

Policies



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Subject Background Checks
Section Human Resources
Approved by Marissa Madrigal, Chief Operating Officer
Approved on August 21, 2020
Replaces Criminal Background Check adopted 11/11; revised 1/14

Policy Purpose: In order to protect its employees and the public and to safeguard agency assets, Metro will conduct criminal and other background checks on applicants selected as finalists for Metro positions. Metro is committed to removing barriers to employment for people with criminal histories and to reducing disparate impacts on people of color that result from the use of criminal history information in hiring and employment decisions.

Policy

1. This policy is applicable to all current employees and external applicants for Metro positions.
2. Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.
3. The following types of background checks are addressed in this policy:
 - a. **Criminal Background Check:** Searches for criminal records based on name, social security number, and previous addresses with county, federal and national one (sex offender) databases.
 - b. **Childcare Registry:** State of Oregon Office of Childcare Registry searches federal criminal records for any employee who will have unsupervised access to children.
 - c. **Driver's Record Check:** Required only for classifications which require driving as part of their job.
4. **Criminal Background Check**
 - a. A criminal background check will be conducted for all external applicants who have been given a contingent job offer for a Metro position.
5. **Childcare Registry**
 - a. Any employee who will have unsupervised access to children will be required to register (and to remain active on the registry throughout their tenure with Metro) with the State of Oregon's Child Care Division Central Background Registry.
 - b. This is 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. (Also known as the LEDS background check, which uses the Law Enforcement Data Systems, when conducting the records search.)

- c. Direct Unsupervised Access is defined as 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.
- 6. Driver's Record Check
 - a. Human Resources will complete a driving record check for any person whose primary and essential duty will be driving a vehicle for Metro. They must successfully pass the driving record check in accordance with Metro's driving policy.
 - b. If the position requires a Commercial Driver's License (CDL), after a contingent offer has been made, HR will ensure the inquiry to previous employers and drug test are completed before hire.
- 7. Exclusions
 - a. The following will not require a background check.
 - i. Any employee who previously had a criminal background check conducted and has been demoted, transferred, given a working out of class assignment, promoted, or goes from temporary to regular status, will not require a new criminal background check.
 - ii. Any rehired employee who had a criminal background check conducted when hired previously and whose separation has been less than one year will not need to complete a new background check.
 - iii. Some people serving in the capacity of a volunteer, job coach or job shadowing.
 - b. The exclusions above will not apply to anyone going into a position or a volunteer role that will have unsupervised access to children.
- 8. Process
 - a. Metro will contract with an outside vendor to conduct criminal background checks.
 - b. Any person that is subject to a background check will be provided a disclosure and will be required to sign a consent form for a background check.
 - c. All background checks will comply with Fair Credit Reporting Act (FCRA) requirements. FCRA is a federal law that regulates how consumer- reporting agencies use personal information.
 - d. Any applicant that has had a contingent offer of employment made may also have a social media and web presence check conducted only by trained HR staff prior to making an offer of employment.
 - e. HR will ensure that other pre-employment requirements are met (for example, Health Physical Capacity testing and CDL employer inquiry and drug testing.)
- 9. Use of Criminal History in Employment Decisions
 - a. Metro may consider an applicant's criminal history in the hiring process only after making a conditional offer of employment.
 - b. It is not an unlawful practice for Metro to rescind a conditional offer of employment based upon an applicant's criminal history if Metro determines in good faith that a specific offense or conduct is job related for the position in question and consistent with business necessity.

- c. In making the determination of whether an applicant's criminal history is job related for the position in question and consistent with business necessity, Metro will conduct an individualized assessment of:
 - i. The nature and gravity of the criminal offense;
 - ii. The time that has elapsed since the criminal offense took place; and
 - iii. The nature of the Employment held or sought.
- d. Nothing in this policy prevents Metro from considering an applicant's criminal history after making a conditional offer of employment, except that Metro shall not consider:
 - i. An arrest not leading to a conviction, except where a crime is unresolved or charges are pending against an applicant;
 - ii. Convictions that have been judicially voided or expunged; or
 - iii. Charges that have been resolved through the completion of a diversion or deferral of judgment program for offenses not involving physical harm or attempted physical harm to a person.
- e. If, after consideration of an applicant's criminal history, Metro finds information that may lead to the rescinding of a conditional offer of employment:
 - i. HR will reach out to the applicant to review and discuss the findings of their criminal background check;
 - ii. The applicant will have the opportunity to contact the vendor who conducts the criminal background checks to dispute or provide relevant information on their background check prior to Metro making a final determination regarding the conditional offer;
 - iii. Metro will provide the applicant with 72 hours to resolve any disputes with the vendor regarding the criminal background check;
 - iv. Metro will provide the applicant with written notice of the final hiring decision.
 - v. The vendor who conducts the criminal background checks will provide all other notices to the applicant required by law.
- f. 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.

10. Disclosure Requirements for Arrests and Criminal Convictions

- a. Current employees whose essential functions include driving, safety and security, financial and fiduciary responsibility, or direct unsupervised access to children must disclose arrests that relate to these functions.
 - i. An arrest is a criminal charge that may or may not have resulted in immediate incarceration or a subsequent conviction.
- b. Current employees are required to disclose criminal convictions that are drug-related or that relate to the qualifications or duties of their position.
 - i. If a current employee's self-report discloses an arrest or conviction that is relevant to the employee's ability to perform in their current position, the employee's employment in that position may be impacted. Office of Metro Attorney (OMA) and HR will evaluate such situations and determine the appropriate outcome.
- c. Any disclosures for arrest or convictions should be made to Human Resources or the Office of Metro Attorney within 5 calendar days of arrest or conviction.

11. Employee Responsibilities

- a. An employee who drives for Metro as a primary function of their position must report all driving-related arrests and suspensions (in addition to convictions) within 5 calendar days.
- b. 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.
- c. 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.
- d. Applicants and employees should not report convictions that have been expunged by a court.

12. Hiring Managers/Supervisors Responsibilities

- a. Make offers contingent upon passing background checks and other pre-employment screenings.
- b. Hire a finalist only after receiving notification from HR that the finalist has successfully passed all applicable pre-employment checks.
- c. Ensure confidentiality of information and refrain from conducting your own social media check of job applicants.