



# **POLICY MANUAL**

## **EMPLOYMENT**

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**Number 386**

**Subject: Background Checks**

**Date of Origin: October 17, 2008**

**Effective Date: May 1, 2009**

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### **386.1 PURPOSE**

In order to promote a safe environment, this policy provides specific procedures for conducting background checks of certain prospective and existing employees of Utah State University.

### **386.2 REFERENCES**

- 2.1. Board of Regents Policy R847, Criminal Background Checks
- 2.2. Utah Code 53A-3-410 (Criminal background checks on school personnel -- Notice -- Payment of cost -- Request for review)
- 2.3. Utah Code 53B-1-110 (Higher Education Criminal Background Checks)
- 2.4. Board of Regents Policy R165, Concurrent Enrollment

### **386.3 DEFINITIONS**

#### **3.1 Adjunct Faculty**

An individual who has an established relationship with an academic department and participates in departmental teaching, research, or service activities with or without remuneration. Adjunct positions are not the major work assignment of the individual, but are adjunct to the person's major role in another area, or they may be individuals whose major roles are external to the University.

### **3.2 Applicant**

An individual offered employment, transfer or promotion, contingent on acceptable results of a criminal background check and other reviews required for the position by the University such as financial/credit checks, degree transcripts or license documentation, or student loan status.

### **3.3 Background Review Committee**

The Background Review Committee reviews the results of criminal background checks where prior convictions exist, assesses the risk to the University, and determines whether an individual should be considered eligible to obtain or retain a position.

### **3.4 Criminal Background Check**

A commercial or governmental process of searching public records to determine whether an individual has been convicted of criminal conduct anywhere in the United States of America within the last seven years.

### **3.5 Department Administrator**

A department administrator holds the title of Director, Manager, Department Head, Dean, Vice President, etc.

### **3.6 Employee**

An individual who has received and accepted a legitimate offer of employment from an appropriate hiring authority and whose new hire Electronic Personnel Action Form (EPAF) has been applied to the electronic payroll system.

### **3.7 Minor**

For the purpose of this policy, Utah Policy defines a minor as a person younger than 21 years of age.

### **3.8 Reasonable Cause**

Where the known facts and circumstances are sufficient to cause a person of reasonable prudence to believe that the employee poses an unreasonable risk to persons or property.

### **3.9 Security-Sensitive Positions**

Positions whose duties require, provide for, or encompass the potential to incur human, financial or property loss or other harm to the University and its constituents. A security sensitive position should include at least one of the following elements:

- 3.9.1** Access to minors, including child care in a child care center, or to diminished capacity adults;

**3.9.2** Relationships with students where exceptional trust and responsibility are involved, such as instructors, counselors, health care providers, coaches, and residence hall personnel;

**3.9.3** Responsibility for providing direct medical care, treatment, or counseling and/or access to pharmaceuticals, toxins, hazardous or controlled substances;

**3.9.4** Direct access to laboratory materials and other property that have the potential of being diverted from their proper use either for financial gain or for harmful, dangerous or illegal purposes;

**3.9.5.** Decision-making authority for committing University funds or financial resources through contracts and commitments and/or direct access to or responsibility for handling cash, checks, credit/debit cards or cash equivalents, University property, disbursements or receipts;

**3.9.6** Access to building and residence hall master control and key systems;

**3.9.7** Access to confidential information or sensitive personal information such as employment, health, donor, financial and other records, including data that could facilitate identity theft;

**3.9.8** Access to and responsibility for the maintenance, upgrading, and repair of the University's computer networks and/or information technology systems; and

**3.9.9** Responsibility for police, security, guard forces, or other significant health or safety issues.

### **3.10. Significant Contact**

An employee position which involves significant contact with minor persons if there is a reasonable expectation that in the course of the normal, routine responsibilities of the position, the employee and a minor would interact on a one-on-one basis. For example, teachers with office hour consultations, mentors, counselors, test center employees, coaches, and advisors could all reasonably expect to interact one-on-one with students as a normal, routine part of their work and hence would have "significant contact" with one or more minor persons during the course of their employment.

### **386.4 POLICY**

In accordance with Board of Regents Policy R847, criminal background checks are required under the following circumstances:

## **4.1 New Employees**

All new employees whose positions involve significant contact with minors or are considered to be security-sensitive must submit to a criminal background check as a condition of employment. The Office of Human Resources will determine which positions meet these criteria.

EXCEPTION: Applicants for adjunct faculty (other than concurrent enrollment instructors—see 386.4[c]), temporary (less than three months), or non-benefit-eligible part-time positions are exempt but are required to self-disclose any criminal background and sign an agreement to conform to University rules. However, when appropriate, department administrators may choose to include otherwise exempt applicants after consulting with the Background Review Committee.

## **4.2 Existing Employees**

An existing employee must submit to a criminal background check where a department administrator, in consultation with the Office of Human Resources, determines that reasonable cause exists.

## **4.3 Concurrent Enrollment Faculty**

Concurrent Enrollment Faculty - USU employees, whether full-time or adjunct faculty, who are concurrent enrollment instructors with unsupervised access to K-12 students shall submit to a criminal background check consistent with §53A-3-410 of the Utah Code. (See Policy and Procedures R165, Concurrent Enrollment, paragraph 9.2.)

## **4.4 Leave Without Pay Participants**

Employees, as defined in section 4.1, who are accepted into a leave without pay status for more than 12 months will be required to undergo a background check prior to returning to service at USU.

## **386.5 PROCEDURES**

### **5.1 Written Release of Information**

The University will obtain a written and signed release of information prior to conducting a criminal background check for an applicant. The University will request a written and signed release of information prior to conducting a criminal background check for an existing employee.

### **5.2 Notice that a Background Check has been Requested**

If the existing employee does not provide a written and signed release as requested pursuant to 5.1, the employee shall receive written notice that the background check has been requested.

### **5.3 Criminal Background Check Requirements**

At a minimum, the background check must verify the applicant or employee's social security number, obtain information regarding past employment, and perform a nationwide search of the individual's criminal background in the individual's counties of residence for the last seven years.

### **5.4 Payment of Fees**

Each department will pay the cost of criminal background checks.

### **5.5 Risk Assessment**

If a criminal background check shows prior convictions within the past seven years, the Background Review Committee will assess the overall risk to the University. That risk assessment will include but not be limited to: (1) number of convictions, (2) nature and severity of convictions, (3) the length of time that has elapsed since the last conviction, (4) likelihood of recidivism, (5) the security sensitivity of the position sought by the applicant or held by the existing employee, and (6) other factors that may be relevant. The Background Review Committee, in consultation with the hiring administrator, will determine whether an individual with a criminal history should be considered eligible to obtain or retain the position, or whether additional documentation is required.

### **5.6 Opportunity to Respond**

Before an applicant is denied employment or an employee is subjected to an adverse employment action based on information obtained in the background report, the applicant or employee shall receive a copy of the report, written notice of the reasons for denial or adverse action, a written description of his/her rights under the Fair Credit Reporting Act, and shall have an opportunity to respond to the contents of the criminal background check and any proposed action taken by the University as a result of this check. Notification of intent to respond must be given to the Office of Human Resources Office within three (3) business days of receiving the report if the applicant or employee desires to respond to the background report. The University will provide the applicant or employee a reasonable opportunity to address the information contained in the report.

### **5.7 Financial/Credit Check**

If an applicant is applying for, or an employee holds, a security-sensitive position with access to sensitive personal information or financial responsibilities over the funds of the University, the department administrator, in consultation with the Office of Human Resources, may require an additional financial/credit check to be performed.

### **5.8 Degree Transcripts or License Documentation**

If the position requires a degree or license, the department administrator may request a copy of the applicant's degree transcripts or license documentation.

## **5.9 Student Loan Status**

Per Board of Regents Policy R847, if an applicant or employee has a student loan, the departmental administrator may check on the loan status. The department administrator, in consultation with the Office of Human Resources, may deny employment or take adverse employment action if the applicant or employee has a delinquent or defaulted student loan.

## **5.10 Limitations on the Use of Information**

The information contained in the background check will be available only to those individuals involved in making employment decisions or performing the background investigation. This information will be used only for the purpose of making an employment decision. A copy of the background check will be provided to the applicant upon request.