

UW Oshkosh Employee Criminal Background Implementation Plan & Procedures

Purpose: To provide a safer campus environment for students, employees and visitors.

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

- A ‘new hire’ in a faculty or academic staff position shall be defined as any prospective employee that is not currently a UW- Oshkosh 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 employees who are moving to a position within UW Oshkosh, 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., Wisconsin's Caregiver Law (Wisconsin Statutes, Chapters 48 and 50) and Fiduciary Responsibility Law (Wisconsin Statutes, Section 230.17(3)). Persons who have left UW System employment for a period of up to one year may be rehired without a Criminal Background Check unless otherwise required by law. 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. It is the practice of UW Oshkosh to conduct criminal background checks on current UW Oshkosh and UW System employees who are candidates for certain positions of trust or who are candidates where the majority of their duties are in residence halls. The Office of Equity & Affirmative Action, in consultation with appropriate parties, will determine on a case-by-case basis if a position is deemed a “position of trust.”
- 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 with approval from the division Vice Chancellor and the Director of Human Resources or their respective designee.
- If an individual being considered for a position has a criminal conviction or pending charge that is “substantially” related to the new job responsibilities, that 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 the preceding bullet or otherwise, employment has commenced, the offer should be rescinded and the appointment terminated.
- Any information obtained as a result of conducting a criminal background check is to be kept confidential. Failure to keep the information confidential may result in a violation of a work rule which could lead to discipline up to and including termination. An individual or individuals in

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Human Resources will be designated as responsible for all aspects of conducting criminal background checks. Appropriate training shall be provided.

- 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.
- Temporary or limited term employees; positions filled by a vendor or contractor; hourly student employees; interns; graduate assistants and unpaid volunteers generally will be exempt from these procedures. However, such persons performing job duties covered by the Wisconsin Caregiver Law, Fiduciary Responsibility Law, or a similar law requiring a criminal background check, or holding a position in the Office of Residence Life or a position that UW Oshkosh considers a position of trust will be subject to criminal background checks.

Procedures:

1. Hiring. UW Oshkosh incorporates the following steps into its hiring process. This applies to *all new hires* except those mentioned above.

- a) Announcing a Vacancy – All vacancy announcements (including advertisements) will either direct individuals to the human resources web site to view the position announcement or contain the following statement: “Employment will require a criminal background check.” This language will appear on all position announcements on the human resources web site.

The following language also 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) Consent Form – Prior to conducting a criminal background check, the University will have the candidate sign a consent form. This 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 will submit the consent form directly to the Human Resources Office, and it will be maintained in confidence in the Human Resources Office to the extent permitted by the Wisconsin Public Records Act and other applicable laws.
- c) 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 division Vice Chancellor and 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.
- d) 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 Vice Chancellor of the division and the Director of Human Resources or designee

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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”.

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) The Director of Human Resources will identify at least one employee to perform criminal background checks. The Director of Human Resources will be responsible for all activities involved with the checks including determining the scope, conducting checks, referring checks to outside vendors, and making recommendations on results. 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 department is responsible for notifying Human Resources (HR) that a check needs to be conducted. HR will obtain the completed consent form directly from the candidate. Any available resume/contact and work history information on a vita/employment application also should be provided to HR by the hiring unit. HR will take the information and determine the scope of the check. All costs associated with conducting the background check will be incurred by the hiring department. At a minimum, the HR Office will transfer the expenses to applicable departments bi-annually.
- c) HR will utilize the services of a private, commercial background check vendor such as GIS (General Information Services) which is currently under contract with the University of Wisconsin System.
- d) If a final candidate self-identifies that he or she has lived only in Wisconsin and has no employment history outside of the state, Human Resources will conduct a social security number trace utilizing a private vendor. If the social security number trace confirms residence only in Wisconsin, the check will be conducted by Human Resources using the Wisconsin Department of Justice (DOJ) State of Wisconsin Criminal Background Check process, the Wisconsin Circuit Court Access website 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.
- e) If the final candidate self-identifies he or she has lived outside Wisconsin or if the social security trace establishes residency or employment history outside Wisconsin, Human Resources will utilize a private, commercial background check vendor such as HireRight, Inc. which is currently under contract with the University of Wisconsin System.

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The standard package for out-of-state criminal background checks conducted through GIS will 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
- 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.

UW Oshkosh will comply with the federal Fair Credit Reporting Act ("FCRA") if it uses a private vendor.

3. PROCEDURES FOR RESPONDING TO NOTICES OF ADDRESS DISCREPANCIES RECEIVED FROM CONSUMER REPORTING AGENCIES

The Federal Trade Commission (FTC) issued a new regulation (16 CFR 681.1) which requires users of consumer reports to have a procedure in place to deal with any Notices of Address Discrepancies it may receive from a consumer reporting agency. Specifically, upon receipt of a Notice of Address Discrepancy, UW Oshkosh must be able to form a reasonable belief that the consumer report relates to the consumer about whom it has requested the report. Essentially, the goal of the regulation is to ensure that UW Oshkosh and the credit reporting agency are both referring to the same person, even if they each have different addresses for such person on file.

UW Oshkosh uses third-party consumer reporting agencies to conduct checks in connection with its Criminal Background Check Policy. These checks are typically run by the UW Oshkosh Human Resources Department or a third-party consumer reporting agency.

In the event that UW Oshkosh receives a Notice of Address Discrepancy from a consumer reporting agency related to a Criminal Background Check Policy check, the follow procedure shall apply:

- (1) UW Oshkosh Human Resources will compare the information in the consumer report provided by the consumer reporting agency with its own records or records from third-party sources in order to verify that the consumer report relates to the consumer about whom it has requested the report.
- (2) In the event that Human Resources is unable to verify that the consumer report relates to the consumer about whom it has requested the report based on such documentation, it shall verify the information provided by the consumer reporting agency directly with the individual who is the subject of the consumer report.

In addition to the above, the new regulation requires that UW Oshkosh report the information underlying the discrepancy to the consumer reporting agency that provided the Notice of Address Discrepancy if (1) UW Oshkosh forms a reasonable belief that the consumer report relates to the consumer about whom it requested the report and (ii) UW Oshkosh regularly furnishes information to the consumer reporting agency. UW Oshkosh currently supplies information to the following agencies: GIS. This reporting should be completed as part of the information UW Oshkosh regularly

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furnishes to the above-mentioned reporting agencies for the reporting period in which UW Oshkosh confirms that the consumer report relates to the customer about whom it requested the report.

4. 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 needs to 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 criminal charge or a criminal conviction, using factors outlined below, the Director of Human Resources will determine whether the potential for substantial relationship between the conviction or pending charge and the employment position exists. If the potential exists, a team consisting of the Vice Chancellor of the appointing Division, Director of Human Resources, Affirmative Action Officer, (and in the case of faculty hires a tenured faculty member appointed by the Faculty Senate and in the case of academic staff hires an academic staff employee appointed by the Senate of the Academic Staff) will convene to determine whether the criminal activity is substantially related to the functions of the position. Faculty and academic staff employees participating (appointed through their respective shared governance bodies) in this team will be required to sign a confidentiality agreement. The team may consult with other offices and individuals, inside and outside of the University (including UW System General Counsel and the University Police department), as appropriate to determine whether a substantial relationship exists while maintaining strict confidentiality. In the event a substantial relationship is found, the chair of the Search and Screen committee will be informed. For a Professional/Administrative Academic Staff candidate the supervisor or a current employee from the hiring department may need to be consulted for clarification of job responsibilities. The team shall be the final decision maker in determining if the criminal activity is substantially related to the functions of the position.

In reviewing the results of a criminal history background check on an individual applicant, the team 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:

The Offense. The nature, severity and intentionality of the offense(s) including but not limited to:

- a. The statutory elements of the offense (rather than the individual's account of the facts of the offense);
- b. The individual's age at the time of the offense(s);
- c. Number and type of offenses (felony, misdemeanor, traffic, other);
- d. Time elapsed since the last offense;
- e. The individual's probation or parole status;
- f. Whether the circumstances arose out of an employment situation; and
- g. Whether there is a pattern of offenses.

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The Position. The duties, responsibilities and circumstances of the position applied for, including but not limited to:

- a. 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;
- b. The nature and scope of the position's student, public or other interpersonal contact;
- c. The nature and scope of the position's autonomy and discretionary authority;
- d. The amount and type of supervision received in the position or provided to subordinate staff;
- e. The sensitive nature of the data or records maintained or to which the position has access;
- f. The opportunity presented for the commission of additional offenses; and
- g. The extent to which acceptable job performance requires the trust and confidence of the employer, the University or the public.

HR will be responsible for documenting the basis for the decision to appoint or to refuse to appoint a candidate based on the criminal background check review.

5. Candidate Notification of Negative Results. If there is a potential for non-selection based on the criminal background check results, the results will be provided and the candidate will be given a three working day time period to dispute the information. Additional time extensions may be provided to the candidate at the sole discretion of HR. If a private, commercial background check vendor is used, the University and the vendor will need to ensure compliance with the federal Fair Credit Reporting Act. If the record being disputed has been conducted internally by the HR office, the candidate will address concerns with that office. If the record has been conducted by an outside vendor (e.g. GIS), the Human Resources Office will provide the candidate with contact information for addressing the dispute.

6. Keeping Records. Records gathered as a result of a criminal background check will be kept by E&AA 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
- Resume/Vita
- Information collected from the check
- 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.

7. 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)).

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

8. UW Oshkosh utilizes one criminal background check policy and procedures plan. With the approval of the Human Resources Office, a University department may conduct their own criminal background checks according to the procedures outlined in the UW Oshkosh Criminal Background Check policy and procedures plan. As part of an approval, the Human Resources Office will require the department to sign an agreement form, and will audit the department procedures on an annual basis. Any information obtained as a result of conducting a criminal background check is to be kept confidential, with the files being transferred to the Human Resources Office annually and no copies being kept in the department. Failure to keep the information confidential may result in a violation of an employee work rule which could lead to discipline up to and including termination. Failure by the department to comply with the UW Oshkosh criminal background check policy and procedures plan will result in the department losing the ability to conduct their own checks.

If the background check reveals a pending charge or conviction record and rejecting the applicant may be contemplated as a result, the department will consult with the “Review Team” to consist of the Director of Human Resources Office or designee, the Equity & Affirmative Action Office, and the appropriate Vice Chancellor or designee as outlined in the “Criminal Records Review Consultation” section above.

Authority: Regent Policy #20-19, Resolution 9276, adopted 12/08/06.

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