



State of Ohio Administrative Policy

No: Human Resources
HR-29

Effective: May 15, 2015

Disclosure of Criminal Convictions During the Application Process

Issued By:



Robert Blair, Director

1.0 Purpose

This policy is being issued in conjunction with a revised Ohio Civil Service Application. Effective June 1, 2015, the Ohio Civil Service Application will no longer have an initial question requiring applicants to disclose all felony convictions. The purpose of this policy is to ensure agency, board, and commission human resources departments understand when it is proper to exclude an applicant from further consideration based on a past criminal conviction.

2.0 Policy

Questions requiring applicants to disclose prior felony and other criminal convictions will be removed from the Ohio Civil Service Application, effective June 1, 2015. This policy provides guidance to agency, board, and commission human resources departments, to ensure applicants with past criminal convictions are properly considered and only disqualified from a position when required by state or federal law, other federal restrictions, or following an analysis by the appointing authority of the facts and circumstances surrounding the conviction and the nature of the duties associated with the position for which the individual has applied.

State law provides that certain positions of employment within the State of Ohio are unavailable to individuals who have plead guilty and/or been convicted of criminal conduct, based on the nature of the criminal violation and/or the type of position being sought. Some positions are restricted due to the nature of their funding sources and yet other positions are of the type that an identifiable nexus exists between a criminal conviction and the duties associated with the position, such that the conviction may eventually disqualify an applicant from consideration for the position. However not every criminal conviction precludes job opportunities.

2.1 Posting a position:

When posting vacancies, agencies should analyze whether any state or federal law or other federal restriction would prohibit the hiring of an individual for criminal violations. Prior to posting a position, agencies must determine if there are restrictions against a convicted felon, or an individual convicted of a particular criminal offense, being

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employed based on the nature, type, or status of a position. For example, state law provides restrictions regarding certain positions for certain felony convictions (e.g. ORC 2961.02 prohibits individuals convicted of a felony involving fraud, deceit, or theft from holding a position that has substantial management or control over the property of a state agency). Additionally, federally funded positions may contain restrictions against an individual convicted of a criminal offense being employed in the position. There may also be specific Ohio Revised Code language regarding particular positions in certain agencies (e.g. ORC 1531.132 precludes anyone convicted of a felony from serving as a game warden).

When an agency determines, based on state or federal law or other federal restrictions, that a restriction exists for a position based on a type of conviction, the agency shall include a statement on the job posting which indicates the specific violation(s) that may disqualify an applicant from consideration. (E.g. If the agency determines that the position has "substantial management or control over the property of a state agency," in accordance with ORC 2961.02 above, the posting should state "Conviction of a felony involving fraud, deceit, or theft prohibits an applicant from being selected for this position.")

2.2 Disclosures of criminal convictions and background checks:

Applicants are not prohibited from voluntarily disclosing a criminal conviction at any time during the application process. An applicant who is considered a candidate for a position shall be asked, during the interview process, whether he or she has been convicted of a felony or has a relevant criminal background. If the applicant acknowledges that he or she has a felony conviction or criminal background and is still eligible for the position according to state and federal law, the applicant shall be given an opportunity to explain the conviction or criminal background, as well as the circumstances of the conviction, including post-conviction rehabilitation.

The agency shall have the applicant complete a background check authorization during the application process. Agencies should consult with their legal counsel regarding the background check authorization.

The agency shall conduct a criminal background check (e.g., a WebCheck through the Ohio Attorney General's Bureau of Criminal Investigation) of each applicant selected as a final candidate. The requirement in this paragraph is not intended to supersede or replace the background check process that is in place for unclassified employees. Additionally, the requirement in this paragraph is not intended to supersede or replace any other background check process that is currently conducted by an agency. Agencies should consult with their legal counsel regarding the integration of the requirement of this paragraph into current agency practice.

No final candidate shall begin employment until the agency first conducts an analysis, pursuant to section 2.3 below, of the results of the candidate's criminal background check. At the agency's discretion, final candidates may be given conditional offers of

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employment and begin work pending the results and analysis of background checks that are done in addition to the background check required by this policy.

Information regarding criminal convictions received at any stage of the application process must be analyzed in accordance with section 2.3 below and any agency policies or procedures adopted as referenced in section 2.4 below.

2.3 Analysis of information received from an applicant regarding a criminal conviction at any time during the application process:

Except as otherwise required by state or federal law, consideration of convictions must be analyzed based on the nature of the position being posted. Applicants should not be rejected solely on the basis of having a past conviction. A rejection should only be made after careful analysis of the position and the conviction, and any other pertinent information.

2.3.1 Requesting and analyzing information about convictions

Sufficient information should be sought to allow the agency to consider whether the conviction should disqualify the applicant. Such information for consideration may include:

- the nature of the conviction;
- the time that has passed since the conviction or since release from incarceration;
- any mitigating factors;
- any evidence demonstrating the applicant's rehabilitation;
- the age at which the criminal activity took place; and
- any other information the agency determines would be helpful in considering whether the applicant should be disqualified from consideration for the specific position.

This is not intended to be an exhaustive list of potential considerations. An agency should proactively analyze each position for which it is seeking applicants, and perform an individualized assessment of whether there are restrictions associated with hiring for that position.

2.3.2 Applicant disqualification or selection

Agencies shall develop a procedure for analyzing the information provided by an applicant or a background check and comparing that information to the specific duties associated with the position for which the applicant applied. An individual assessment should be made before excluding an individual from consideration because of a prior conviction or selecting an individual who has a prior conviction.

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An agency shall only disqualify an applicant if the agency determines one of the following exists:

- either a state law, federal law, or other federal restriction (e.g. funding restrictions that prohibit using federal funds to pay for a convicted felon in the position at issue) exists that would prohibit the hiring of the applicant; or
- following an analysis of the duties of the position and the information the applicant submitted regarding the conviction, a sufficient nexus exists between the conviction and the position to disqualify the applicant from further consideration.

The recommendation to disqualify or select a candidate who has a criminal conviction must be reviewed and approved by the agency human resources administrator.

2.4 Implementation:

Agencies should work with their legal counsel to adopt policies or procedures to ensure proper consideration is given to a candidate's disclosure of a past conviction.

Agencies should adopt a process for notifying applicants who may be disqualified based on a conviction. The process should allow the applicant an opportunity to explain why the conviction should not disqualify the applicant from the pool. Such a process should allow an applicant to provide the information listed in Section 2.3.1 above.

3.0 Authority

ORC 124.09, 124.34, 1347.15, 2961.02

4.0 Revision History

Date	Description of Change
05/15/2015	Original policy.
05/15/2016	Scheduled policy review.

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5.0 Inquiries

Direct inquiries about this policy to:

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State of Ohio Administrative Policies may be found online at
www.das.ohio.gov/forStateAgencies/Policies.aspx

Appendix A - Resources

Document Name
<i>EEOC Enforcement Guidance 915.002 (4/25/12)</i>