

## New Background Check Policy

“Do we really know who we are hiring?” This is becoming a more frequent concern today as employers seek new workers who will be not only competent but also responsible members of their workforce. To provide a broader base of information for hiring decisions, employers are increasingly requiring background checks on candidates prior to the final hire. The University of Alabama in Huntsville joined the other two University of Alabama System institutions last year in adopting, after extensive review by a number of UAH offices and groups, a background check screening policy. As stated in the announcement accompanying the new policy, a background check can “help confirm the accuracy of personal information provided by the candidate . . . [and] help identify candidates whose employment presents unacceptable risks.”

In certain respects, background checks have long been carried out at UAH. Employment history verifications, personal and professional reference checks, and degree/education verifications have been obtained by the University for many years for faculty and staff candidates. The same is true regarding motor vehicle record checks for employees who will be operating vehicles while at work. These checks have been performed by University officials. The new policy adds a sex and violent offender check, a criminal records check, and a credit history check to the list of inquiries that can be made into a candidate’s history prior to hire. This information is obtained by a vendor who provides it to the University under contract.

The federal Fair Credit Reporting Act (FCRA) applies to background checks performed by third party vendors (a “FCRA background check”), while those conducted by the employer (“non-FCRA background checks”) are not subject to this law. The FCRA essentially requires that the employer notify the employee about the kind of information being sought and about any adverse actions considered or taken by the employer based on that information. The UAH policy includes provisions to insure compliance with the FCRA.

A satisfactory background check is now a condition to the hiring of an applicant. A non-FCRA background check is generally conducted on a *pre-offer basis*, as a part of the process of evaluating candidates for a position. In contrast, a FCRA background check is done on a *post-offer basis*, after a final candidate has been selected and with the explicit proviso that the final hire will be conditional upon a satisfactory check. A “satisfactory” check is defined in the policy as having two components. It must, first, “not reflect adversely on the completeness, accuracy, or truthfulness of information provided by the candidate.” Secondly, it must “not reflect adversely on the candidate’s suitability for the position.”

An unsatisfactory background check does not automatically disqualify the candidate for the job. For information obtained in a non-FCRA check, an evaluation will be made about the relevance of the information to the job and about the extent to which it reflects on the candidate's suitability for the position. The individual may, before a decision is made, be given the opportunity to explain the information. An applicant’s statement that he possesses an academic degree when he does not or a statement that her departure from prior employment was due to resignation when the real reason was termination would constitute information that is not “complete, accurate, or truthful.” An applicant who is dishonest in these or similar ways may not

be viewed as suitable for the job, and accordingly adverse information may result in the individual being eliminated from the pool of candidates being considered for the job.

The same process is generally followed with respect to a FCRA check, except that the FCRA requires that the candidate be provided notice of the receipt of adverse information and a statement of rights. If a criminal conviction is discovered, an individualized assessment will be made, taking into account a number of factors (the nature of the offense, the amount of time that has elapsed since the conviction, etc.). For example, a conviction for loitering will be regarded differently in this assessment than a conviction for assault with a deadly weapon. The individual will be given the opportunity to respond. As would be expected, adverse information uncovered in a FCRA check may result in revocation of the job offer.

The policy applies to existing employees only in two limited instances. A criminal background check and a sex/violent offender check is required as a precondition to a promotion to a position involving significantly greater responsibility or authority. The grant of tenure is deemed such a promotion under the policy. Additionally, an employee who is convicted of a crime while employed at UAH is under a duty to inform his/her supervisor. A determination of the impact of that conviction on the suitability of the individual for continued employment will then be made.

Access to information obtained in a background check is restricted to University officials who have a need to know, generally those involved in the hiring process. A criminal conviction or other FCRA information is only made available to senior administrative officials, such as the president and the provost. Documentation related to background checks is maintained in Human Resources and is kept confidential.

This new policy is now being implemented. Some commentators have expressed privacy concerns regarding the broader sweep of an employer's review of a prospective employee's personal history represented by a comprehensive background check. To the extent that such a check helps employers hire workers who do not present issues involving integrity, qualifications, and high risk behaviors, this concern has generally been regarded as subordinate to the benefit accruing to both the employer and other employees from a more effective hiring process.