

## **UAM OPERATING PROCEDURE 403.1**

### **BACKGROUND CHECKS AND SUBSTANCE ABUSE TESTING**

This campus policy implements UA Systemwide Policies and Procedures 470.1, Background Checks and Use of Criminal Record, Financial, and Substance Abuse- Testing Information in Employment Decisions and for Volunteers with Similar Responsibilities; Training for Positions Working with Minors. Administrators responsible for hiring activities and background checks should reference both the campus and system-wide policies. Note that this policy is intended for general guidance purposes only. State and federal statutes and regulations may provide more specific restrictions, requirements or procedures with regard to employment categories. This policy does not create any right to procedural or substantive due process of law beyond that mandated by federal and state laws, if any, nor does it create any contract rights to any applicant or employee. Furthermore, this policy is subject to all policies of the Board of Trustees of the University of Arkansas.

#### **Procedure**

All persons hired as employees must submit to a criminal background check (including a registered sex offender check).

Each position announcement will include language indicating that a criminal background check (including a registered sex offender check) is required. In addition, if a financial history check or substance abuse test is required, that information will also be included.

Background checks will be conducted once a candidate becomes the finalist or one of the finalists for a position. Unless prior completion of the check is required by law for the position, hiring units may make an offer of employment that is expressly conditioned on completion of a criminal background check, financial history check, substance abuse test, or a combination of these checks that is fully satisfactory in the sole discretion of the University. The University has partnered with a third party provider to conduct background checks.

Once Human Resources (HR) is notified of the final candidate and has received the Request for Background Check Form, they will submit the candidate's information to its provider to initiate the background check process. The results shall be returned to HR for initial evaluation, with any potentially disqualifying information to be reviewed with the hiring manager, in consultation with other appropriate units as described in more

detail below. The results of criminal or financial history checks and substance abuse testing<sup>1</sup> performed by a third-party vendor (as opposed to state agencies, such as the Arkansas State Police), are considered consumer reports and fall under the Fair Credit Reporting Act (FCRA) regulations.

HR will maintain a schedule ("Schedule A") that indicates the type of checks and tests required for each specific position that requires one or more checks or tests.

- I. **Types of Background Checks; Positions Covered for Each Type of Check** A background check is required of individuals who are final candidates for employment, being promoted, or moving to a new position (excluding faculty rank promotions) as outlined in this policy. The types of background checks include the following:
- A. **Criminal (including a check for registered sex offender status)**
1. All positions (including faculty) shall have, at the minimum, a national criminal background check and a check for registered sex offender status. Criminal background checks will include a social security number validation and trace. This process validates the applicant's social security number and helps identify the scope of the check by identifying all residences and employment within the United States. Except for law enforcement personnel, or as required by law, criminal record requests shall be limited to criminal convictions and arrests currently pending adjudication, and shall not include other arrests.
  2. Criminal background checks for incumbent positions may be conducted as required by law or as specifically determined to be necessary by the Vice Chancellor responsible, based on need.
- B. **Financial History**
1. Financial history/credit checks include the names and addresses of the person being screened, all debts, liens, collections, bankruptcies, payment history, and charge-offs.
  2. A financial history background check is required for a final candidate for employment or promotion or other move for those positions where such information is relevant to job duties performed, including the following types of positions:
    - a. Positions with extensive cash management duties, with access to cardholder data sets or access to the cardholder data processing or storage environment<sup>2</sup> as a primary job duty.<sup>3</sup>
    - b. Senior administrators, including
      - i. Chancellor
      - ii. Vice Chancellors
      - iii. Deans
      - iv. Associate/Assistant Vice Chancellors
      - v. Other positions, such as Fiscal Officers, who are assigned a level of responsibility and authority that provide financial oversight or are granted high level authority for transaction approval.
  3. Additional types of positions not listed above may be added to the list of covered positions requiring financial/credit checks; contained in Schedule A; however, any additional covered positions which are not otherwise mandated by this policy, must be approved by the appropriate Vice Chancellor in consultation with HR. Furthermore, any such checks must be job-related and a business necessity, based on a need specifically identified by University officials, or as otherwise required by law, and shall be applied in a consistent manner, in terms of type of checks and frequency, across similar positions within a given unit.
  4. Financial checks for incumbent positions may be conducted as specifically determined to be necessary by the Vice Chancellor responsible based on need.

## II. **Substance Abuse Testing; Positions Covered**

- A. Substance abuse testing will include a urine analysis, unless an alternative, reliable method is determined in consultation with HR. Any pre-employment, pre-promotion, or pre-move substance abuse test will be a 9-panel screening unless otherwise required by law. Alteration or falsification of a substance abuse test shall be grounds for disqualification or termination.
- B. A substance abuse test is required for a final candidate for employment or promotion for the following types of positions:
1. Senior administrators: Chancellor, Vice Chancellors, Deans, and Associate/Assistant Vice Chancellors.
  2. Positions that perform duties in residence halls, including Resident Assistants.
  3. Bus and van drivers (primary job duties), or positions which otherwise require a Commercial Driver's License.<sup>4</sup>
  4. University police and other security positions.
  5. Safety-sensitive, non-academic unit positions as follows:
    - a. Electricians (including high voltage, low voltage and alarm electricians)
    - b. Boiler/chiller operators
    - c. Utility maintenance workers
    - d. Heavy Equipment Operators
    - e. Institutional service assistants with regular access to personal spaces such as residence halls, and athletic locker rooms
- C. Additional types of positions not listed above may be added to the list of covered positions requiring substance abuse tests; contained in Schedule A; however, any additional covered positions, which are not otherwise mandated by this policy must be approved by the appropriate Vice Chancellor in consultation with HR. Furthermore, any such tests must be job-related and a business necessity, based on a need specifically identified by University officials, or as otherwise required by law, and shall be applied in a consistent manner, in terms of type of tests and frequency, across similar positions within a given unit.
- D. Periodic substance abuse testing, or testing for incumbent positions, may be conducted as required by law or as specifically determined to be necessary by the Vice Chancellor responsible based on need.<sup>5</sup>

## III. **Re-Checking of Incumbent Employees**

With respect to any positions for which re-checking is required, employees shall be required to provide a separate authorization for each round of checks/testing, unless 1) employees have specifically consented to an ongoing authorization to obtain updated checks at any time during their employment, or 2) a check is conducted as part of an employee misconduct investigation.

## IV. **Promotions and Transfers; Previous Background Checks; Camps**

Excluding faculty promotions, incumbent employees who are applicants for new positions are subject to background check requirements for the new position. To the extent permitted by law, a new check is not required if the applicant has undergone a background check of the type applicable to the position within the past two years, and the applicant has remained continuously employed, in good standing, by the University

(allowing for regular seasonal breaks of six months or less) since the check was conducted.

A. Applicants who are not continuously employed by the University but who are rehired each year (e.g. camp employees) must have a new check conducted. K-12 school employees who have a current background check on file with his or her school district, and remain employed by the school district, may have such background check furnished to the University, but only if it is submitted directly by the HR office of the district, rather than by the employee.

**V. Training for Employees Working with Minors**

In addition to criminal background checks and checks for registered sex offender status, all new employees who provide care or supervision of minors as part of their job responsibilities must receive a copy of University of Arkansas at Monticello Policies and Procedures 297.1, Protection of Minors on Campus, and the employee must acknowledge in writing that he or she has read and understands the policy. Further, the new employee must complete a live or on-line training program on protecting minors, including child maltreatment reporting, prior to the performance of job duties.

**VI. Use of Results**

If background check/substance abuse test results indicate there are no convictions or other information that might disqualify the applicant or employee, the third party vendor shall inform HR, who in turn shall inform the hiring manager that the candidate is viable for employment.

In instances where position-related adverse information is obtained, HR shall review the report with the hiring manager, in consultation with, as appropriate, General Counsel, and the University Police, in order to assess the appropriateness of hiring, appointing, promoting, or transferring the individual in light of the information obtained and the duties of the position. In the context of hiring for positions utilizing a committee process, HR may review the report with the relevant unit head as well as the chair of the committee.

If the criminal history check reveals criminal convictions, HR shall review the report with the hiring manager, in consultation with, as appropriate, General Counsel, and the University Police, evaluating each conviction, including any additional information that the individual provides, before a tentative decision is made whether to disqualify the individual. The existence of a conviction does not automatically disqualify an individual from employment or appointment. Appropriate consideration shall be given to the nature and number of convictions, their dates, and the relatedness each conviction has to the duties and responsibilities of the position. The basic inquiry is whether hiring the individual, in view of his or her record, would be inconsistent with the safe and efficient performance of the functions of the position. Relevant considerations include safety of fellow employees, students, and the public, fitness for a supervisory role, and protection of property, funds, and the reputation of the University of Arkansas at Monticello.

If substance abuse testing results are positive, the applicant or incumbent shall be

permitted to submit relevant medical information pertaining to the positive test results. All positive substance abuse tests will be reconfirmed and reviewed by a medical examiner. Additional information regarding disqualification criteria for applicants and incumbent employees is contained in the system policy.

A decision to hire, appoint, promote, or otherwise transfer an applicant with adverse, job-related background check information shall require the approval of the Vice Chancellor for the division where the position is located, in consultation with the Vice Chancellor for Finance and Administration. Persons making determinations under this policy shall document the reasons, within the standards of this policy, for the employment decision made.

In the context of hiring for positions utilizing a committee process, if a final decision is made not to hire based on adverse information, the committee may be informed that the applicant was disqualified based on the background check, but detailed information shall be limited to the hiring manager, search committee chair, department head, or appropriate management officials.

## VII. **Adverse Action Procedures**

If, upon review of the results of the background check or substance abuse test,<sup>6a</sup> a tentative decision is made to disqualify an individual based on the background check/substance abuse test results, the applicant or employee shall be notified in writing of the information and its source before making a final decision. The applicant or employee will have five business days to request, in writing, clarification or further review of the report.

If the adverse decision is based on a consumer report covered by FCRA, (third-party vendor reports), HR will provide the individual a pre-adverse action disclosure that includes a copy of the individual's consumer report and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act." When notified of the intended adverse action, the applicant or employee shall be given five business days to request, in writing, clarification or further review of the decision.

After five business days, if no additional information has been presented establishing that disqualification based on the initial results of the check or test is inappropriate, the decision to disqualify the applicant may be finalized. When the decision to disqualify an individual is finalized, HR shall provide the individual with an adverse action notice.

The adverse action notice will include

- A. Notice of the adverse action taken;
- B. The name, address, and phone number of the consumer reporting agency that supplied the report;
- C. A statement that the consumer reporting agency that supplied the report did not make the decision to take the adverse action and cannot give specific reasons for the decision; and
- D. A notice of the individual's right to dispute the accuracy or completeness of any information the agency furnished, and his or her right to an additional free

consumer report from the agency upon request within 60 days.

- E. In instances where the individual disputes the accuracy of the information provided by the vendor agency, the HR representative may request the vendor to verify the accuracy of the information before final action is taken.

If information provided by a consumer reporting agency in connection with an employee misconduct investigation forms the basis for an adverse employment action against an employee, the University must provide an “adverse action notice” after the action is taken, together with a summary of the investigation report.

#### VIII. **Background Check Records**

Records of background checks/tests and communication to the applicant/employee concerning results will be maintained for three years from the date of any hiring decision by HR, and then securely destroyed. Access to background check information shall be restricted to authorized persons with a specific, job-related need to know. Background check records shall be stored separately from other employee application or personnel files; electronic records will be stored securely in password-protected files, and any paper records will be stored in locked files in HR or an office granted exception by HR to obtain the check.

#### **Footnotes**

- (1) However, if testing results are reported directly by a lab, rather than by a credit report agency, FCRA requirements would not apply.
- (2) Does not include positions which only have access to point of sale terminals.
- (3) Payment Card Industry Data Security Standard (PCIDSS) requires financial checks for all persons who have access to cardholder data sets or the cardholder data processing or storage environment.
- (4) Includes any employee whose position requires driving a motor vehicle: (a) with a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight of more than 10,000 pounds; (b) with a gross vehicle weight rating of 26,001 or more pounds; (c) designed to transport 16 or more passengers, including the driver; or (d) of any size that is used to transport hazardous material which requires the vehicle to be placarded under the hazardous materials regulations. *See* 49 CFR §§ 382.107 & 382.301; Ark. Code Ann. § 27-23-103(7). Certain driver positions are subject to periodic/random substance abuse testing pursuant to federal law.
- (5) Note that substance abuse testing by employers is permissible under Act 593 of 2017, which implements, in part, the Arkansas Medical Marijuana Amendment of 2016.
- (6) Again, if substance abuse testing results are reported directly by a lab, FCRA requirements would not apply.

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