

Human Resources Policy

Purpose: Wake County Government seeks to ensure the safety and security of employees and the public; to ensure employees are qualified for the positions for which they are hired; and to verify the information provided by applicants by conducting pre-employment background checks.

Policy: Background checks will be conducted prior to the employment of anyone for positions required by law to conduct a background check, positions that are safety sensitive, positions that the County has determined a business necessity, and for positions with such sensitivity that a background check is warranted. The type of information that may be collected as part of a background check is based on the duties assigned the position and requirements of the position and may include a criminal background check, motor vehicle record, sexual offender registry check, reference check, credit history, drug screening, credentials, education and social security verification and e-verify. In the event that federal or state standards conflict with this policy, then the federal or state standard shall control.

Background checks must be in compliance with all federal and state statutes, such as the Fair Credit Reporting Act (FCRA). The checks must be consistent with the guidelines set forth by these laws requiring organizations to obtain a candidate's written authorization before obtaining a criminal background report, motor vehicle records check or credit report; and to properly store and dispose of information derived from such reports. To find out more about federal laws relating to background reports, visit www.business.ftc.gov

According to the Equal Employment Opportunity Commission (EEOC), the results of a background check cannot be used as a basis for denying employment unless the denial of employment is determined to be due to job-related issues or business necessity. To meet the job-related or business necessity, the following factors will be considered for those applicants with a history of criminal convictions in determining whether to hire the applicant: the nature and gravity of the offense and its relationship to the position, the time that has passed since the conviction and/or completion of sentence, the number (if more than one) of convictions, the individual's age at the time of the offense, and whether hiring the applicant would pose a risk to the business and other evidence regarding fitness for the position such as character references. For more information on using arrest and convictions see "Questions and Answers about EEOC's Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII" at www.eeoc.gov/laws/guidance/ga_arrest_conviction.cfm.

Hiring Managers are reminded that arrest history information and dismissals or convictions which have been expunged should not be used as a part of the hiring process and cannot be a basis for denying employment.

Departments may establish additional pre-employment requirements other than criminal background history unique to their individual business needs as long as the requirements are job related, consistently applied to all final candidates and are in compliance with all federal and state statutes, such as the Fair Credit Reporting Act (FCRA) and the Municipal Records Retention Schedule. These additional pre-employment requirements are subject to approval by the Human Resources Director. Pre-employment investigations and information obtained in pre-employment

investigations must be reasonable and appropriate for the position for which the candidate is applying, taking in to consideration the nature of the offense, whether it is job-related, when it occurred and the candidate's conduct since the offense.

Although a disqualification is possible, in accordance with federal and state laws, a previous conviction does not automatically disqualify an applicant from consideration for employment with the County.

The County will ensure that all information attained from the reference and background check process will only be used as part of the employment process and kept strictly confidential according to FCRA. Hiring managers and administrative staff responsible for the pre-employment process are reminded that background check information falls under the FCRA disposal rules. Background check information kept as part of an employment hiring record, or used to make an employment decision, should be kept with the employee's personnel file or hiring file in Human Resources. If an applicant is found to have deliberately withheld information with the intent to mislead or is found to have falsified information pertaining to previous convictions, education, employment history, or any information deemed pertinent to employment, the applicant will be disqualified from further employment consideration in any position with the County due to falsification of an application; or if this is discovered post-employment, the employee will be terminated.

The North Carolina Department of Justice and the North Carolina Sheriffs' Education and Training Standards set the qualifications for the employment and retention of law enforcement including but not limited to standards addressing the minimum age, education, physical standards and mental status, citizenship, and good moral character (N.C. General Statute §17C-10). In addition, Chapter 12 of the North Carolina Administrative Code controls the extent, scope and use of a background investigation and further places specific eligibility limitations on an applicant's prior criminal history. For this reason, the following Departments are exempt from this policy:

- Wake County Sheriff Department
- City/County Bureau of Identification (CCBI)

Definitions:

1. Applicant - An individual who applies for an open position with Wake County Government, whether the individual is an outside applicant or a current employee of the County.
2. Adverse Action - Denial of employment to a candidate based on background check history.
3. Criminal Background Check - shall generally mean an investigation into a person's conviction history to determine whether, in the last ten years, the person had been convicted of a felony, unless federal, state or local law requires a different definition for specific types of jobs. A criminal background check may require fingerprinting and/or record checks of criminal convictions; it does not include consideration for arrest records that did not result in convictions.

4. Motor Vehicle Record (MVR) - An individual's driving history obtained from the state where the applicant/employee driver's license is or was issued or through agencies with license to obtain these reports on the County's behalf.
5. Fair Credit Reporting Act (FCRA) -Federal regulations of the collection and use of information contained in consumer reports prepared and assembled by a consumer reporting agency.
6. Educational Verification - Confirmation that the selected candidate has the degree or educational level required for the position; or confirmation that the candidate has the degree or educational level as stated on the application or resume.
7. Reference Check - A basic work profile from a professional reference provided by the applicant, generally consisting of: title, basic responsibilities, relationship, professional and interpersonal skills.
8. Sexual Offender Registry - This report will contain all information available in the applicant's state data repository.
9. Social Security Verification - This report will verify the issue date of the social security number, if the number has been reported deceased or not yet been issued. The report will also reveal other names used by the applicant, such as maiden names or aliases and addresses listed by applicant when they have applied for credit.
10. Credit History - A profile of the applicant's credit history for the last seven years as reported by a major credit bureau. Charge offs, collection accounts, public records, trade lines, bankruptcies, judgments and monthly payment histories are included in a history.

Procedures:

1. The Wake County Government job posting will include the following statement:
"Position may require a criminal background check. Unless required by state law, a record of conviction will not automatically exclude you from consideration for employment."
2. Offers of employment prior to the successful completion of a background check should include a statement that "offer is contingent upon successful completion of a background check".
3. Prior to conducting the pre-employment background check, the following will be provided to the selected applicant:
 - Form A: Consumer Notification
 - Form B: Applicant Authorization and Consent for Release of Information Form
 - Form C: Summary of Rights Under the Fair Credit Reporting Act and Consumer Notification.

4. Before taking an adverse action that is based in whole or in part on the information collected as part of the pre-employment background check, hiring departments must consult the Human Resources Department to obtain concurrence on the adverse condition. Upon receiving an approval from Human Resources, the applicant will be provided the pre-adverse action disclosure (Form D) that includes a copy of the individual's consumer report and a copy of Form C: A Summary of Your Rights under Fair Credit Reporting Act to the candidate.
5. After taking adverse action, hiring departments must notify the candidate that an adverse action has been taken by providing the candidate with form E. The Adverse Action Notice must include:
 - a. the name, address, and phone number of the Consumer Reporting Agency (CRA) that supplied the report
 - b. a statement that the CRA that supplied the report did not make the decision to take the adverse action and cannot give specific reason for it
 - c. a notice of the individual's right to dispute the accuracy or completeness of any information the agency furnished and his or her right to an additional free consumer report from the agency upon request within 60 days
6. All costs and fees associated with the background check process shall be paid by the employing unit.

Position Background Check Requirements:

1. Candidates for employment where driving is an essential function of the job or the job duties require driving authorization under the County's Driving Policy or other related duties will be subject to a Motor Vehicle Records check.
2. Candidates for employment where the job duties include responsibility for initiating or affecting financial transactions or other related duties will be subject to criminal background and credit history check.
3. Candidates for employment where the job duties include entering a private household, interaction with children or other related duties will be subject to a criminal background check and sexual offender registry check.
4. Candidates for positions with access to confidential identity information which includes names associated with a social security number, bank account information, credit card information, or other combination that could be used for identity theft or related criminal activity will be subject to a criminal and credit background check.
5. Candidates for positions that require a degree will be verified by the hiring department or the candidate can be required to submit an official transcript.

Official transcripts must be received in a sealed envelope from the college, university or school system in question and must be a certified copy. Verified education shall be keyed in the HR System (Advantage) by the HR Rep.

6. Candidates for positions requiring a license or certification will be verified by the hiring department and the license or certification shall be keyed in the HR System (Advantage) by the HR Rep.
7. Candidates for positions that will have unsupervised access to children, developmentally disabled persons or vulnerable adults will be subject to a criminal background check.
8. Candidates for positions with broad, unsupervised access to County facilities after hours will be subject to a criminal and credit background check.
9. Candidates for senior leadership positions will be subject to a criminal and credit background check.
10. Candidates may be subject to other background checks as required by federal, state or local law.

Records:

Background check information kept as a part of an employment hiring record, or used to make an employment decision, is confidential and shall be kept in a separate file labeled "Confidential" in the employee's personnel file or hiring packet. These files shall be housed in Human Resources Department.

The EEOC requires state and local governments to preserve all records (including all application forms, regardless of whether the applicant was hired and other records related to hiring) for two years after the records were made, or after a personnel action was taken, whichever comes later. If the applicant or employee files a charge of discrimination, the records must be maintained until the case is concluded.

Once all applicable recordkeeping requirements have been satisfied, the records may be securely disposed. That can include burning, pulverizing, or shredding paper documents and disposing of electronic information so that it can't be read or reconstructed.

FORM A: CONSUMER NOTIFICATION

Date

Applicant Name & Address

Dear :

This is to inform you that a consumer report or an investigative consumer report will be requested from Wake County Government's vendor, _____ a Consumer Reporting Agency (CRA). This report is for the purpose of evaluating your eligibility for employment, promotion, reassignment or retention as an employee.

You have been asked to carefully read and sign an "Authorization for Release of Information" permitting the County's vendor to furnish the consumer report to us.

In accordance with the Fair Credit Reporting Act (15 U.S.C. §1681 et. seq.), you will be notified in writing before the County makes any adverse employment decision which is based in whole or in part on the consumer report.

Unless mandated by state law, a misdemeanor or felony conviction reported on a background check will not automatically disqualify you for employment with Wake County. Consideration will be given to the nature and circumstances of the criminal conviction, the length of time since the conviction occurred, the age of the individual at the time of the conviction, evidence of rehabilitation, and the nature, duties, and responsibilities of the position and other evidence regarding fitness for the position such as character references.

Sincerely,

FORM B: APPLICANT AUTHORIZATION AND CONSENT FOR RELEASE OF INFORMATION

This release and authorization acknowledges that Wake County Government may now, or at any time while I am employed, contact personal references, conduct a verification of my education and licenses/certifications, employment/work history, motor vehicle records, and receive any criminal history record information pertaining to me which may be in the files of any Federal, State or Local criminal justice agency, and to verify any other information deemed necessary to fulfill the job requirements. The results of this verification process will be used to make employment decisions pursuant to Wake County Policy. Wake County will not request credit reports without proper notification in compliance with the Fair Credit Reporting Act.

I authorize the County's current employment verification vendor and any of its associates, to disclose orally and in writing the results of this verification process to the designated authorized representative of Wake County Government. Wake County may at its discretion change the vendor and this release will remain in effect.

I have read and understand this release and consent, and I authorize the background verification. I authorize all persons, schools, current and former employers and other organizations and agencies to provide the County's employment verification vendor, or its associates with all information that may be requested. I hereby release all of the persons and agencies providing such information from any and all claims and damages connected with their release of any requested information. I agree that any copy of this document is as valid as the original.

I do hereby agree to release and discharge Wake County Government, the employment verification vendor and their associates to the full extent permitted by the law from any claims, damages, losses, liabilities, costs and expenses or any other charge or complaint filed with any agency arising from the retrieving and reporting of information. According to the Fair Credit Reporting Act, I am entitled to know if employment was denied based on information obtained by my prospective employer and to receive a disclosure of the public record information and of the nature and scope of the investigative report. I have been given a summary of my rights under the Fair Credit Reporting Act.

Printed Name (Last, First, M.I.)

Social Security Number

Signature Date

FORM C: A SUMMARY OF YOUR RIGHTS UNDER THE FAIR CREDIT REPORTING ACT

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.ftc.gov/credit or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.**

You must be told if information in your file has been used against you. Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.

You have the right to know what is in your file. You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if: a person has taken adverse action against you because of information in your credit report; you are the victim of identity theft and place a fraud alert in your file; your file contains inaccurate information as a result of fraud; you are on public assistance; you are unemployed but expect to apply for employment within 60 days. In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.

You have the right to ask for a credit score. Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.

You have the right to dispute incomplete or inaccurate information. If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.

Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information. Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

FORM D: PRE-ADVERSE ACTION

Date

Applicant Name & Address

Dear :

We are writing to inform you that in evaluating your application for employment, promotion, reassignment or retention as an employee we have received the enclosed consumer report. This notification is provided because an adverse employment decision may be based, in whole or in part, on this report. The report was prepared by _____ and authorization signed by you at the time of application. A copy of the authorization and a summary of your rights as a consumer are enclosed. _____ is not responsible for any employment-related determination.

If you have any questions regarding this report or believe that it may contain incorrect information, you may contact this company and they will respond to your inquiry. Their mailing address and phone numbers are listed below:

You have seven (7) calendar days from the mailing date of notice from the County to provide the County information to dispute the accuracy and/or explain the relevance of any conviction(s) or explain how a decision to bar you from employment is not job related and consistent with business necessity, or to submit any evidence of rehabilitation, before a final decision is made about your suitability for the position sought.

Sincerely,

Enclosure: Consumer Report
Copy of Authorization
Consumer Rights Notification

FORM E: ADVERSE ACTION NOTICE

Date

Applicant Name & Address

Dear :

We are writing to inform you that we have decided not to offer you employment based upon the information we have received from a consumer report. The report was prepared by _____ pursuant to an authorization signed by you at the time of application. _____ is not responsible for any employment-related determination and are unable to provide the specific reasons regarding our decision.

You may receive a free copy of the consumer report from _____ during the 60 day period described in the Fair Credit Reporting Act "FCRA" (15 U.S.C §1681j).

You may also dispute the accuracy or completeness of any information as pursuant to FCRA 15 U.S.C. §1681m (a). Their mailing address and phone numbers are listed below:

Sincerely,