

DEPARTMENT OF MILITARY AFFAIRS
STATE HUMAN RESOURCES
PRACTICE AND PROCEDURE MANUAL

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SUBJECT: General Policy

SECTION: Background Investigations

I. PRACTICE

The Wisconsin Department of Military Affairs (DMA) will comply with the Wisconsin Fair Employment Act and other applicable laws to ensure that individuals are not discriminated against because of arrest, pending charge or conviction records that do not substantially relate to the activities of a particular job or licensed activity.

It is the policy of the DMA to conduct background checks in accordance with the following laws, rules and guidance:

Wisconsin Fair Employment Law, s.s. 111.31 to 111.395, Wis. Stats.
Sections 111.335(1)(a), (b), and (c), Wis. Stats.
Section 230.17(3), Wis. Stats.
Chapter 343, Wis. Stats., et seq., relating to the operation of motor vehicles
Wisconsin Criminal Code, Chapters 938 to 951, Wis. Stats.
Chapter ER 1.02(10), Wis. Adm. Code
Chapter ER-MRS 6.10, Wis. Adm. Code
Wisconsin Human Resources Handbook (WHRH), Chapter 246
Gun Control Act of 1968 as codified in 18 U.S.C. §921 et seq.
AFI 31-101, "Air Force Installation Security Program"
DoD 5200.2-R, "Personnel Security Program"
DoD Directive 3025.12
NGR 5-1/ANGI 63-101

DMA leadership must notify The Office of State Human Resources (SHR) of changes in regulatory or business requirements that may affect background check requirements for state positions. **No changes will be implemented for current employees without prior notice to and approval by SHR.**

WHRH, Chapter 246, is hereby incorporated into DMA's background check policy and procedure. SHR will serve as the primary advisor and trainer for supervisors on all subjects relating to background checks on state employees. SHR will seek counsel from the DMA legal office and the Office of State Employment Relations (OSER), as needed, on a case-by-case basis.

Background checks will be required for every new hire (including contractors, limited term employees, project employees, interns, intergovernmental exchanges) in a job title or position that is included in Section II of this policy.

Current employees in positions with a background check requirement may be subject to a check if illicit information is made known by credible means. Employees from a non-secure work site may be subject to background checks upon promotion, transfer, demotion, reinstatement, restoration or for options exercised in lieu of layoff to a different position which resides at a secure military work site. In addition, current employees are required to disclose changes to their arrest and conviction status in accordance with the "Reporting Requirements for Current Employees" outlined below.

Persons Conducting Checks/Reviewing Results: A limited number of qualified personnel will conduct background checks, review results, and participate in nexus determination for the DMA. SHR will provide training for staff members who do not have the suitable knowledge or experience for this activity. Training will include a review of the policies set forth in WHRH Chapter 246 and the agency background check policy, along with other pertinent laws and regulations. Individuals who complete training will be provided documentation of such. Notation indicating the receipt of training will be maintained by SHR with a list of individuals in the agency approved to conduct or review the background checks.

Personnel who participate in conducting background checks or who review the results will complete the Confidentiality Agreement (Attachment #1) provided in WHRH Chapter 246. A copy of each Confidentiality Agreement will be placed on file with SHR. Personnel will be subject to discipline for violating this agreement.

Out-of-state checks must be done if the final candidate has an employment history outside Wisconsin or has lived outside the state. DMA can conduct these checks in-house by utilizing information the candidate has provided (resume/vita, reference check information, past employment information, consent form, etc.) and accessing available criminal records in other states. In the alternative, DMA may use a private, commercial background check vendor. The standard package for out-of-state criminal background checks conducted shall include:

- Social Security Number Trace—Authenticates applicant's information and generates a list of addresses the applicant has lived at for the last seven years.
- Criminal Felony/Misdemeanor by county of residence—superior and municipal court records in any county in the US.
- Sex Offender Registry—sex offender search by state.

Additional criminal and non-criminal checks (e.g., motor vehicle, etc.) may be run when appropriate in relation to the position.

Records: Information collected in connection with the background check includes all background search efforts, such as phone calls, letters, record search results, completed Reliability Questionnaires (DMA Form 178 (Rev 1/02)), etc. This information will be treated confidentially to the extent permitted by the Wisconsin public records law and other applicable laws. A record of all background search efforts and results will be retained by DMA securely in a file for a period of six and one-half years after the position has been filled, and may be accessed only on a need-to-know basis or as required by applicable law.

II. SCOPE

In accordance with Chapter 246.050 (9), Scope of Positions Approved for Background Checks, the following positions within the DMA have been identified for a background check requirement:

- A. All positions located at the Challenge Academy. All positions at the Challenge Academy carry a significant level of public trust in that they have frequent access to a vulnerable population of at-risk youth.
- B. Joint Force Headquarters positions serving roles in homeland security programs and initiatives, which require a security clearance from the Department of Homeland Security (DHS) or a reciprocal Federal agency. Positions include Attorney Confidential, Executive Staff Assistant, and Administrative Managers (Bureau Directors) and select Emergency Government Specialist (EGS) and EGS Senior positions in the Division of Wisconsin Emergency Management, as well as one Emergency Services Coordinator position, identified with a working title of Force Protection Security Specialist. The DHS, State and local law enforcement, and the aforementioned have access to classified information regarding subjects of homeland security and/or have responsibilities in anti-terrorism programs, threat assessment and protection of facilities and personnel within the Wisconsin National Guard.
- C. Positions with fiduciary duties defined in WHRH Chapter 246.030(8), as required by the Fiduciary Responsibility Law (S. 230.17(3), Wis. Stats.), will require a background check. Titles include: Accountant Senior, Budget and Policy Manager, Budget and Policy Supv Division Advanced, Contracts Specialist Senior, Financial Specialist 1-5, Grants Specialist and Grants Specialist Adv, Payroll and Benefits Specialist Confidential and Advanced Confidential, and Purchasing Associate.
- D. All positions located at a secure Air National Guard installation, including Truax Air Field (Madison), Mitchell Air Field (Milwaukee), and Volk Combat Readiness Training Center (Camp Douglas). Security thresholds at these installations are established by the Department of Defense (DOD) and the National Guard Bureau (NGB) and are governed by the respective Base Commander.

- E. All positions that work in the mail centers and the information systems unit under the J6 Directorate of Administrative Support. The DOD requires a background check for positions that may have access to classified information. Classifications include Shipping and Mailing Associate, Printing Technician, Office Operations Associate, Operations Program Associate, Management Information Manager, IS Network/Data Services, IS Network Support Technician, and IS Systems Development Services.
- F. Positions residing in the J4 Directorate of Installations Management that are responsible for the maintenance, repair and installation of electronic security systems associated with the Army National Guard's arms and munitions vaults. The DOD requires a security clearance for these positions. Classifications include Building and Grounds Superintendent (program manager) and Electronics Technician Security – Senior.
- G. Employees in positions that are users of Federal computer systems must undergo a vetting and background check process to acquire a Common Access Card (CAC). A CAC is a Federal requirement and the card is necessary to unlock a computer for use. The main objective of the CAC program is to protect and control access to federal computer networks by screening and authenticating users. The level of screening is dependent upon the position's access to the network and systems (i.e. non-privileged access such as end-users, limited privileged access such as configuration of individual systems, limited privileged access to common network applications, and privileged access to infrastructure devices or classified information systems). AR 25-2 provides these personnel security standards.

III. PROCEDURES

- A. **Requirement Determination:** When a position becomes vacant and approval has been given to fill the vacancy, the DMA Human Resources Specialist (or designee) will work with the division and review the position description to determine if the vacant position requires a background check.
- B. **Announcing a Vacancy:** When a determination has been made that a background check is required, all vacancy announcements in WISCERS and Wisc.Jobs (open, promotional, and transfer) must contain the following (or similar) statement: "Due to the nature of the position, DMA will conduct background checks on applicants prior to selection."
- C. **Initiating the Background Check:** The assigned Human Resources Specialist will initiate background checks following the interview and after receipt and approval of the hiring recommendation. The background check will be conducted by a Base Chief of Security Forces or a Military Affairs Security Officer Supervisor. The Federal Bureau of Investigation, National Crime Information Center or Wilenet/eTime will be utilized to conduct the background checks.

- D. If the Reliability Questionnaire (DMA Form 178 (Rev 1/02)) is utilized during the selection process (for Fire/Crash and Security positions only) it will be completed by the candidates in a fashion whereby the hiring supervisor and interview panel are not privy to the information on the completed form. Completed forms must be sealed and sent to the Human Resources Specialist along with the hiring recommendation. SHR will review the results of the completed form for the candidate being recommended for appointment. All other completed forms will remain sealed and only opened if an additional candidate is being considered for the vacancy, should the first choice decline, or if there is a second vacancy to be filled at a later date.
- E. A majority of positions in the DMA are subject to background check requirements external to the DMA, under the authority of the DOD and NGB. The types of criminal background checks vary, depending on the security level for the specific position, and may include a National Agency Check (NAC), National Agency Check with Inquiries (NACI), or DOD Security Clearance.
- F. **Timing of Checks and Appointments:** Background checks will be conducted either prior to the extension of an offer of employment or as part of an offer of employment that is contingent upon a review of the criminal background check results. Individuals will not begin employment before a successful criminal background check is completed, except under special circumstances (e.g., the agency needs to have individuals begin employment in order to participate in scheduled training) as approved by the DMA Human Resources Manager.

In these instances, the employee may start employment, but results of the background check will determine if the offer should be rescinded or the appointment continued or terminated. If an appointment is offered contingent on the successful completion of a criminal background check or an employee is permitted to commence employment pending completion of a check, the appointment letter must contain the following (or similar) statement: "This appointment is conditional pending the results of a background check."

- G. **Background Check Results:** If the criminal background check on an employee or candidate results in questionable data, the assigned Human Resources Specialist will work with the applicable division management, Legal Counsel and the Affirmative Action Officer (only for current employees that are a member of an affirmative action target group) to determine whether the circumstances of the charges or offense are substantially job related. The DMA Human Resources Manager is the authority for making the final nexus determination. They will consider the following: *(Based on the specific position, there may be additional factors that should be taken into consideration.)*

1. The Position

- a) The nature and scope of the position's public or client contact.
- b) The nature and scope of the position's discretionary authority and degree of independence in judgment relating to decisions or actions which affect the public or clients.
- c) The extent to which acceptable job performance requires public or client trust and confidence.
- d) The amount and type of supervision received in the position.
- e) The amount and type of supervision provided by the position to subordinate staff, if any.
- f) The sensitive nature of the data or records maintained.
- g) Whether the position includes fiduciary responsibilities.
- h) Whether the position is one for which the Legislature has determined certain offenses to be a bar to employment.
- i) The nature and scope of the position, including key access to residential facilities, key access to other facilities, access to firearms, access to cash and access to vulnerable populations, including minor children.

2. The Offense

- a) Whether intent is an element of the offense.
- b) Whether the elements of the offense are substantially related to the job duties.
- c) Whether the circumstances of the pending charge or conviction arose out of an employment situation.
- d) Whether the offense is one that under Federal or State law is a bar to employment for the specific job.
- e) The statutory elements of the offense.

IV. REPORTING REQUIREMENTS FOR CURRENT EMPLOYEES

Commencing with the date of implementation for this policy, employees must comply with the reporting requirements below. Failure to notify supervisors of the following circumstances will be considered a work rule violation for which disciplinary action may be taken.

Felony or Misdemeanor: If an employee whose position requires a background check or security clearance, is arrested, charged, convicted, or sentenced for a felony or misdemeanor offense, the employee shall notify his/her supervisor the following business day. The employee's position description will clearly indicate the background check or security clearance requirement.

Any employee required to have a valid driver's license as a condition of employment shall notify their supervisor before the start of the employee's next work shift if his/her driving record is subject to the following:

- a) Suspension, revocation, restriction or non-renewal;
- b) Issuance of an occupational license;
- c) Three or more moving violations and/or at-fault accidents have amassed in the past two (2) years (Violations occur when the citation is issued, not when the final court decision is made);
- d) An OWI or DUI has been issued (Violations occur when the citation is issued, not when the final court decision is made).

Employees that are registered under a Vehicle Use Agreement, which is required by the Department of Administration in order to drive a state-owned fleet vehicle and by the DMA in order to drive under any condition for business purposes, will have their driving record reviewed on a monthly basis.

DMA State Human Resources staff and Legal Counsel are available for confidential assistance to help supervisors determine whether or not a citation is substantially related to their employee's job.

DMA State Human Resources staff and Legal Counsel are available to an employee to assist in reviewing his/her driving record to determine if a reportable violation has occurred.



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PRACTICE & PROCEDURE BULLETIN RECEIPT CERTIFICATION

This is to certify that I have received the Practice & Procedure (P&P) Bulletin No. 4.115 on Background Checks. I have read the above P&P, specifically Section IV (Reporting Requirements for Current Employees) and understand that I must comply with the self reporting requirements therein. I understand that violation of this P&P may be grounds for disciplinary action, up to and including termination.

(Signature)

(Date)

(Typed or Printed Name)

Please return this certification to WING-SHR, PO Box 14587, Madison, WI 53708-0587 or fax to (608) 242-3168 within 2 weeks of receipt.