

## Adverse Results: Criminal Records Checks and Credit Checks

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### **I. ASSESSMENT OF CRIMINAL RECORDS CHECK RESULTS**

#### **A. Interpretation of Adverse Criminal History**

If the background check reveals a conviction relevant to a position, the individual may be disqualified from holding the position. In making such a decision, the campus Decision Maker(s) will consider the following:

- The nature and gravity of the crime(s) and relevance to the position sought;
- The number and circumstances of the offense(s);
- The period of time since the last conviction; and
- The candidate's conduct, performance and/or rehabilitation efforts since the conviction(s).

See Attachment A Section VII "Conducting Criminal Records Checks".

#### **B. Conducting an Individualized Assessment for Adverse Criminal Records Check Results**

An employer's use of an individual's criminal history in making employment decisions may, in some instances, violate the prohibition against employment discrimination under Title VII of the Civil Rights Act of 1964 (Title VII) (42 U.S.C. § 2000 *et seq.*), or the California Fair Employment and Housing Act (FEHA) (CA Govt. Code § 12940 *et seq.*).

Exclusion of a candidate from consideration for employment is permissible if the conviction is job related and the exclusion is consistent with business necessity. An individualized assessment process may not be necessary when there is a clear and direct connection between the conviction and the open position's job responsibilities. Campuses are strongly encouraged to consult with Human Resources to determine when an individualized assessment is necessary/unnecessary.

An individual assessment of a job candidate with an adverse criminal history requires the campus to take the following steps:

- 1) Inform a candidate that he or she may be excluded from consideration for employment because of a conviction;
- 2) Provide an opportunity to the candidate to demonstrate that the exclusion does not properly apply to him/her. The candidate may respond by providing information to demonstrate

- That he or she was not correctly identified in the criminal record, or that the record is otherwise inaccurate;
  - The facts or circumstances surrounding the offense or conduct;
  - The number of offenses for which the candidate was convicted;
  - The time that has passed since date of conviction, or release from prison;
  - Evidence that the candidate performed the same type of work, post conviction, with the same or a different employer, with no known incidents of criminal conduct;
  - The length and consistency of employment history before and after the offense or conduct;
  - Rehabilitation efforts;
  - Employment or character references and any other information regarding fitness for the particular position; and
  - Whether the candidate is bonded under a federal, state, or local bonding program.
- 3) Consider whether the additional information shows that the exclusion of the candidate is not job related and consistent with business necessity.

**C. Communication of Adverse Criminal Records Check Results**

If any information in the criminal records check is utilized to make an adverse action regarding an employment decision, the campus shall notify the applicant of the information and its source in writing **before** making a final determination.

**D. Notice of Criminal Offender Record Information (CORI)**

If an applicant for employment requests a summary of the criminal records check results, an employer is required to provide it (under IPA, ICRA, and/or FCRA). See Governing Laws under Attachment D1 for additional information.

**II. APPLICANTS' RIGHT TO APPEAL CRIMINAL RECORDS CHECK RESULTS**

When adverse information is found as a result of the criminal records check, applicants must be notified and given an opportunity to review the criminal records check results and submit an explanation through an appeal process.

- A. Pre-Adverse Action Notice:** The campus must first provide a Pre-Adverse Action Notice to the applicant, including a copy of the report together with a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act." The sample Pre-Adverse Action Notice and a copy of the Summary are provided in Attachment D7 and D5, respectively, of this policy.
- B. Five Business Days to Request Review:** When notified of the intended adverse action, the applicant shall be given five (5) business days to request, in writing, clarification or further review of the decision. The campus Decision Maker(s) must wait five (5) business days after notice is provided and consider the applicant's appeal before making a final decision.
- C. Adverse Action Notice:** The campus may finalize its decision to disqualify the applicant if, after five (5) business days, no additional information has been presented establishing that disqualification based on the initial results of the check is inappropriate. If the decision is finalized, the campus will notify the individual of the non-selection using the Adverse Action Notice in Attachment D7.

**III. APPLICANTS' RIGHT TO APPEAL CREDIT CHECK RESULTS**

When applicants will be disqualified due to the results obtained from a credit history check, they must be notified and given an opportunity to submit an explanation through an appeal process.

- A. **Pre-Adverse Action Notice:** The campus must first provide a Pre-Adverse Action Notice to the applicant, including a copy of the report together with a copy of “A Summary of Your Rights Under the Fair Credit Reporting Act.” The sample Pre-Adverse Action Notice and a copy of the Summary are provided in Attachment D7 and D5, respectively, of this policy.
- B. **Five Business Days to Request Review:** When notified of the intended adverse action, the applicant shall be given five (5) business days to request, in writing, clarification or further review of the decision. The campus Decision Maker(s) must wait five (5) business days after notice is provided and consider the applicant’s appeal before making a final decision.
- C. **Adverse Action Notice:** The campus may finalize its decision to disqualify the applicant if, after five (5) business days, no additional information has been presented establishing that disqualification based on the initial results of the check is inappropriate. If the decision is finalized, the campus will notify the individual of the non-selection using the Adverse Action Notice in Attachment D7.