

## **Sample Background Check Policy**

All applicants who are offered employment with the Company will be subjected to a check of their background either by the Company or a third party vendor. As such, applicants and employees may be subject to a consumer report or investigative consumer report. The Company will review the relevant background information to select and retain the most qualified employees with the end goal of maintaining a safe and productive work environment. This policy applies to the criminal history screening of prospective and current employees.

The Company will conduct all third party background checks in accordance with the Fair Credit Reporting Act (FCRA), other applicable federal and state laws, and Company procedures.

### **Obtaining Background Reports**

Prior to the background check being conducted, the applicant will be required to complete disclosure and authorization forms authorizing the Company to conduct specific background checks. This authorization will be made in either electronic or written form and will remain valid throughout the employee's employment with the Company, if hired as allowed by applicable law.

Background checks will be kept confidential and will only be shared with individuals who have a business need to review the information to make employment decisions. Reports will be retained in accordance with the Company's document retention procedures and federal and state regulations.

### **Criminal Background Reports**

The existence of a criminal record will not automatically disqualify an applicant from employment. If a criminal record is received during the background check, the information in the record will be compared with the information on the disclosure and authorization form and any other identifying information provided by the applicant to ensure the record belongs to the applicant. In the event that an applicant's background check includes a criminal offense, the Company will conduct an individualized assessment to determine whether excluding an applicant based on the offense is job-related and consistent with business necessity. Factors that may be taken into consideration prior to making an employment decision, include, but are not limited to:

- The nature and gravity of the offense
- The nature of the position held or being sought, including the specific duties and responsibilities of the position
- The relevance of the offense to the position being sought
- The time which has elapsed since the offense

***CAUTION: This document is only a basic template or checklist of things to consider. It is not all encompassing. Attorneys must use discretion and independent judgment to ensure any work product is appropriately tailored to the unique facts and circumstances of their matter. In addition, attorneys must review relevant Federal and Local Rules, standing orders, and any other orders to ensure compliance.***

- The age of the applicant at the time of the offense
- The facts or circumstances surrounding the offense
- The number of offenses for which the individual was convicted
- Evidence that the individual performed the same type of work, post conviction with no known incidents of criminal conduct
- The length and consistency of the applicant's employment history before and after the offense
- Relevant evidence of rehabilitation, including any education or training completed following the offense
- Employment or character references or other relevant information regarding fitness for the position held or sought
- The interest of the Company in protecting property, and the safety and welfare of other employees or the general public
- False statements or material omissions made by the applicant on the employment application or during an interview
- Any other factors mandated by federal or state law

### **Adverse Action**

An applicant or employee will be provided with a copy of the criminal record obtained from the Company's third party vendor prior to the Company questioning the individual about his or her criminal record.

Prior to taking any adverse action in whole or in part on information in the background check, the applicant will be provided with a pre-adverse action notice along with a copy of his or her background check, a summary of rights under the FCRA, and any other applicable documents as required under the FCRA or state law.<sup>1</sup>

Applicants will be afforded an opportunity and an appropriate time period<sup>2</sup> to provide information or data that explains any discrepancies or inaccuracies contained in the background report before an employment decision is made. If after that time period,

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<sup>1</sup> In Massachusetts, applicants will also be provided with a copy of this criminal background check policy and information concerning the process for correcting a criminal record by the DCJIS. New York applicants will be provided a copy of Corrections Law Article 23-A, and New Jersey and Washington applicants will be provided with a summary of their rights under applicable state law. The Company will also comply with any and all additional state requirements. For example, in Seattle, WA, San Francisco, CA, Montgomery County, MD, and Prince George's County, MD we will state the reason for the possible adverse action.

<sup>2</sup> In Newark, NJ, employers must wait ten (10) business days before making any final decision regarding employment. In San Francisco, CA, employers must wait seven (7) days before making any final decision regarding employment.

adverse action is still deemed necessary, the applicant will be provided with an adverse action notice regarding that decision.

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