

# **University Rule 5-130A: Criminal and Other Background Checks for Faculty and Other Academic Personnel.**

## **Revision 1. Effective Date: October 2, 2017**

### **I. Purpose and Scope**

- A. Purpose: To implement University Policy 5-130 (Policy on Criminal and Other Background Checks) for faculty and other academic personnel by describing the scope of personnel positions subject to background checks, the type of criminal and other background checks the University may use, and the related decision making processes.
- B. Scope: This Rule applies for all units of the University (with varying requirements dependent on type of unit), and applies to faculty and other academic personnel positions (with varying requirements dependent on the type of position) as further described in Part III. Staff employee personnel positions are governed by separate Rule.  
The original version of this Rule took effect May 1, 2009. Background checks of University personnel in addition to or different from those required under Policy 5-130 and this Rule may be required under other University Policies. See Policy 1-015: Safety of Minors Participating in University Programs or Programs Held on University Premises (applicable for other employees, and students and volunteers in certain circumstances).

### **II. Definitions**

- A. Definitions of terms provided in University Policy 5-130 apply for purposes of this Rule.
- B. Relevant employee category definitions are as defined in Policy 5-001.
- C. University of Utah Health (U of U Health) unit – for purposes of this Rule and Rule 5-130 B, is defined as a unit of the University which administratively reports through the office of the Senior Vice President for Health Sciences (including all academic units and clinical care units, as more fully described in Part III-A-5 below).

### **III. Rule**

- A. Final Applicants (new employees).

1. Full-time positions (Effective May 1, 2009). (As defined in Policy 5-001 and Policy 5-130-III-F, full-time employment positions are those that require a minimum of 0.75 FTE, 75% of Full Time Effort.).
  - a. The University will conduct background checks as a condition of employment for final applicants for all full-time faculty positions in all faculty categories and ranks (as described in Policy 6-300) in every unit of the University.
  - b. The University will conduct background checks as a condition of employment for final applicants for other full-time academic positions to the extent required by law and policy, which does not include post-doctoral fellow positions.
2. Part-time positions (Original version effective May 1, 2009, and expanded version effective October 1, 2017). (As defined in Policy 5-001 and Policy 5-130, part-time positions are those requiring 0.74 FTE or less).
  - a. Except as otherwise provided for in sections 2(b) and 2(c) below, provisions of this Rule regarding final applicants do not apply to applicants for part-time faculty positions, or other part-time academic positions (including post-doctoral fellows, visiting lecturers, educational trainees, academic staff, and professional staff members of businesses, industries, and other agencies and organizations appointed by the University to serve in other part-time instructional, research or public service positions), except as required by law. However, departments may request that background checks be conducted for some or all positions for part-time faculty or other academic personnel with the approval of the Background Review Committee (BRC). Such departmental requests and BRC approvals shall be completed prior to the selection of a final applicant for such position, and shall be based on uniform application of criteria for positions with similar responsibilities.
  - b. Special provision for faculty positions at 0.50 FTE or greater. For every unit of the University, and for positions in all faculty categories and ranks (as are described in Policy 6-300) beginning October 1, 2017, the University will conduct background checks as a condition of employment, for faculty positions at 0.50 FTE or greater.
  - c. Special provision for University of Utah Health units. This section applies to employees of any academic unit of the University, which administratively reports through the office of the Senior Vice President for

Health Sciences, including any unit within any of the Health Sciences academic colleges (Dentistry, Health, Medicine, Pharmacy, Nursing), and any Center, Institute, Bureau or similar unit. (These academic units along with clinical care units together are sometimes referred to collectively as “University of Utah Health” or “U of U Health”). Beginning October 1, 2017, the University will conduct background checks as a condition of employment, for every faculty position in these units, regardless of % FTE (includes all faculty categories and ranks as are described in Policy 6-300), and also for every (non-faculty) other academic personnel position (as defined in Policy 5-130, regardless of % FTE.

Except however, that this special provision does not establish a requirement of background checks for unpaid adjunct faculty positions in these U of U Health units. (Note however that a requirement may become applicable for a particular such position in some circumstances under other provisions of Policy 5-130 or this Rule, e.g., as security sensitive, or under another University Regulation.)

3. Individuals who have previously been employed by the University and who then have no University affiliation for 12 months or more will for purposes of this Rule be treated as new employees subject to the background check requirements applicable to final applicants. Approved leaves of absence, part-time employment, and unpaid faculty appointments constitute a continued affiliation with the University.
4. Faculty members in a Tenure-line category undergoing retention, promotion in rank, or granting of tenure, and faculty members in a Career-line, Visiting or Adjunct category being reappointed with or without promotion in rank shall not be considered final applicants/new employees for purposes of this Rule, and shall be subject to background check requirements only as provided in part III-B applicable for existing employees.
5. Individuals currently employed by the University and seeking a position in another department of the University which requires a background check for new employees with a broader scope than the check required for the employee’s existing position shall be considered a final applicant for the new position, for purposes of this Rule.

#### B. Existing Employees-Reasonable Cause

The University may conduct background checks for existing employees in faculty

and other academic positions (including full- and part-time), or for final applicants for whom a background check would not otherwise be required, when the University finds that reasonable cause exists (as defined in Policy 5-130). The determination of the existence or lack of reasonable cause will be made by the Background Review Committee.

C. Background Review Committee-establishment and composition.

A Background Review Committee ("BRC") is hereby established for purposes of administering this Rule. It shall have continuing members, ad hoc members, and faculty representative members. Its continuing members and a chairperson shall be appointed by the President. The continuing members will consist of University personnel representing the Senior Vice Presidents for Academic Affairs and Health Sciences, the Associate Vice President for Equity and Diversity, Human Resources and General Counsel.

In each case considered by the BRC, the continuing members will invite one or more representatives of the applicant or employee's division or program (if applicable), department, and college to participate as ad hoc members of the BRC.

Faculty representative members of the BRC shall be elected by the Academic Senate Executive Committee upon the recommendation of the President of the Academic Senate. They shall be selected on the basis of qualifications consistent with those applicable for members of the Consolidated Hearing Committee (Policy 6-002-III-D-1-e), and may be selected from the current or past roster of the CHC. They shall serve for terms determined by the Executive Committee, within the range of one to five years, staggered. At least two and no more than three shall serve in any given period. The President of the Academic Senate or designee may substitute for any faculty representative absent for a particular BRC proceeding. No BRC proceeding involving investigation of an existing faculty employee shall be completed without the direct participation of at least one of the faculty representatives.

In addition, the department chairperson will have the option, following notice to the applicant or employee, to consult with the faculty of the department on any BRC matter regarding an existing faculty member or final applicant for a faculty position in that department. Background check information shall be divulged only to the extent necessary for purposes of such consultation, or as further agreed by the applicant or employee.

All members of the BRC and all other persons consulting or otherwise participating in BRC proceedings are governed by the provisions of Policy 5-130 regarding privacy, confidentiality, and limitations on the use of background check information.

D. Types of background checks.

1. For final applicants for all positions within the scope of this Rule, background checks shall include a criminal background check (as defined in Policy 5-130).
2. For final applicants for faculty positions the check will also include a verification of the highest degree awarded (doctoral degree or the latest master's degree awarded). Such a degree check may be included in a background check for other full-time academic positions.
3. Checks of other background information, such as financial/credit, student loan, motor vehicle, degree, or professional licensure information may be required for final applicants for a position or category of positions if a request to do so is approved by the Background Review Committee before a specific final applicant is identified. Checks of such other background information may be required, with reasonable cause, for existing academic employees at the request of the cognizant senior vice president, dean, department chair, division chief or program director with the concurrence of the Background Review Committee.
4. The University will not require or conduct fingerprint background checks, except as required by law.
5. In conducting background checks, the University will request from final applicants and existing employees (with reasonable cause) a written release of information, and may request completion of a self-disclosure form, in accord with Policy 5-130.

E. Costs.

The University will not require applicants or existing employees to pay the costs of a criminal or other background check as a condition of employment.

F. Results of background checks.

1. If a background check or self-disclosure reveals a criminal background, following the applicant or employee's opportunity to respond, consistent with

University Policy 5-130, the University will assess the overall risk posed to persons and property by the background of the particular applicant or existing employee under all the circumstances. The individual's failure to complete a requested self-disclosure, or the providing of materially false information in such self-disclosure, may be considered in a risk assessment.

The risk assessment will be made by the Background Review Committee. For cases involving only minor motor vehicle-related violations, the BRC member representing the cognizant senior vice president may act on behalf of the BRC to determine that the individual shall be considered eligible for the position without further assessment. However, any determination that an individual is to be considered ineligible, or that an existing employee should be considered for other sanctions, must be made by the full BRC.

The BRC may determine that an individual with a criminal history should be considered eligible to obtain or retain the position, or considered ineligible, or that an existing employee should be considered for other sanctions, or that additional documentation should be required before making a determination of eligibility. If the BRC is divided, the University president or designee will make the final decision.

The risk assessment will include:

- a. the number of crimes committed;
- b. the severity of those crimes;
- c. the length of time since they were committed;
- d. the likelihood of recidivism;
- e. the security sensitivity of the position sought by the applicant or held by the existing employee;
- f. the extent of any failure to provide accurate information requested through self-disclosure; and
- g. other factors that may be relevant.

In cases involving an existing employee, if the risk assessment process leads to a determination that the employee should be considered ineligible to retain the position, or considered for other sanctions or other

disciplinary action, then proceedings for any disciplinary actions shall be conducted in compliance with such other regulations of the University as are applicable based on the particular position held by the employee. For faculty, those include the Code of Faculty Rights and Responsibilities (Policy 6-316). For other academic personnel, they include the Policy on Academic Staff, Educational Trainees, Postdoctoral Fellows and Medical Housestaff (Policy 6-309).

2. If a degree check reveals a discrepancy between the educational credentials claimed by an individual and the information from the institution purportedly awarding the degree, the individual will be given an opportunity to explain the discrepancy before any negative employment decision is made.
  3. If a check of other background information reveals information which the University may consider a basis for a negative employment decision, the individual will be given an opportunity to explain that information.
- G. Security sensitive position designations will be made as needed with approval of the Background Review Committee.

[Note: Parts IV-VII of this Regulation (and all other University Regulations) are Regulations Resource Information – the contents of which are not approved by the Academic Senate or Board of Trustees, and are to be updated from time to time as determined appropriate by the cognizant Policy Officer and the Institutional Policy Committee, as per Policy 1-001 and Rule 1-001.]

#### IV. Procedures, Guidelines, Forms, and Other Related Resources

- A. Rules
- B. Procedures

Procedure 5-130A (Verifying Exclusion Status of Employees)

- C. Guidelines
- D. Forms
- E. Other related resource materials

#### V. References

- A. [University Policy 5-130](#)

- B. [University Rule 5-130B](#) (Staff Employees)

## VI. Contacts

The designated contact officials for this Regulation are

- A. Policy Owners (primary contact person for questions and advice): Associate Vice President - Faculty, 801-581-8763 and the Associate Vice President – Faculty (Health Sciences), 801-585-9602
- B. Policy Officers: Sr. Vice President for Academic Affairs, 801-581-5057 and the Sr. Vice President for Health Sciences, 801-581-7480

See University Rule 1-001 for information about the roles and authority of policy owners and policy officers.

## VII. History

Current version. Revision 1.

Approved by the Academic Senate: October 2, 2017.

Effective date: October 2, 2017

Earlier Versions: [Revision 0](#)

Effective date: May 1, 2009 to October 1, 2017

[Background information on Revision 0:](#)

[2009 Proposal for Criminal Background Checks Regulations](#)