13C), EEOC Enforcement Guidance on criminal background checks, and the Criminal Offenders; Rehabilitation statute (M.S. 364); 2. Background checks are job-related and consistent with business necessity; 3. All legally required background checks are conducted; and, 4. The background check system is effectively managed and communicated through agency-specific policies and procedures.
Scope	This policy applies to employees of executive branch agencies and classified employees in the Office of Legislative Auditor, Minnesota State Retirement System, Public Employee Retirement System, and Teachers' Retirement System.
Definitions	<p>Background Check: A review of an applicant's background history for the purpose of determining suitability for a position, including, but not limited to, employment records, criminal records, driver's license records, education records and/or other applicable records.</p> <p>Employment Records Check: A type of background check that involves obtaining and reviewing a copy of an applicant's relevant files from previous employment (e.g., personnel, disciplinary).</p> <p>Finalist(s): The person or person(s) under final consideration in the selection process.</p> <p>Reference Check: An inquiry made to a previous employer and/or other sources about an applicant's work history, work performance, competencies, and disciplinary history.</p>
Exclusions	This policy does not apply to background checks conducted for non-employee positions, such as contractors and volunteers. This exclusion does not prohibit agencies from conducting background checks for non-employee positions.

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This policy does not affect or supersede specific background check requirements imposed by law or as a condition of funding from any federal or state agency.

Statutory References

Includes, but is not limited to:

1. 15 U.S.C. 1681 et seq., Fair Credit Reporting Act (FCRA);
2. Public Law 88-352, Title VII of the Civil Rights Act of 1964 (as amended);
3. M.S. Ch. 13, Data Practices Act;
4. M.S. Ch. 13C, Access to Consumer Reports;
5. M.S. Ch. 16C, State Procurement;
6. M.S. 138.17, subd. 7, Government Records;
7. M.S. Ch. 363A, Human Rights Act;
8. M.S. Ch. 364, Criminal Offenders, Rehabilitation;
9. Minnesota Rule 3900.7500, Appointments.

GENERAL STANDARDS AND EXPECTATIONS

I. AUTHORIZATION REQUIRED

Prior to conducting a background check, reference check, or verification of any kind, agencies must obtain a signed authorization from the individual applicant or employee consenting to the background check, reference check, or verification.

II. REQUIRED BACKGROUND CHECKS

- a. Agencies shall conduct all background checks required by law that are relevant to the agency's programs and positions.
- b. Agencies shall verify all job-related information on finalist(s) pursuant to Minnesota Rule 3900.7500 (e.g. licenses and certifications required as a minimum qualification for the position, etc.).
- c. Agencies shall conduct driver's license checks on the finalist(s) and incumbents of each position the agency determines are covered by HR/LR Policy #1419, Driver's License and Record Checks.
- d. Agencies shall conduct state employment reference checks on current and former state employees who are the finalist(s) for each position. Agencies shall contact the finalist's current and/or former supervisors and human resources office(s) at the state.

For instruction on conducting employment reference checks on current or former state employees, agencies should refer to HR/LR Procedure #1421P, Employment Reference and Records Checks for Current and Former State Employees.

III. RECOMMENDED BACKGROUND CHECKS

- a. For finalists who are not current or former state employees, and for non-state prior employment for current or former state employees, it is strongly recommended that agencies conduct an employment reference check on the finalist(s) for each position by contacting the applicant's current and former supervisors and human resources office(s) for the past three positions held or for the past 10 years of employment
- b. Agencies are encouraged to perform an employment records check prior to appointing a current or former state employee. Agencies should refer to HR/LR Procedure #1421P, Employment Reference and Records Checks for Current and Former State Employees.

GENERAL STANDARDS AND EXPECTATIONS

- c. Agencies are encouraged to conduct a criminal history check on the ultimate finalist for each position for which the agency determines there is a job-related basis to do so. The check should include all states in which the applicant has lived. If the agency determines to conduct a criminal history check, any job offer must explicitly state that employment is contingent upon the results of the criminal history check.

If the criminal history check returns conviction data, the agency shall, unless exempt, follow the provisions of M.S. Ch. 364 (Criminal Offenders; Rehabilitation) to determine if the applicant should be disqualified from the position. This analysis includes determining whether the criminal conviction directly relates to the employment sought and if the applicant can show sufficient evidence of rehabilitation.

Note: unless statutorily exempted from M.S. Ch. 364, a public employer may not conduct a criminal history check on any applicant prior to offering the applicant an interview. Agencies should refer to M.S. 364 for applicable statutory criteria and procedures.

IV. AGENCY POLICY REQUIREMENTS

Agencies that conduct background checks, other than employment reference checks, employment records check, driver's license checks or verification of job qualifications, shall have a policy covering the following:

1. A statement indicating why background checks are being conducted;
2. The agency division(s)/unit(s) responsible for administering and enforcing the background check policy (e.g., HR, supervisors, internal affairs, etc.); and,
3. The process that will be used to ensure that all background checks are job-related and consistent with business necessity and that the background check data is analyzed and evaluated in compliance with all applicable laws, rules, policies, etc. This process must be developed before the agency posts a job and before the agency begins recruiting candidates.

When determining job-relatedness and business necessity, some considerations include:

1. Background checks required by law;
2. Background checks required for federal funding;
3. Job duties involving the health, safety or welfare of clients or the public;
4. The level of access to statutorily protected or sensitive information, or to money or fiscal data;
5. The level of interaction with or exposure to the public, including children and vulnerable adults;
6. The work setting and type of interaction with colleagues or customers;
7. The level of authority, decision-making and impact on the organization;
8. The educational degrees, licensures, certifications and work experience required to qualify for hire;
and,
9. Other relevant and applicable considerations.

GENERAL STANDARDS AND EXPECTATIONS

Agencies should refer to MMB’s guidance documents on conducting background checks, which are listed below under “References.” Agencies conducting regular background checks on current employees should contact MMB Labor Relations for further guidance.

RESPONSIBILITIES

Agencies are responsible for:	Implementing a background check policy and complying with all applicable statutes, regulations, rules, and policies when conducting a background check.
MMB is responsible for:	Updating this policy as necessary.

FORMS AND INSTRUCTIONS

Contacts	MMB’s Human Resources Management Division
References	<ul style="list-style-type: none">• House Research Department Revised: February 2014 Criminal Background Check Statutes Overview http://www.house.leg.state.mn.us/hrd/pubs/bkgdchck.pdf• Agency Background Check Policy Template, available on the MMB website.• Volume 1: MMB Guide for Employer Conducted Background Checks, available on the MMB website.• Volume 2: MMB Guide for Vendor Conducted Employment Background Checks, available on the MMB website.• Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm• HR/LR Policy #1419, Driver’s License and Record Checks• HR/LR Procedure #1421P, Employment Reference and Record Checks for Current and Former State Employees