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# Code of Practice-Background Verifications

*Revised September 1, 2023*

The City University of New York (CUNY) and the constituent colleges and units of the University (collectively referred to as the “University”) is committed to providing a safe and secure environment for our community, including students, visitors and employees, and safeguarding the assets and resources of the University, in compliance with federal, state and local laws. In support of this effort, any applicant for who receives an offer of employment, will be required to submit to a background check. Rehires with a break in service of more than six consecutive months, will also be required to undergo a background check. This policy sets forth CUNY’s procedures for conducting pre-employment background checks for all full-time and part-time positions.

The background check will consist of a national criminal record search (including a 50-state sex offender registry search), education verification, social security number verification, home address verification, professional reference check and prior employment verifications. Applicants for certain positions will be required to undergo drug testing, a motor vehicle report, fingerprinting, and a credit check, depending upon the nature of the position.

**Note:** the background check report must be reviewed and the candidate must be cleared before employment can begin.

No background check will be conducted without the prior written consent of the final candidate. Any information that is falsely reported or omitted by an applicant or employee, may be cause for withdrawal of an offer of employment, promotion or transfer and/or constitute cause for termination of employment and disqualification of future hire.

CUNY will comply with all applicable laws related to the use of criminal history in making employment decisions.

Background checks may include but are not limited to:

- Education Verification
- Professional Reference Check
- Verification of Prior Employment
- National Sex Offender Registry
- National and Local Criminal Check
- Medical Test/Pre-employment Physical (Custodial Assistants, Laborers. Campus Security, Public Safety, Peace Officers and Motor Vehicle Operators)
- Drug Screening (Campus Security, Public Safety, Peace Officers and Motor Vehicle Operators)
- License/Certification Verification (if applicable)
- Motor Vehicle Record (if driving is a requirement of the position)
- Credit History (certain roles with significant financial responsibilities of more than 10K)
- Social Media Check (must be consistent for all positions at location)

### *Appendix I: Components of Background Checks*

#### **I. Governed by this Policy**

This policy covers:

- Full-time, part-time, union and non-union candidates who receive an offer of employment.

Categories of employees that are **excluded** from this policy include temporary employees not directly paid by the University, student employees, unpaid interns, and volunteers (unless in a child care center, campus

school or program with minors) unless a background check is otherwise required by state, federal law, or by an accrediting body.

## **II. Statement About Background Checks**

Information discovered through the background check process is considered highly confidential and will be used solely for the purpose of evaluating an applicant's suitability for employment.

## **III. Professional References**

**Administrative staff:** professional references for final candidates should be contacted before the verbal employment offer is extended. Professional references should include a prior supervisor/manager. Candidates provide contact information for references on the employment application.

**Faculty:** professional reference checks are conducted through the faculty hiring process prior to the extension of an offer of employment.

Hiring managers with questions about checking professional references should contact their campus Human Resources department.

## **IV. Maintenance of Background Check Reports**

Authorization forms for background check reports shall be placed in the personnel file of the employee and maintained in accordance with CUNY's Record Retention Guidelines.

Background check reports shall be delivered directly to Campus Human Resources by the vendor. Reports will remain with Campus Human Resources until confirmation of employment eligibility has been made; reports are to be stored separately from any employee personnel files, as a confidential file, for a minimum of five years. Copies or content of background reports **should not** be shared with the hiring department. Except as may be required by law, Campus Human Resources shall not release background reports.

# **Background Check Process**

## **Overview**

- The University will perform background checks on all candidates who have received an offer of employment for full-time or part-time employment. All offers of employment are contingent upon clear results of the background check and all verifications.
- Offers of employment (offer letters) for all positions should include the following statement: “This offer of employment is conditional upon satisfactory completion of all verifications, including but not limited to confirmation of academic and professional credentials, necessary employment and background checks, fiscal ability and approval by the Chancellor or Chancellor’s designee.” Certain positions (Chancellor, President, Vice Chancellor (all levels), and Vice President) require the approval of the Board of Trustees.
- Campus Human Resources will initiate the background check after a conditional offer of employment offer has been extended (full-time or part-time) and upon receipt of a signed release form
- Campus HR will review the background check report and notify the hiring department that the candidate has either a) cleared the background check or b) the report revealed potentially disqualifying information. In the case of potentially disqualifying information, Campus HR will start the adverse action review process (*refer to section D below*).
- Once the final candidate has been cleared by Human Resources, the department can move forward in the hiring process.

## **A. Consent to Conduct Background Checks**

Prior to conducting the background check, signed, written consent must be obtained. Refusal to authorize the background check will render the finalist ineligible for employment.

The final candidate authorizes the confidential background check by completing the *CUNY Employment Application – Part 2 Post-Conditional Offer of Employment*; this form must be signed by the candidate and submitted to Human Resources.

Candidates for employment in job titles requiring a credit check must submit a signed **FCRA Authorization to Obtain a Consumer Report** form to Human Resources.

## **B. Determining Required Background Checks for Position/Classification**

*(Appendix 2-Standard Background Check Package and Other Pre-employment Checks)*

- Candidates for all staff positions: standard background checks including but not limited to prior employment verification, education, and criminal convictions.
- Candidates for civil service positions: the Department of Criminal Justice Services processes criminal history checks using fingerprinting in accordance with the CUNY Civil Service regulations. National criminal history checks for these candidates must be processed by the vendor. Article 23-A does not apply to the following titles:
  - Campus Peace Officer
  - Campus Public Safety Sergeant

- Assistant College Security Director
  - College Security Director
- Candidates for employment in childcare centers, campus schools and programs with minors, are subject to national and local criminal history checks using fingerprinting, in accordance with the New York City Health Code and other legal mandates. *Appendix 3-Background Checks for Employees in Childcare Centers, Campus Schools and Programs with Minors*
  - Candidates for all faculty, research, and fellow positions are subject to criminal background checks. Employment and educational qualifications for faculty and research positions are verified during the faculty hiring process.

### **C. Background Checks for Current Employees**

Current employees with a change in position as a result of a transfer, promotion, or reclassification may be required to undergo a background check, if a background check was not conducted during the initial new hire process.

Adjuncts (teaching and non-teaching)-if a background check was processed by another campus, the vendor's system will flag the candidate and another check will not be processed if under 6 months; the vendor will share background check results will be shared with the new campus HR director only.

If the candidate is a current employee and the background investigation report reveals adverse information that supports the withdrawal of the conditional offer of employment, or suggests that discipline is warranted, such discipline shall be handled pursuant to applicable University policies and/or collectively-bargained procedures. The 23-A evaluation process must be followed for criminal convictions and credit check results see *Section D Evaluation of Criminal Background Check and Credit Check Results*.

During their employment, all employees have an ongoing responsibility to make the University aware of any felony or misdemeanor convictions by reporting convictions to Human Resources.

### **Background Checks for Former Employees**

Background checks will not be required for former employees who are offered a regular or temporary position within one year of ending their most recent employment with CUNY, if a background check was completed within 6 months preceding the rehire date.

### **D. Evaluation of Criminal Background Check\* and Credit Check Results**

The public policy of New York State is to encourage the licensure and employment of persons previously convicted of one or more criminal offenses. According to Article 23-A of New York's Correction Law (§§750-755), and the Fair Chance Act it is illegal to deny employment to a candidate because the candidate has been convicted of one or more criminal offenses unless:

- there is a direct relationship between one or more of the criminal offenses and the specific employment sought by the candidate
- hiring the candidate would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. Section 753 of the NYS Correction Law and the NYC Fair Chance Act outline factors that must be considered when determining if a record of criminal conviction may be the basis for rescinding an offer of employment.

In accordance with Article 23-A of the New York State Corrections Law and the NYC Fair Chance Act, the following factors must be considered when evaluating criminal convictions:

- New York public policy encourages the licensure and employment of people with criminal records
- The specific duties and responsibilities of the prospective job;
- The bearing, if any, of the criminal offense(s) for which the applicant or employee was convicted, or that are alleged in the case of pending arrests or criminal accusations, on the applicant or employee's fitness or ability to perform one or more such duties or responsibilities;
- The time that has elapsed since the occurrence of the events that led to the applicant's criminal conviction, not the time since arrest or conviction;
- Whether the person was 25 years of age or younger at the time of occurrence of the criminal offense(s) for which the person was convicted, or that are alleged in the case of pending arrests or criminal accusations;
- The seriousness of the applicant's conviction history ;
- Any additional information produced by the applicant or employee, or produced on their behalf, in regards to their rehabilitation or good conduct, including a history of positive performance and conduct on the job or in the community, or any other evidence of good conduct;
- The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public;

In all cases, the employer must gather all information necessary to assess each of the relevant factors, including requesting from the employee information relating to the relevant fair chance factors, such as evidence of rehabilitation or good conduct and confirmation of the applicant's date of birth as age is one of the NYC Fair Chance Act factors.

**The NYC Fair Chance Factors applicable to pending cases are:**

- The policy of New York City to overcome stigma toward and unnecessary exclusion from employment of persons with criminal justice involvement;
- The specific duties and responsibilities necessarily related to the employment held by the person;
- The bearing, if any, of the criminal offense or offenses for which the applicant or employee was convicted, or that are alleged in the case of pending arrests or criminal accusations, on the applicant or employee's fitness or ability to perform one or more such duties or responsibilities;
- Whether the person was 25 years of age or younger at the time of occurrence of the criminal offense or offenses for which the person was convicted, or that are alleged in the case of pending arrests or criminal accusations, which shall serve as a mitigating factor;
- The seriousness of such offense or offenses;
- The legitimate interest of the employer in protecting property and the safety and welfare of specific individuals or the general public; and
- Any additional information produced by the applicant or employee, or produced on their behalf, regarding their rehabilitation or good conduct, including but not limited to history of positive performance and conduct on the job or in the community.

**Handling Applicants' Intentional Misrepresentations of Pending Cases or Conviction Histories**

- The NYCHRL does not prohibit an employer from disqualifying an applicant based on the applicant's intentional misrepresentation about their conviction history or pending cases. A misrepresentation is intentional if it is made with knowledge of its falsity and with intent or purpose to deceive. A covered employer may never, however, disqualify an applicant based on their representations about non-convictions.
- Where an employer properly bases its decision to deny employment on an intentional misrepresentation by the applicant, it is not required to perform the Fair Chance Analysis. Before

disqualifying an applicant based on a perceived intentional misrepresentation, the employer is required to provide the applicant with a copy of any information that led the employer to believe that the applicant intentionally misrepresented their criminal record and afford the applicant a reasonable period of at least five business days to respond.

- If the applicant credibly demonstrates either that the information provided was not a misrepresentation or that a misrepresentation was unintentional, the employer is required to perform the Fair Chance Analysis before making a decision regarding taking adverse action against the applicant.
- Some discrepancies between an applicant's criminal background record and self-report of their criminal history may not constitute credible evidence of an intentional misrepresentation. Discrepancies can arise despite the absence of an intentional misrepresentation because, among other reasons, the applicant incorrectly assumed a conviction was too old to be considered or was not relevant to the employer's assessment or the job; the applicant confused the charge initially filed against them with the one for which they were convicted; or because of an error in the criminal history record. It is an employer's burden to credibly demonstrate that any discrepancy on which they wish to rely as a basis for disqualifying an applicant is attributable to an intentional misrepresentation. Employers who improperly invoke intentional misrepresentation as a pretextual basis for failing to comply with the Fair Chance Process violate the NYCHRL. [fca-guidance-july-15-2021.pdf \(nyc.gov\)](#)

### **Handling Errors in the Background Check**

Errors on background checks are remarkably common. Errors can occur, for example, because the background check was run for the wrong person or because of recordkeeping errors by police, prosecutors, or the court.

If an applicant identifies an error on the background report, they should promptly notify the employer and the employer must then conduct the Fair Chance Analysis based on the corrected criminal background information, to ensure its decision is not tainted by the previous error.

As before, if the employer can show a direct relationship or unreasonable risk and intends to take an adverse action on that basis, it must follow the Fair Chance Process: the applicant must be given a copy of the corrected inquiry, the employer's Fair Chance Analysis, and a reasonable period of at least five business days to respond, with an opportunity to provide any additional information for the employer to review and re-examine its analysis.

**Criminal checks:** The Fair Chance Act (FCA), makes it an unlawful discriminatory practice for employers to inquire about or consider the criminal history of job applicants until **after** extending conditional offers of employment. The criminal history report should be reviewed by the Director of Human Resources. Before any adverse action is taken, Campus Counsel and, if appropriate, their Labor Designee. Requests for additional review should be directed to the office of the Sr. Vice Chancellor of Human Resources.

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Prior to any adverse action as a result of a criminal history report, CUNY will follow the **Fair Chance Process**, the post-conditional offer process mandated by the FCA, by providing the following to the applicant:

- A written copy of the criminal history report

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<sup>1</sup> NYC Fair Chance Act (FCA) Amendments- effective July 29, 2021 [FCA Amendment 072821.pdf](#)

- The **CUNY Fair Chance Act Notice of Criminal History Review-Article 23A Evaluation Form-A**: a written analysis, in accordance with Article 23-A New York Correction Law and the Fair Chance Act factors, with all supporting documents that formed the basis for any adverse action and reasons for the adverse action;
- Time to reply-allow the candidate with at least five business days to respond; during that time, the position must remain open for the candidate.

**Credit check:** A credit history report may be considered **for certain job titles** when determining employment eligibility for positions with significant fiscal decision-making responsibility i.e., 10K. Pursuant to federal and state law, before obtaining a consumer history report, the candidate must be provided with a disclosure statement notifying the candidate that the University intends to obtain a consumer report for employment purposes. The candidate must complete a “FCRA Authorization to Obtain a Consumer Report” form and submit it to the Director of Human Resources. The candidate must be provided with a copy of “Summary of your Rights Under the Fair Credit Reporting Act.”

The Stop Credit Discrimination in Employment Act (SCDEA) prohibits the use of a job applicant's personal credit history as hiring criteria, unless a reasonable business necessity is determined. Refer to: Stop Credit Discrimination in Employment Act (SCDEA): Legal Enforcement Guidance <https://www1.nyc.gov/site/cchr/law/stop-credit-discrimination-employment-act.page>

Therefore, the determination of ineligibility will be considered on a case-by-case basis, after a review of the credit history report by the Director of Human Resources. Before a decision regarding adverse action is taken, the Director of Human Resources should consult with Campus Counsel and, if appropriate, their Labor Designee. Requests for additional review should be directed to the office of the Sr. Vice Chancellor of Human Resources.

Prior to any adverse action as a result of a credit history report, and in accordance with the Fair Credit Report Act (FCRA), CUNY will provide the following to the applicant:

- A copy of the credit history report
- “**A Summary of Rights Your Rights Under the Fair Credit Reporting Act**”
- A **Pre-Adverse Action Notice**- a letter to the finalist indicating that a consumer report has been requested in connection with the application for employment to include the consumer reporting agency name and contact information
- An **Adverse Action Notice** If adverse action is taken against a finalist based upon the results of the credit history report, the finalist will receive a letter indicating that the employment offer has been rescinded. The candidate with at least five business days to respond; during that time, the position must remain open for the candidate.

### **Vendors:**

The University has engaged **TruView** as the vendor for processing Social Security Number Trace (Social Security Number and Address verifications), criminal history, sex offender registry, credit checks (if applicable) <https://truviewbsi.com>

**Educational Verifications:** the University has engaged **DegreeVerify** as the vendor for processing no fee educational verifications. <http://www.studentclearinghouse.org/colleges/degreeverify>

**Fingerprinting:** the University has engaged **Morphotrust USA Enrollment Services** (formerly L1 Enrollment Services) to conduct fingerprinting for criminal background reports for civil service positions.



**Motor Vehicle Reports (MVR's) and driver's license status updates:** campuses are **required** to register for the **License Event Notification Service (LENS)** to 1) process motor vehicle reports for all new hires required to drive 2) receive automatic updates on status changes of driving records for employees required to drive. Apply for LENS: <https://dmv.ny.gov/dmv-records/apply-lens-0>  
[Request for DMV Records \(PDF\)](#) (MV-15) for descriptions of the permissible uses of DMV records

**Resources:**

**NYC CHR Fair Chance Act: Legal Enforcement Guidance**

NYC Commission on Human Rights Legal Enforcement Guidance on the Fair Chance Act, Local Law No. 63 (2015) *Revised 7/29/2021* <https://www1.nyc.gov/site/cchr/law/fair-chance-act.page>

**NYC Fair Chance Act (FCA) Amendments- effective July 29, 2021 Memo from VC Gloria** [FCA Amendment 072821.pdf](#)

[CUNY-FairChance\\_Form23-A6.pdf](#) revised July 2021

**Fair Trade Commission: Using Consumer Reports: What Employers Need to Know**

<https://www.ftc.gov/tips-advice/business-center/guidance/using-consumer-reports-what-employers-need-know>

**NYC Stop Credit Discrimination in Employment Act (SCDEA): Legal Enforcement Guidance**

<https://www1.nyc.gov/site/cchr/law/stop-credit-discrimination-employment-act.page>

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