



*Background Check Policy*

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## 01. Purpose

The University endeavors to provide a safe environment for all members of the University Community. An important part of those efforts is the University's process for screening candidates for employment and when appropriate, for reviewing employees for continuation of employment. This process includes inquiring about an applicant's conviction record and pending arrests (and performing criminal history and related background checks) after the otherwise qualified applicant has been given a conditional offer of employment; and also when conducting post-hire re-checks under appropriate circumstances.

Convictions and the existence of pending criminal proceedings (a "Criminal Record") disclosed or discovered through these background checks may influence the hiring of an individual who has been conditionally offered employment (or the continuation of a current employee) when the facts related to the criminal activity reasonably bring into question whether the individual can be relied upon to safely and honestly perform his or her job duties. Likewise, the failure of an individual to be forthcoming about his or her Criminal Record or any misrepresentation of education or work history may also influence decisions regarding the hiring of an individual who has been conditionally offered employment or the continuation of an employee.

When performing Criminal Record background checks, the University (as a New York State and New York City employer) must comply with applicable law, including Article 23-A of the New York Correction Law ("Article 23-A") and New York City Administrative Code, Chapter 1, § 8-107 Subdivisions 10 and 11. Article 23-A prohibits arbitrary and discriminatory treatment of persons with a Criminal Record. In compliance with Article 23-A, in each case the University will conduct an individualized review to determine whether: (1) there is a direct relationship (a direct bearing on the individual's fitness or ability) between one or more of the previous criminal offenses and the employment sought or held by the individual; and/or (2) the granting or continuation of employment would involve an unreasonable risk to property or to the safety or welfare of one or more members of the University community or the general public. In compliance with the New York City Administrative Code in New York City, and voluntarily at its Westchester campuses, the University will not inquire about criminal convictions and pending arrests (or conduct a Criminal Record background check) until it has conditionally offered employment to a candidate.

This Policy is intended to establish the parameters for the University's performance of Criminal Record and related inquiries and background checks.

## 02. Policy Provisions

### Requirements for Background Checks

Background checks are required for all new prospective full and part-time University employees, trainees and volunteers.

Updated background checks may also be performed when an employee assumes a new staff or administrative position; or assumes new job responsibilities involving financial or fiduciary responsibility or supervision of minors; or when the University is required to certify that an employee providing contract or grant funded services on behalf of the University has no Criminal or other disqualifying Record.

Annual updates may be required as a condition of employment for certain positions (e.g., drivers of University vehicles who are required to have Commercial Driver's Licenses).

Background checks will not be updated as part of the faculty post-employment tenure and promotion review process.



### **Background Checks for Rehires**

Individuals who incur a break in service of twelve months or greater are required to undergo a new criminal background check. Those who are rehired within less than a year following the termination date for whom the University did not previously perform a criminal background check, will also be required to undergo a new background check. Sabbaticals and other leaves of absence granted to faculty members pursuant to the Faculty Handbook are not deemed breaks in service for the purposes of this Policy.

### **Information Obtained as Part of the Background Check**

Each background check will, consist of:

- Social Security Number Trace Search
- Criminal Record Search (Federal and County Level – Felony and misdemeanor convictions and pending felony and misdemeanor criminal charges – but not violations.)
- Sexual Offender Database Search
- Education verification - Professional licensure and/or certification may also be requested. With respect to faculty, such requests will be coordinated with the appropriate College or School.

A Motor Vehicle Violation report may be requested for individuals being hired to drive University Vehicles and/or who are authorized to drive their own vehicles to transport students in connection with University activities. In accordance with applicable law, credit and other financial background checks may be requested for individuals being hired to positions involving the handling of University funds and/or finances. To maintain University compliance with regulations of the Office of Foreign Assets Control (OFAC) of the US Treasury Department, the University may request a search to confirm that individuals being hired are not listed in the OFAC/Terrorist Watch List. The University may request a FACIS® (Fraud and Abuse Control Information System) Report to identify whether a licensed professional being hired in the College of Health Professions, Health Care Unit, Center for Psychological Counseling, Student Counseling Centers and/or similar units has engaged in wrongful action in the health care field. Other background checks may be required by grant funding agencies, government agencies, vendors and University affiliates as a condition for University personnel to participate in particular programs, projects and/or activities.

## **03. Access and Privacy**

### **Participants in the Review of the Background Check Results**

Human Resources will receive and retain the results of completed background checks.

In connection with hiring: If there is no Criminal Record or other issues of concern revealed in the background check, Human Resources will notify the department to finalize the hiring process and proceed with the on-boarding process. If a Criminal Record or other issues of concern are revealed in the background check, Human Resources will notify the hiring manager, review the results with him or her, and collectively make a final determination regarding the suitability of the candidate for the offered position, in consultation with appropriate University administrators and University Counsel.



In connection with post-employment updates: If a Criminal Record or other issues of concern are revealed in the background check, Human Resources will notify the department manager and review the results with him or her. Collectively, Human Resources and the department manager will make a final determination regarding the suitability of continuing the employee in his or her position, in consultation with appropriate University administrators and University Counsel.

Both in connection with hiring and post-employment updates, the individual's post-rejection response/explanation of extenuating circumstances will be reviewed before a final decision is made. In the case of a faculty search or post-employment update, if the candidate or faculty member is found to have a Criminal Record, Human Resources shall include respectively, the chair of the search committee or the applicable Department Chair, among the University administrators to be consulted before a final decision is made.

Confidentiality: All persons reviewing records produced in connection with a background check will be required to keep confidential all information relating to the candidate's or employee's Criminal Record, the University's consideration of such Record as part of the hiring process (or employment continuation review) and the final employment decision. If a candidate's offer of employment is rescinded or a decision is made to terminate an individual's employment as a result of consideration of information disclosed by the Criminal background check, Human Resources will notify the candidate or employee in writing in accordance with applicable law.

### **Protecting an Individual's Privacy**

Pace University conducts background checks through a third party vendor ("Vendor"). Human Resources will serve as the Office of Record for all background check results and will strive to maintain confidentiality. Departments will not receive any details of a background check, except as otherwise provided by this Policy. Pace University prohibits its employees, contractors and agents from seeking out, using, or disclosing background check information except within the scope of assigned duties and this Policy, and/or as allowed or required by applicable laws.

### **Maintenance of Background Check Information**

If the individual is hired as an employee, the background check results will be filed in and become a permanent part of the employee file in Human Resources. These are maintained in a secure electronic database, accessible only to authorized University representatives. Background check results will be maintained with the individual's application in Human Resources. The background check results are also stored in the Vendor's database. The initial background check information must be maintained for a period of seven years after the position has been filled. All background check results may be accessed only on a need-to-know basis or as allowed or required by applicable law. The Human Resources Division will provide an annual report to the Faculty Councils, by the end of February, indicating the total number of faculty background re-checks post-hire that were conducted during the preceding calendar year.



#### **04. Issues in Hiring due to background check information**

##### **Completion of Background Check as Condition of Employment/New Responsibilities**

A completed background report that has been reviewed and determined to be satisfactory is a condition of employment for prospective new hires. It is also a condition for appointment of current employees to new staff or administrative positions or current employees' assumption of new job duties or assumption of new job responsibilities in accordance with Section 02 of this Policy. All offers of employment will be extended with the understanding that commencement of employment (or commencement of the new position or job responsibilities) is dependent upon acceptable results with respect to the background check.

##### **Criminal Conviction's Effect on Employment/Reclassification or Promotion**

In compliance with Article 23-A, when a Criminal Record is revealed in the background check, Human Resources and the manager will review the results and make the final determination regarding the individual's suitability for (or continuation of) employment in the position. In some instances, Human Resources may recommend additional controls that a department would need to implement before employing, promoting, or reclassifying a person with a Criminal Record. In accordance with Article 23-A consideration will be given only to relevant factors, including but not limited to:

- The public policy of New York State to encourage the employment of persons previously convicted of one or more criminal offenses.
- The specific duties and responsibilities necessarily related to the employment.
- The bearing, if any, the criminal offense(s) for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
- The time which has elapsed since the occurrence of the criminal offense(s).
- The age of the person at the time of occurrence of the criminal offense(s).
- The seriousness of the offense(s).
- Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- Whether a certificate of relief from disabilities or a certificate of good conduct has been issued to the individual, which creates a presumption of rehabilitation in regard to the specified offense(s).
- Whether the Criminal Record was disclosed during the application process.
- The legitimate interest of a private employer in protecting property, and the safety and welfare of one or more members of the University or the general public.



### **Convictions That Will Generally Preclude Hiring a Candidate**

Consistent with Article 23-A, in each instance, a thorough analysis will be conducted by Human Resources and others specified in this Policy, in consultation with appropriate administrators and University Counsel.

## **05. Hiring Process & Forms**

### **Hiring Procedure**

Once the Hiring Manager identifies a finalist, the Manager will then notify the University Talent Acquisition Department. This must take place prior to extending a conditional offer of employment. A Talent Acquisition representative (or an authorized designee) will then contact the finalist to extend a conditional offer of employment and inform them of the next steps in the process (which will include alerting the candidate that they will be receiving an invitation to complete a criminal background check from the University's screening Vendor).

### **Forms and Documents**

Candidates who have been conditionally offered employment must complete a Disclosure and Authorization Form that informs the candidate that Pace University will be utilizing the services of its Vendor to conduct the background check. This form requests specific biographical information necessary to complete a background screening. In addition, the candidate must be given a copy of A Summary of Your Rights under the Fair Credit Reporting Act. New York State residents will be given a copy of New York Correction Law Article 23-A. These documents will be sent to the candidate via email by the Vendor or by University Talent Acquisition.

## **06. Employee and Supervisor Self-Disclosure Requirements<sup>1</sup>**

Employees have an ongoing responsibility to disclose any post-employment criminal convictions and/or criminal charges filed against them. Employees shall disclose such information to their Supervisor and/or an Employee Relations Representative from the Human Resources department within three business days following the event. Supervisors notified of a post-employment criminal conviction and/or felony or misdemeanor criminal charges have an obligation to report it to Employee Relations. Supervisors who fail to report the information may be subject to disciplinary action, up to and including termination.

## **07. Employment Action Based on Discovered or Self-Disclosed Criminal Background Information.**

Upon discovery or receipt of criminal background information from any source, the University reserves the right to take any actions it deems appropriate regarding employment, up to and including termination. Before Taking any employment action based on criminal background information, the University will analyze the facts as required by Article 23-A of the New York Correction Law.<sup>2</sup>

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<sup>1</sup> This section of the Policy is applicable to all officers, academic and non-academic administrators and non-faculty staff.

<sup>2</sup> Any termination of a tenured faculty member or non-tenured full-time faculty member prior to the expiration of a contract of appointment shall be subject to the Academic Dismissal Policy set forth in the Faculty Handbook.