

Metro | Policies and procedures

Subject Criminal Background Check
Section Human Resources
Approved by Martha Bennett, Chief Operating Officer; MERC Commission

POLICY

In order to protect the wellbeing of its employees and the public and safeguard agency assets, Metro will conduct criminal background checks on all internal and external applicants selected as finalists for Metro positions, including internships and volunteer positions. In addition, this policy provides that current employees have an ongoing duty to disclose certain criminal convictions and other information as described below. The criminal background check is intended to assess individuals' fitness for complying with the job requirements. This policy is administered by the Human Resources Department with oversight by the Office of Metro Attorney.

Applicable to

Current employees and internal and external applicants for Metro positions, including internships and volunteer positions.

Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.

Definitions

Arrest: A criminal charge that may or may not have resulted in immediate incarceration or a subsequent conviction.

Child Care Division Central Background Registry: A registry maintained by the State of Oregon to ensure that all individuals working in or associated with childcare facilities and education programs receive criminal history and child protective services record checks.

Direct Unsupervised Access: Contact with children that provides an employee, volunteer or intern with the opportunity for personal communication or touch when not under the direct supervision of a childcare provider or another employee. *OAR 414-061-0020.*

Fair Credit Reporting Act (FCRA): FCRA is a federal law that regulates how consumer-reporting agencies use personal information.

Guidelines

1. A criminal background check will be conducted for all applicant finalists for Metro jobs. Individuals who do not disclose all convictions requested on the application form may

be denied employment due to falsification of the application, as well as denied other employment opportunities for six months afterwards. Omissions discovered after employment may result in termination.

2. Finalists for positions with direct unsupervised access to children will be required to register with the State of Oregon's Child Care Division Central Background Registry.
3. Current employees are required to disclose criminal convictions that are drug-related or that relate to the qualifications or duties of their position. Current employees whose essential functions include driving, safety and security, financial and fiduciary responsibility, or direct unsupervised access to children must also disclose arrests that relate to these functions.

Procedures

1. A criminal conviction will not necessarily bar an employee from hire or continued employment with Metro. HR will consider the following criteria when reviewing a conviction record:
 - a. Nature, gravity and frequency of the offense;
 - b. Duties of the position the employee holds or for which the candidate is applying;
 - c. Age of the individual at the time of conviction;
 - d. Time that has passed since the conviction;
 - e. Rehabilitation and/or other court-ordered treatment completed, if any;
 - f. Employee's entire work record or the applicant's work qualifications in total, rather than only one aspect of the individual's history.
2. An applicant who is still on probation or parole may be denied employment based on the above criteria. If a pre-employment arrest leads to a conviction after hire, it will be evaluated by Human Resources and the Office of Metro Attorney.
3. In addition to convictions, finalists for positions that involve financial or fiduciary responsibilities, safety and security, or direct unsupervised access to children may be denied a position because of underlying conduct leading to arrest in certain very limited circumstances. While an arrest itself is not a bar to employment, employment may be denied if the conduct underlying the arrest makes the individual unfit for the specific position. A consultation with the Office of Metro Attorney is required prior to rendering a no-hire decision based on an arrest record or an "open case" with Child Protective Services.
4. Metro may conduct a criminal background check for current employees who transfer or promote to, or work out of class in, positions with responsibilities that include safety and security, financial or fiduciary duties, or direct unsupervised access to children. A criminal background check may also be conducted if there is reason to believe that an arrest or undisclosed conviction has occurred that may be relevant to the safety of employees and customers or to the integrity of the organization.
5. All finalists will be provided a disclosure and will be required to sign a consent form for a background check. Metro will contract with an outside vendor to conduct criminal

background checks. All background checks will comply with Fair Credit Reporting Act (FCRA) requirements. If a finalist is not hired due to the background check, he or she will receive an “adverse action letter” including a notice of the individual’s right to obtain a free copy of the report from the agency and to dispute with the agency the accuracy or completeness of the information. The agency can then conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate. If it is determined that the initial information was inaccurate, Metro may choose to hire the finalist.

6. Current employees must self-report criminal convictions that are drug-related or that relate to the qualifications or duties of the employee’s position. Reports should be made to Human Resources or the Office of Metro Attorney within 5 calendar days of conviction. This requirement is consistent with the Drug-Free Workplace Act, which imposes specific reporting requirements on federal grantees and contractors for drug-related convictions.
7. At the time of the standard pre-employment background check procedures, Human Resources will complete a driving record check. Finalists whose primary and essential duty will be driving a vehicle for Metro must successfully pass the driving record check. If the driving record does not meet Metro standards, Human Resources will reject the applicant.
8. An employee who drives for Metro as a primary function of his or her position must report all driving-related arrests and suspensions (in addition to convictions) within 5 calendar days.
9. An employee whose essential functions include safety and security, financial and fiduciary responsibility, or direct unsupervised access to children must report all arrests (in addition to convictions) related to these functions within 5 calendar days.
10. If a current employee’s background check or self-report discloses a conviction or arrest that is relevant to the employee’s ability to perform in his or her current position, the employee’s employment in that position may be impacted. OMA and HR will evaluate such situations and determine the appropriate outcome.

Expunged records

11. Applicants and employees shall not report convictions that have been expunged by a court.

Responsibilities

All applicants are required to disclose convictions and sign a background check authorization form in order to proceed in the hiring process. Applicants may be asked to provide supplemental information and should do so in a timely manner to be considered further for employment.

Employees:

- Report any criminal convictions that are drug-related or that relate to the qualifications or duties of the employee’s position to Human Resources or the Office of the Metro Attorney within 5 calendar days of conviction.
- Report driving-related arrests, suspensions and convictions within 5 calendar days if the employee drives for Metro as a primary function of his or her position.

- Report arrests within 5 days if they relate to the employee's essential functions related to safety and security, financial and fiduciary responsibility, or direct unsupervised access to children.
- Refrain from conducting their own unofficial background checks on potential employees.

Supervisors:

- Make offers contingent upon passing background checks and other pre-employment screenings.
- Hire a finalist only after receiving notification from HR that the finalist has successfully passed all applicable background checks.
- Ensure confidentiality of information.

Human Resources:

- Be responsible for the background check process. HR staff are the only persons authorized to administer the process and obtain information related to background checks.
- Provide finalists with information about their rights under FCRA and disclose that a "consumer report" will be obtained for employment purposes, when applicable.
- Ensure confidentiality and prompt processing of the information.

Office of Metro Attorney:

- Provide legal counsel to Human Resources to guide decision-making under this policy.
- Determine applicants' suitability for employment based on the information obtained through the recruitment process and forward recommendations to HR.