



Guidance- Criminal Background Checks

Implementation Guidance for Regent Policy 20-19: Criminal Background Check

This guidance is intended to answer common questions for UW System Institutions regarding the application of the Criminal Background Check process.

Positions of Trust – no exceptions apply

There are several circumstances in the policy in which a background check is at the discretion of the institution. This discretion is sharply limited when the position in question is a “Position of Trust” in accordance with how that term is defined in the policy.

There are no exceptions available at all when the “Position of Trust” meets the definition of a “Position of Trust with Access to Vulnerable Populations.” Background checks are always required in this circumstance.

In order to validate that background checks for employees in position of trust are run on a routine basis, institutions should ensure that all positions are designated as either a position of trust or not a position of trust within HRS. This field should not be left blank for any employee. See [Knowledge Base document on ‘Using the Person Assignment Checklist to record Criminal Background Check Position of Trust, and Sexual Harassment Reference Checks in HRS’](#), on how to do this.

Positions of Trust – no exceptions apply Student Employees, Interns, Temporary or Limited Term Hires, Overloads (within the same institution), and Independent Contractors

Performing Criminal Background Checks on student employees, interns, temporary or limited term hires, overloads (within the same institution), or independent contractors is at the discretion of the local institution.

This decision should be made on a case-by-case basis, depending on the level of supervision and guidance provided to the student employee, and the nature and duties of the job. It would not be appropriate for a local institution to adopt a policy that stated background checks will never be performed on student employees. At a minimum, background checks must always be performed on student employees in positions of trust.

Employees, such as a student or temporary (employees), must have a criminal background check run if they are transfer into a permanent position, if the check was not conducted upon initial hire into their original appointment, due to the above exception.

Foreign National Employees

Individuals who have a record of committing certain crimes are classified as inadmissible to the United States and are ineligible to receive a visa. The list of crimes that make an individual inadmissible is listed in [Section 212 of the Immigration and Nationality Act](#). UW System institutions may assume that foreign nationals possessing a valid visa have no disqualifying convictions from the list included in that statute. The most relevant convictions include:

- A crime involving moral turpitude (other than a purely political offense) or attempting or conspiring to commit such a crime. Two exceptions exist, including one for minors (under 18 years of age) who committed the crime and were released from any prison or confinement more than five years before applying for a visa; and one for where the maximum penalty possible for the person's crime is less than one year's imprisonment, and the person was not, in fact, sentenced to more than six months.
- A violation of (or a conspiracy or attempt to violate) any controlled substance (drug) law.
- Multiple criminal convictions (two or more, other than purely political offenses) for which the total, aggregate prison sentences were five years or more.
- Illicit trafficking in any controlled substance (drug).

Institutions must still complete an *appropriate* criminal background check on a prospective hire who is a foreign national, as required by the policy. Foreign nationals that do not possess a Social Security Number upon hire shall have a criminal background check completed that is appropriate to the information possessed at the time of hire.

If a foreign national applicant has had a social security number for less than 90 days prior to the date of their application for UW System employment, the Social Security Number Trace requirement may be waived, as long as the institution has other evidence that the social security number provided by the applicant is accurate and validly assigned to that particular individual.

In the event that an individual lists a US address(es) as part of their criminal background check application, but the check subsequently reveals a foreign address(es), the appropriate criminal background checks should be conducted for all identified countries of residence. The same holds true if an individual lists a current US address and previous addresses outside of the US.

Employees Switching from One UWS Appointment to Another UWS Appointment (Transfer)

Regent Policy Document 20-19 requires that a criminal background check must be conducted on prospective hires who are not University of Wisconsin employees, and on current employees who are seeking to move to a position of trust within the University through promotion or otherwise, regardless of whether their current appointment is a position of trust.

If an employee transfers from one position to another within the same UW institution, and the duties of the new position are substantially different from the duties the employee performed at their previous position, an institution may perform an additional background check at the institution's discretion. A substantial difference means two positions that share identical job duties at least 50% of the time. Thus, for a position to be substantially different, it must have distinct differences in job duties that make up 51% of the new position's work time.

If the transfer occurs between different institutions, then the employee is considered to be a new hire, and a background check must be run.

Employees who are part of an interchange or interinstitutional agreement

Employees who participate in an employee interchange or interinstitutional agreement are still considered employees of the sending institution (and not the receiving institution). Participation in such an agreement is not considered a "hire" for purposes of triggering the background check requirement and therefore, a criminal background check by the receiving institution is not required. An exception to this principle would be if the employee is moving into a position of trust as a part of the agreement.

The receiving institution may perform an additional background check at the institution's discretion for the purpose of conducting a new individual analysis based on the new job duties.

Lump Sum Employees

For individuals who are receiving compensation in the form of a lump sum (within or across institutions), there are two common situations:

- 1) The individual is being hired for a temporary appointment. In this case, the institution has discretion as to whether to perform a background check, based on the level of direct supervision and the nature of the duties of the job. If the work the individual is doing is substantially similar to their normally assigned duties, and a criminal background check has already been completed for the employee in that assignment, then it is not necessary to complete an additional background check. If the lump sum is being paid for work that would meet the definition of a "Position of Trust", then a criminal background check is mandatory.
- 2) The individual is an existing UW System employee who is being paid an additional sum over and above their normal salary. If this additional sum is an award, then this does not count as a hire and does not require a criminal background check. If this additional sum is for an added work assignment, then the institution should follow the procedure in (1), above.

Employees who have concurrent appointments within the same university

Employees who have two or more part-time UWS appointments may or may not require a separate background check for each appointment. A background check will need to be completed when the employee is hired into their first appointment. When the employee is hired into their second or subsequent appointments, the hiring institution should evaluate whether the duties of the second position are similar to the duties of the first position. A substantial difference means two positions that share identical job duties at least 50% of the time. Thus, for a position to be substantially different, it must have distinct differences in job duties that make up 51% of the new position's work time. If the duties are similar, then a second background check is not required. If the duties are meaningfully different, then the institution may want to conduct a second individual analysis as to whether a substantial relationship exists between the employee's criminal history and the functions of the new position. This analysis may be performed using the previous criminal background check records, or the institution may order a new criminal background check.

If the second or subsequent position meets the definition of a position of trust, then a second background check is required unless the first position is also a position of trust.

Rehired Employees

A rehire occurs when an employee completely ends their employment relationship with the UW System, a period of time passes, and then the same individual is hired again by the UW System. An employee is considered a rehire if their break in service is twelve months or more. A criminal background check is required if an employee is a rehire.

Options if background check is delayed

In some circumstances, the completion of a criminal background check may be delayed as a result of the local record release policies of a jurisdiction in which the prospective hire has lived, difficulty in obtaining foreign criminal histories, the prospective hire having several names under which records may exist, and/or other factors. The Criminal Background Check policy does permit offers of employment to be made contingent upon the successful completion of a criminal background check. Under normal circumstances, an employee should not be assigned a start date prior to the completion of the criminal background check. In some circumstances, there may be a compelling institutional need for the employee to begin work prior to the completion of the background check. In this circumstance, the full criminal background check must still be completed as expeditiously as possible. An

institution may take the following steps to help mitigate the risks associated with starting an employee prior to the completion of the background check:

- Removal/suspension of position of trust access/duties until the CBC is complete.
- Require that the Chancellor or their designee approve any employment commencing prior to the completion of the criminal background check.
- The local institution Office of Human Resources may undertake a manual review of WI Circuit Court Access Project records and the WI Sex Offender Database.
- The local institution Office of Human Resources may undertake a supplemental examination of the applicant's employment history and initiate additional contacts with previous employers or references for the specific purpose of risk assessment and mitigation.
- The employee's start date may be delayed.

Local Documentation

Each university shall document its practices in either a local policy or procedure that defines what types of appointments and in what instances, a criminal background check is run, for those cases where Board of Regent and System Policy or Practice allow discretion. The local policy or procedure should include the requirements for student employee hires, interns, temporary or limited term appointments, overloads, transfers (in certain situations), lump sum appointments, concurrent appointments, and independent contractors. It should also include the process the university follows when a criminal background check is delayed.

If a criminal background check is not run, the university shall document the reason in the employee's personnel file, and the reason for the decision.