

# Policies

**Subject** Background Checks  
**Section** Human Resources  
**Approved by** Marissa Madrigal, Chief Operating Officer  
**Approved on** June 2, 2022  
**Replaces** Criminal Background Check adopted August 21, 2020

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Policy Purpose: 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. Likewise, Metro is committed to ensuring the safety and well-being of our employees and most vulnerable clients by conducting background checks for employees with access to confidential and personal information, who are commercial driver license holders, or for those who have unsupervised access to children.

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## Policy

1. This policy is applicable only to positions which have specific job-related conditions which require a background check. Job-related conditions that will trigger the need for a background check generally include positions which have access to confidential and personal information (social security numbers), if they will be required to maintain a commercial driver license, or if they have unsupervised access to children.
2. This policy applies to pre-employment background checks, when an internal employee is promoted to a position that requires a background check or when an internal employees scope of duties change to include duties that trigger the need for a background check.
3. Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will govern.
4. 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: Searches for any driving violations from the state from which the license has been issued. Required only for classifications which require driving as part of their job.
5. Criminal Background Check

- a. A criminal background check will be conducted only for positions subject to the provisions of this policy and only after applicants have been given a contingent job offer for a Metro position.
6. 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. This is also known as the LEDS background check, which uses the Law Enforcement Data Systems, when conducting the records search.
    - 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.
    - 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.
  7. Driver's Record Check
    - a. Human Resources (HR) 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.
  8. Other Pre-employment Screens
    - a. HR will ensure that other pre-employment requirements are met (for example, Health Physical Capacity testing and CDL employer inquiry and drug testing.)
    - b. Any applicant for whom a contingent offer of employment has been made may also have a social media and web presence check conducted only by trained HR staff prior to making an offer of employment. Social media checks will generally be reserved for roles in the Deputy Director and Director classifications and other highly visible roles.
  9. Process
    - a. Metro will contract with an outside vendor to conduct 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 and ORS 659A.360. FCRA is a federal law that regulates how consumer-reporting agencies use personal information.
  10. Use of Criminal History in Employment Decisions
    - a. For any applicant who is subject to a background check, Metro may consider their 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;
  - iii. The nature of the employment sought; and
  - iv. Any evidence of the individual's rehabilitation efforts.
- 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.

#### 11. Disclosure Requirements for Arrests and Criminal Convictions

- a. Employees who are subject to the provisions of this policy must disclose arrests and convictions that relate to the qualifications or duties of their position. Such disclosures must be made to Human Resources or to the Office of Metro Attorney within 5 calendar days of arrest or conviction. Any resulting adverse action taken against existing employees must comply with any applicable collective bargaining agreement.

#### 12. Certifications and Licensure

- a. There may be some positions that require third-party licensure or certifications which include successfully passing a criminal background check. For example, the Oregon Department of Public Safety Standards & Training (DPSST) requires individuals pass a national background check in order to receive their DPSST Security Certification. Any such requirements are not changing and are beyond the scope of this policy.

#### 13. 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 who is subject to the provisions of this policy must report all arrests (in addition to convictions) related to the functions of their job 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.

14. Hiring Managers/Supervisors Responsibilities

- a. For positions subject to this policy, 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.