

### **Regulation on Pre-Employment Background Checks and Applicant Salary History**

- I. Purpose. This regulation sets forth requirements related to the administration of pre-employment background checks and prior salary history to ensure that such checks are accomplished in a fair and compliant manner in accordance with industry standards and federal and state requirements and to promote a safe and secure environment for the University's faculty, staff, students, and visitors.
- II. Coverage. This regulation applies to permanent faculty, SAAO, EPS, and SHRA staff as well as temporary employees, including student employees. Sworn law enforcement personnel are subject to the State of North Carolina's background check requirements for law enforcement certification as well as any specific requirements established by the institution's public safety lead; therefore, the chancellor or their designee may exclude these individuals from the provisions of this regulation at the institution's discretion. Students who seek University employment incidental to their status as a student or otherwise related to their education may be exempted from the background check requirement at the institution's discretion unless a background check is mandated by another policy or regulation.
- III. Required Policies and Procedures. Each constituent institution and affiliate of the University of North Carolina System will establish and implement policies and procedures to meet the minimum pre-employment background check requirements set forth in this regulation for all hiring decisions of employees to whom this regulation applies. At a minimum, a background check is required for all selected candidates either prior to the date of initial employment or after the date that a conditional employment offer was extended. Constituent institutions and affiliates may choose to exceed these requirements as deemed appropriate to meet operational needs as long as the procedures comply with applicable federal and state compliance requirements.
- IV. Basic Requirements. The policies and procedures required by this regulation must:
  - A. Prohibit hiring managers from viewing applicants' responses to questions regarding their criminal history on their employment applications.
  - B. Prohibit the consideration of a candidate's expunged or pardoned convictions; pending charges; arrests not resulting in a conviction; or charges resulting in dismissal or not guilty; however, separate and apart from a specific judicial status or disposition, the institution may consider a candidate's documented conduct incidental to an arrest (including matters that remain pending) if the conduct is demonstrably related to the position's responsibilities or access to institutional resources.
  - C. Conduct an individualized assessment of adverse background check results following the EEOC "Green" factors and ensure that employment decisions are not based on the criminal history of an individual unless that criminal history is demonstrably job-related and consistent with business necessity associated with the position, or unless state or federal law prohibits hiring an individual with certain criminal convictions for a particular position.

D. Before taking any adverse action based in whole or in part on the background check report, provide the applicant a copy of the background check report, a copy of "Summary of Your Rights Under the Fair Credit Reporting Act", and a description in writing of the rights of the applicant within 3 business days of taking such action, as prescribed by section 609(c)(3) of the Fair Credit Reporting Act, if a criminal record is obtained as part of the employment process, unless the act of sharing the criminal record is prohibited by state or federal law.

E. Set forth the procedure and criteria for considering an applicant's criminal history, consistent with section VI., of this regulation, the U.S. Equal Employment Opportunity Commission's Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions<sup>1</sup> under Title VII of the Civil Rights Act, and any guidance provided by the North Carolina Office of State Human Resources (OSHR).

F. If the results of a background check may result in a non-selection decision:

1. Allow the applicant a reasonable opportunity to explain the circumstances surrounding their relevant conviction(s) and/or charge(s) and provide any proof of rehabilitation, including a certificate of relief;
2. Address under what circumstances, if any, a previously completed background check may be used for a subsequent position or appointment; and
3. Include consequences for an applicant or employee either failing to provide the required information in a complete and timely manner or willfully omitting, concealing, or falsifying information.

V. Minimum Requirements for Pre-Employment Background Checks. The following minimum standards apply to all background checks conducted by the UNC System and its constituent institutions and affiliates.

A. Accreditation. Any vendor conducting a background check must be accredited by the Professional Background Screening Association (PBSA).

B. Length of criminal history. All background checks must cover a period of at least seven years prior to the date of the check, when available, within the relevant jurisdictions, or until age 18 if the applicant is younger than 25 years old, or as required by external, affiliated programs.

C. Scope. All background checks must include, at a minimum, federal criminal history national criminal search, applicable criminal history for all local, state, and international jurisdictions in which an individual has previously lived within the period of the check, the national sex offender registry, and, for designated positions, a federal System for Award Management (SAM) and Office of Inspector General debarment check. Checks may also include but are not limited to verification of driver's licenses and other credentials and professional licensures as may be procured through a consumer report. UNC Lab Schools are also required to conduct an FBI and SBI criminal history check on prospective candidates. The check should include a good faith attempt to identify any omissions by the candidate with respect to prior residences during the period being checked.

D. Federal Fair Credit Reporting Act (FCRA)<sup>2</sup> Compliance. The institution shall ensure that all FCRA requirements are satisfied with respect to the pre-employment background check process. This shall include notification to an applicant of any background check results that are determined to have an impact on a non-selection employment decision and providing an opportunity to receive and respond to such results in accordance with the Act.

E. Confidentiality. Background check requests and results are considered part of an applicant's or employee's confidential personnel record. The results of background checks will be made available to applicants on request in accordance with State personnel policies as well as the requirements of the FCRA.

F. Records Retention. Records of background checks shall be retained in accordance with the State of North Carolina records retention schedules for universities and the UNC General Records Retention schedule.

#### VI. Assessment of Background Check Results

A. Designated Individuals. The constituent institution or affiliate must designate a specific individual or individuals within Human Resources, the Provost's Office, Legal Affairs, and/or other appropriate administrative office(s) of the institution to determine whether adverse background check results impact an employment determination. While such designated individuals may consult with the authorized department-level official in reviewing adverse results, the authority and responsibility for a final employment decision based upon adverse background check results lies with the individual(s) designated pursuant to this subparagraph, to ensure consistency across the institution.

B. Assessment of Adverse Results. The designated individuals who will make such a determination must consider the following factors with respect to each applicable conviction, infraction, or charge and its bearing on a potential employment decision:

1. The relationship of the conduct to the specific job duties and responsibilities that would be performed by the covered individual, if appointed;
2. The nature, gravity, and context of the events surrounding the conduct, as evidenced by the background check results and any supplementary information that can be obtained by the University or that is promptly provided by the covered individual;
3. The time that has elapsed since the conduct occurred and/or the completion of any sentence served;
4. The individual's demonstrated behavior since any conviction and the future potential for illegal activity by the individual, as might be inferred from a past pattern of conduct; and
5. Any other extenuating circumstances documented by the covered individual or otherwise known to the University (e.g., the age of the candidate at the time of the conduct or the totality of the circumstances).

VII. Access to Annual Performance Appraisal. Constituent institutions may establish procedures for a hiring manager to review the most recent annual performance appraisal for candidates who are current or former state University or agency employees. Any such review should occur prior to the date of initial employment or after the date that a conditional employment offer was extended.

VIII. Prohibition on the Use of Salary History for Hiring Actions.

A. UNC institutions shall not request an applicant's salary history on the employment application or as part of any supporting documentation provided in the application process.

B. UNC institutions shall not use a selected candidate's salary history to determine the candidate's salary for any hiring action, including new hires, transfers, and promotions. Rather, salary determinations shall be based on other relevant factors including, but not limited to, the salary range of the proposed position, the qualifications and credentials of the candidate, equity to other similarly situated and qualified employees, and available budget.

C. UNC institutions will utilize only the factors listed in VII.B. above and will not utilize current salary information of state employees who apply for other positions, even though such current salary information is publicly available.

D. UNC Laboratory (Lab) Schools as defined by State law, N.C.G.S. 116-239.5 et seq., may be exempted from this requirement when hiring teachers, school administrators, and non-teaching positions if the Lab School has elected to follow the State Salary Schedules developed specifically for public school employees and published by the Department of Public Instruction (DPI). For the purposes of determining a starting salary, the Lab School may ask the prospective employee and/or the employee's current employing unit to verify the employee's current DPI salary step.

IX. Other Matters

A. Effective Date. The requirements of this regulation will be effective on the date of adoption of this regulation by the president.

B. Relation to State Laws. The foregoing regulation as adopted by the president is meant to supplement, and does not purport to supplant or modify, those statutory enactments, regulations, and policies which may govern the activities of public officials.

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<sup>1</sup>See <https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions>.

<sup>2</sup>See 15 U.S.C. § 1681.