

## RESOLUTION NO. 296

### SETTING THE POLICY OF ALBANY COUNTY REGARDING BACKGROUND CHECKS OF EMPLOYEES

Introduced: 7/10/17

By Messrs. Ward, Commisso, and Burgdorf:

WHEREAS, It is the policy of the County of Albany that all new staff, volunteers and employees have certain credentials, criminal and other background information verified as a condition of employment but not before a conditional offer of employment has been made or such other employment event set forth in the policy that may authorize a background check, and

WHEREAS, This policy is intended: 1) to ensure the County's mission and goals are supported by qualified employees who protect the public; 2) to provide a safe and secure environment for all County employees, volunteers and constituents, and; 3) to take action to protect funds, property, and other assets associated with programs and operations, now, therefore, be it

RESOLVED, That the following policy shall be known as "The Albany County Background Check Policy" and is hereby instituted:

#### **Section 1. Definitions**

(a) Criminal records check - the process used to conduct criminal records background checks on candidates to verify whether the candidate has relevant criminal convictions or pending criminal charges. A conviction includes a plea of guilty or any court determination of guilt. Criminal records information will be obtained using computerized and/or finger-print based processes, as determined by the Albany County Sheriff. Criminal records checks will be performed by the Albany County Sheriff's Office, or, by a third party vendor chosen by the County of Albany to complete background checks. A nationwide criminal records check requiring fingerprints may be obtained from New York State Police through the Federal Bureau of Investigation (FBI).

(b) Fingerprint-based criminal check - a criminal records check using an individual's fingerprints. If, at any time, it is determined that Albany County will use an individual's fingerprints to conduct a criminal records check, the records check will be subject to all rules and regulations under the laws of the State of New York.

(c) Candidate - a person for whom the County may require a criminal records check as a condition to providing services as an employee, contractor, student employee or volunteer.

## **Section 2. Applicability**

Unless specifically prohibited by NYS or Federal laws, rules, or regulations; this policy covers positions that may include, but are not necessarily limited, to:

- a) Prospective new employees (classified, unclassified, exempt class);
- b) Temporary employees and student employees;
- c) Current employees accepting new appointments;
- d) Current employees when working in programs involving children primarily under the age of 18, i.e. summer camps for students;
- e) Current employees when working in programs involving individuals over the age of 62;
- f) Current employees when working in programs involving individuals with mental health deficiencies;
- g) Individuals working under a Personal Services Contract;
- h) Volunteers;
- i) All persons working for outside agencies conducting day-care-provider and home-service provider services for the County, or having contact with children in schools, camps, childcare, and therapeutic programs in conjunction with Local Law 1 for 2002.

## **Section 3. Exemptions**

An appointing authority may apply to the **Grievance Committee of the Albany County Legislature** for an exemption from this policy if he or she believes the subject position, or class of positions, do not require background checks.

## **Section 4. Policy**

(a) After a conditional offer of employment, the County of Albany will conduct or require background checks on prospective employees, volunteers, and contractors (as listed above) to determine fitness for employment. A background check may include the following verifications, in addition to reference checks, for all candidates:

- (i) Employment history check consisting of a review of a candidate's previous employment to ensure the candidate actually worked in the positions cited that qualify the candidate for the position sought immediately preceding application for the position.
- (ii) Education history check verifying relevant educational credentials listed on a candidate's application, resume, or curriculum vitae or otherwise cited by the candidate as qualifying the candidate for the position sought.

(iii) Industry-specific credentials check verifying that the candidate possesses the required degrees, licenses, and certifications listed on the application, resume or curriculum vitae for the position sought and that license or certifications are current.

(iv) Check of references provided by the applicant/contractor.

(b) The following verifications will be conducted, as appropriate, based on position duties and in addition to the checks identified above, for all candidates for all positions to which this policy applies.

(i) Criminal history check, and a fingerprint-based criminal history check, if applicable, verifying the candidate does not have criminal convictions, arrests, or disposition of criminal charges that would make the candidate unsuitable to perform the responsibilities of the position. A conviction includes a plea of guilty or any court determination of guilt.

*The County of Albany may deny employment, volunteer services, and contracted services to anyone subject to this policy if the individual refuses to consent to a criminal background check and/or refuses to be fingerprinted, if requested.*

(ii) Motor vehicle history check verifying that candidate possess the appropriate type of driver's license and does not have any undisclosed motor vehicle violations and citations that would make the candidate unsuitable to perform the responsibilities of the position shall be conducted.

(iii) Military history check verifying candidate has served as a member of the armed forces as indicated on the application, resume, or curriculum vitae, if the candidate is requesting veteran's preference.

(iv) Verification of the applicant's social security number.

(c) All recruitment announcements and job postings by Albany County must include the following statement: "This position may be subject to a background check for any convictions deemed related to its duties and responsibilities. Convictions will be considered but will not automatically disqualify the candidate. No background check will occur until after a conditional offer of employment has been made. Any revocation of an offer of employment due to criminal history will include a clear explanation and instructions for appeal."

(d) The County of Albany may deny employment to anyone who knowingly provides false, fraudulent, or misleading statements, answers, or information during the application process. Employees who are found to have provided false, fraudulent, or misleading statements, answers, or information during the application, transfer, or promotion process are subject to discipline up to and including termination.

(e) New employees cannot begin working until completion of a criminal background and educational verification check. A criminal conviction is not necessarily a bar to county employment; decisions will be made on a case-by-case basis, as described below.

(f) This policy may be revised at any time without prior notice. All revisions supersede prior policy and are effective upon approval of the Albany County Legislature.

### **Section 5. Procedure**

(a) Before making a final offer to a potential employee, volunteer, or other individual in a designated position as defined in this policy, the hiring department must contact Human Resources.

(b) Upon selecting a candidate for a job offer, **and after a conditional offer of employment to the prospective employee/volunteer**, the search committee chair, or department head, will contact Human Resources to initiate the background check process on the selected candidate.

(c) The Albany County Sheriff will receive the report and forward to the relevant department head or other hiring authority. The department head or other hiring authority shall review the report and share it with the candidate before making the final offer of employment or revoking the conditional offer of employment.

### **Section 6. Appeals Process**

(a) If the conditional offer of employment is revoked and the candidate disagrees with the results of the background check, the individual should contact the Human Resources Department as set forth in Local Law 1 for 2017. Human Resources will work with the Sheriff's Department/background check vendor to determine if there has been a mistake with the candidate's name, prior addresses, or personal identifiers. If the results of the background check were inaccurate, the department head or other hiring authority will be contacted to proceed with continuing to extend an offer of employment to the candidate.

(b) If the vendor determines the candidate's background check is accurate and shows a relevant criminal history, the Director of Human Resources will contact the candidate to let him or her know further investigation has resulted in finding a history that disqualifies him or her for consideration of employment at the County of Albany. The department head or other hiring authority will be notified.

(c) The candidate may appeal any determination disqualifying him or her from the position by following the procedure delineated in Section 9 of Local Law 1 of 2017.

(d) If the candidate further disagrees with the background check results, the candidate's next option is to request a copy of his/her own FBI record and/or have his/her record expunged. The candidate must take responsibility for the cost and time associated with this process. If the department head or other hiring authority has not yet extended a job offer to another candidate, the disputed background check is cleared, the department head or other hiring authority may extend a job offer to the candidate. If the department has already extend a job offer to another

candidate, and the disputed background check is cleared, the candidate may apply for other open positions.

### **Section 7. Confidentiality**

(a) The Sheriff's Department, or background check vendor will transmit all search results directly to the hiring department head or other hiring authority. Due to the confidential nature of the information, the department head will hold all materials with the highest regard for individual privacy.

(b) Criminal background check reports will be retained in a separate file located in the office of the Sheriff. Access to the background check reports will be limited to authorized staff members having a need to know only.

(c) Unauthorized disclosure of information contained in the background checks may subject the individual to disciplinary action up to and including termination.

### **Section 8. Post Employment Motor Vehicle Check Policy**

(a) The County of Albany will conduct a motor vehicle history check to verify that the candidate, employee or volunteer in question possesses the appropriate type of driver's license and does not have any undisclosed motor vehicle violations and citations that would make the candidate ineligible or unsuitable to perform the responsibilities of his or her position.

(b) The check can be accomplished yearly, through the Sheriff's Department, or by the County of Albany entering into the LENS program with the New York State Department of Motor Vehicles which would automatically notify the Human Resources Department if a motor vehicle violation affecting a County employee or volunteer (who drives County cars) has occurred.

(c) The program covers the following individuals if they use County motor vehicles or equipment:

- (i) Current Employees (classified, unclassified, exempt class);
- (ii) Temporary employees and students employed by the County;
- (iii) Individuals working under a Personal Services Contract;
- (iv) Volunteers;
- (v) Outside contractors, if they transport any individuals on behalf of the County of Albany

### **Section 9. Reporting**

The Human Resources Department shall annually report to the County Legislature's Personnel Committee. The Director shall provide a summary of background check activities and results. The information shall not include the names of potential and actual employees, but shall be organized by department and title. The report shall identify generically how many of each of the various checks were completed in the previous year, how many candidates were disqualified

because of these various checks, details as to the number of individuals denied positions because of criminal backgrounds, inadequate professional licenses, academic discrepancies, motor vehicle driving license issues, etc., the number of individuals granted positions, even though they have criminal backgrounds, academic discrepancies, motor vehicle driving issues, etc. and final determinations relating to hiring. The report to the Personnel Committee shall be provided in an Executive Session, and no videography or taping of the session shall be permitted.

The annual report shall also include information pertaining to the monitoring of vehicle, educational and professional licenses; which will be tracked on a continuous basis.

*Referred to Law and Personnel Committees – 7/10/17*