HR/LR Policy #1421

Background Checks

Date Issued: 03/26/2013
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Authority: Enterprise Employee Resources

OVERVIEW

Objective

To ensure that state agencies conduct lawful and consistent background checks when considering candidates for employment.

Policy Statement

Agencies shall implement an effective background check system to ensure employee selection decisions are supported by lawful and thorough background research.

The background check system must be designed to ensure that:

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 (Minn. Stat., Ch. 13), the Minnesota Human Rights Act (Minn. Stat., Ch. 363A), Title VII of the Civil Rights Act, and, whenever applicable, the Fair Credit Reporting Act (FCRA), Access to Consumer Reports (Minn. Stat., Ch 13C), EEOC Enforcement Guidance on criminal background checks, and the Criminal Offenders Rehabilitation Act (Minn. Stat., Ch. 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 all employees of agencies in the executive branch, as defined in Minnesota Statutes, section 43A.02, subdivisions 2 and 22, and employees of the Minnesota State Retirement System, Public Employees Retirement Association, and the Teachers Retirement Association.

Definitions and Key Terms

Terms	Definitions
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 history records, driver's license records, education records, and/or other applicable records.

Terms	Definitions
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.
Finalist(s)	The person or person(s) under final consideration in the selection process.
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.
Criminal History Check	A type of background check that includes a review of any conviction(s) of felonies, gross misdemeanors, and misdemeanors for which a jail sentence may be imposed.

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.

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

Statutory References

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

Agencies shall conduct the following:

a. All background checks required by state or federal law, rule, or regulation applicable to the agency's programs and positions.
b. Verification of 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. 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. State agency employment reference checks on current and former state agency 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.
e. Criminal history checks on the finalist(s) for each position that:
    1) Includes access to money or fiscal data, or
    2) Includes access to children or vulnerable adults, or
    3) For which the agency otherwise determines there is a job-related basis to conduct a criminal history check.

Any job offer must explicitly state that employment is contingent upon the results of the applicable required background check.

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. CRIMINAL HISTORY CHECKS

Agencies shall conduct criminal history checks on the finalist(s) for each position that includes access to money or fiscal data or includes access to children or vulnerable adults. Agencies shall identify any other positions within the agency for which there is a job-related basis to conduct a criminal history check on finalist(s).

Any criminal history check must include all states in which the applicant has lived or worked.

Unless the agency is statutorily exempt from Minnesota Statutes, chapter 364:

a. The agency shall only conduct a criminal history check on an applicant after offering the applicant an interview or as part of a conditional offer of employment.
b. If the criminal history check returns conviction data, the agency shall determine if the conviction(s) directly relate to the position of employment sought. If the conviction directly relates to the position of employment

sought, the applicant shall not be disqualified if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties.

Agencies should refer to Minnesota Statutes, chapter 364, for applicable statutory criteria and procedures.

IV. RECOMMENDED BACKGROUND CHECKS

It is recommended that agencies conduct the following:

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.

V. AGENCY POLICY REQUIREMENTS

Agencies shall have a policy that includes the following:

a. A statement indicating why background checks are being conducted,
b. The agency division(s)/unit(s) responsible for administering and enforcing the background check policy (e.g., HR, supervisors, internal affairs, etc.), and
c. 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 whether a background check is job-related and consistent with business necessity, relevant considerations include:

a. Background checks required by law
b. Background checks required for federal funding
c. Job duties involving the health, safety or welfare of clients or the public
d. The level of access to statutorily protected or sensitive information
e. The level of interaction with or exposure to the public
f. The work setting and type of interaction with colleagues or customers
g. The level of authority, decision-making and impact on the organization
h. The educational degrees, licensures, certifications and work experience required to qualify for hire; and
i. Other relevant and applicable considerations

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.

REFERENCES, FORMS, AND SUPPLEMENTS

Agency Background Check Policy Template, available on the MMB website.

Volume 1: MMB Guide for Employer Conducted Background Checks, available on the MMB website, (as of 9/2/2025 is under review for revisions and updates).

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.

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.

CONTACTS

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