



BACKGROUND CHECKS: QUESTIONS AND ANSWERS

Is Penn State alone in considering background checks for academic appointments?

No. Several months ago the CIC (the academic consortium of the Big Ten schools) signed an agreement with HireRight, whereby the California-based company would provide any of us a group rate if we employed its services for background checks of our employees. The extent to which HireRight will be contracted by individual institutions is currently under discussion at various individual CIC campuses. Outside of the Big Ten, other public research universities that have background checks include the University of Virginia, the University of Georgia, and the University of Texas, which we are told is in the final stages of formulating background checks for faculty. State legislatures have begun to mandate background checks for faculty appointments. These include the states of Virginia, Georgia, and Indiana, and Arizona has come under similar public and legislative pressure.

Do other institutions require self-disclosure of criminal background?

Yes. In addition to those required by schools mandating background checks, some form of background disclosure is required by such comparable schools as Michigan State, Purdue, and Temple. Temple tells us that it asks for disclosure for all of the situations we ask for in our disclosure form, while Purdue asks for disclosure for all criminal convictions.

When states mandate background checks or self-disclosure for faculty appointments, can institutional pressure insure that the scope of information sought respects institutional culture and faculty concerns?

Not really. By Georgia law, faculty at the University of Georgia need to complete a form that assures that “there are no reasonable grounds to believe that he/she is a subversive person.” In their self-disclosure form, faculty need to state whether they have ever been convicted of any charges, or if there are any charges now pending against them “for any violation of any federal law, state law, county or municipal law, regulation, or ordinance.” Those charges include traffic violations for which a fine of more than \$35 was imposed.

What are the chances legislation will be passed in Pennsylvania to require background checks for faculty appointments?

It is probably inevitable and within the next several months. Legislation, called the College and University Criminal History Record Act, was introduced into the Pennsylvania House of Representatives on February 2, 2004, and it is hard to see how it will not result in a requirement that there be background checks faculty members at all Pennsylvania institutions of higher education. The legislation has over thirty sponsors and the *Harrisburg Patriot* reports that it has strong bipartisan support. The legislation requires all faculty applicants to obtain a report from the Pennsylvania State Police concerning any past criminal activity and to have themselves fingerprinted and to send those fingerprints to the FBI.

How can we influence the state government not to impose a background check policy on us that is so against our culture and that would be so destructive to us in our ability to attract candidates and convince them to accept a Penn State offer?

We will do everything we can to make our case that any system of background checks for faculty has to be limited and as unintrusive as possible. Our best way of making that case is to convince the legislators that Penn State has already developed its own policy, in the hope that they would either allow us to substitute our policy for theirs or to have our policy impact the legislation they are considering. We have already begun to make that case and have sent our policy to some of the legislators we have co-sponsored the act. In a January 30, *Collegian* interview with State Representative Matthew Baker, who introduced the legislation, Representative Baker said, “PSU is moving in the right direction. I’ve looked at Penn State’s policy, and I applaud it. I will be in discussion with administrators to determine any refinements [to my proposal].”

Why can’t we just say that background checks for faculty, even if they have begun at other universities, unfairly single out faculty in higher education for this procedure?

That is a hard case to make. According to a January 20, 2004 article in *The Wall Street Journal*, “A recent survey by the Society for Human Resource Management in Alexandria, Virginia, found that about 80% of companies performed criminal background checks on potential employees in 2003, up from 51% in 1996.” Pressures for accountability have increased markedly in all areas in recent years, and higher education is not immune to those pressures. Our legislators refer to the fact that candidates for elementary and secondary education positions are required to agree to background checks, and they do not understand why the requirement should not extend to faculty in higher education. Talking about the act he introduced, Rep. Backer says, “When you work in a public arena, the public—especially employers—have a right to know whom they are hiring. It makes sense to protect students, faculty and staff.” It is not likely that the legislators who will be voting whether or not to extend background checks to University faculty will disagree when most of their constituents submitted to background checks in their own employment applications.

Might we be able to argue that the difference is, the faculty members we hire are so well vetted by the time they receive their advanced degrees and are so well-known by their professional colleagues, that we wouldn't expect that any serious past criminal activity that we didn't already know about would be discovered through background checks?

Although this is largely true, experience tells us that this, sadly, is not always the case. Most visibly, a Penn State case that received a great deal of national and local press last year, involving a faculty member who we hired four years earlier and who had been convicted of committing a triple-murder, makes it difficult for us to make that case. The cover letter introducing the legislation in act Harrisburg begins with reference to that case, making the fact that we made the appointment without any knowledge of that background the starting point for its rationale.

Did that case of the triple-murderer then drive Penn State's decision to have background checks?

Penn State had already begun considering the possibility and feasibility of background checks when the incident surfaced in a very public way, leading to a number of calls and e-mail messages from a large number of our constituents. The issue soon became, more than whether we could justify such an appointment, how we could justify making such an appointment without seeking such essential background information. The University's statement that we would be instituting a background check process was intended to be responsive to those concerns, while at the same time keeping control of a background check process rather than having one imposed on us. That is still our position.

Are faculty positions the only academic appointments subject to self-disclosure statements and background checks?

No, they would apply to all academic appointments, including deans, vice presidents, and vice provosts. The president is hired by the Board of Trustees, which does its due diligence in its own background checking procedures.

Are academic appointments the only ones subject to disclosure statements and background checks? Shouldn't there be consistent policy for all Penn State employees?

There should be consistent policy, but we do not have one now. All staff appointees have for years been asked to disclose whether they have been convicted of any criminal activity, and background checks have been employed in a number of units in the University, such as the Office of Student Affairs. Penn State's policy is being extended to require background checks of all appointments at Penn State, faculty and staff, so that there is no sense that one segment of Penn State employees is treated differently in this respect than the other.

Will current faculty members be subject to background checks?

No, the policy will apply only to new faculty members at the point of hire. Part-time faculty members who are currently teaching with us will similarly not be required to undergo these checks, and new fixed-term or part-time appointees will only receive background checks the first time they teach at Penn State, unless a substantial amount of time has passed since they last taught with us.

Will all applicants for academic positions undergo background checks?

No, only the candidate being made an offer will undergo the background check, with the offer being contingent on the background check and the return of the self-disclosure form.

Won't the need for a disclosure form and background check slow the process of making an appointment, perhaps at the cost a department being able to make the hire? How intrusive will this be?

We intend the process to be unintrusive as possible. Only at the point of an offer being made, when the candidate will have to submit some other paper work, will he or she be asked to go on line and fill out the disclosure form and the consent form for a background check. HireRight tells us that they can convey the results of its check, which only involves a quick check of public records for limited information, within 24 hours. In cases where a decision needs to be made before the information clears, the department head can make the appointment or put the faculty member into the classroom immediately (as might be necessary with a part-time appointment), with only the disclosure form returned to us. If the background check reveals evidence of criminal activity that was not reported on the disclosure form, then appropriate action will be taken.

Just what will be looked for by HireRight in the background check? Won't the very process of doing the checking be intrusive? What prevents the background check from revealing additional information that candidates would not want to be revealed about them?

HireRight will be authorized to do no more than check state and federal records for convictions of felonies, sexual offenses, or misappropriation of funds. It will also verify the highest degree claimed by the candidate. Even if it were to find any information beyond these offenses, we have asked them not to report it to us. No doors will be knocked on, no questions asked of neighbors for any additional information.

Aren't such background checks violations of privacy and civil liberties?

Clearly not, with 80% of US companies currently performing them and with these checks being restricted to a review of public records. Moreover, no background check will be made without the candidate's consent, and candidates will be informed that they can request to be informed of any findings.

What about errors in the background check, or extenuating circumstances?

Candidates will be given the opportunity to explain past convictions or sanctions and their circumstances on the disclosure form. All that the background check does is to insure that there are no convictions for the listed offenses that they had not disclosed. If there are such convictions, to insure that there is no mistake, no action will be taken without giving the candidate the opportunity to verify the finding and to offer any explanation.

Why in addition to felonies, will Penn State do background checking for sexual offenses?

Penn State wants to do everything it can to insure that its women faculty and students feel safe and supported by the actions, behavior, and sensitivity of all of its employees. There are a variety of offenses for sexual assault in Pennsylvania that do not rise to the level of felony, but we want to insure that if a candidate has a history of such offenses, we know about it before we decide to make an appointment.

Why is the conviction for misappropriation of funds the third category of criminal activity for which there will be a background check?

Since these checks will be made for all academic appointments, including those with budgetary responsibility (vice presidents, deans, department heads, institute directors, etc.), it would be important to know if a candidate for such positions, or faculty members who may later move into such positions, have a criminal record that involves misappropriation of funds, even if the crime did not rise to the level of a felony.

What if a candidate was only accused of one of these crimes, but was not convicted?

Candidates are not asked to disclose such information, and it would not be revealed to us in a background check since only a record of convictions will be sought.

Why does the disclosure form also ask the candidate whether he or she has been sanctioned for professional misconduct, harassment, or discrimination? Will there be background checks to investigate such actions as well?

Background checks will not discover such actions, since they do not involve convictions that would be found in public criminal records. They may, however, be learned through the normal reference checking procedure. Departments and colleges should want to know if a candidate they wish to hire has been guilty of professional misconduct, such as plagiarism or falsifying information on a grant proposal. Actions of harassment or discrimination may also be of concern to us before we make an appointment. If a faculty member at another institution was interested in making a move to Penn State because his current institution had forced a separation as a result of sexual harassment, we should know about that.

Does this mean that if a faculty member has been accused, perhaps falsely, of sexual misconduct that Penn State will base its hiring decision on such accusations?

Penn State is not asking any candidate to reveal accusations, only findings by previous employers, and findings that were serious enough that they led to formal sanctions.

Does this mean that simply because a candidate has been convicted of crimes or sanctioned for the actions listed, he or she is automatically barred from a position at Penn State? What if such actions are well behind them, or they have made restitution in some way or paid for their actions, or can explain their actions based on their circumstances?

By no means does the disclosure by itself require that Penn State not make the appointment. The decision for the appointment of a faculty member will be made by the dean, who is responsible for all faculty hiring decisions, but our policy requires that, if there are revelations, context be considered, including the time that has elapsed since the crime or sanction, the seriousness of the act that led to the conviction or sanction, and evidence of rehabilitation.

What assurances are candidates given that any information that is found about them will be kept confidential?

Both our disclosure form and the consent form for the background checks assure candidates that their self disclosure and any information found by the background check will be kept in strict confidence. There will be no files with this information kept in either the dean's office or in the department. Any information that is conveyed to the dean will be kept in strict confidence by her and the provost, with whom she will consult before weighing the impact of the findings on a decision to hire. Candidates will not need to fear that such information will be shared with their disciplinary colleagues, or perhaps leaked to others outside the University.

What is the cost of all this, and who will pay for it? How can the University afford this initiative in difficult budgetary times?

We estimate the cost as about \$48 for each background check, a total cost of under \$100,000 annually for all academic appointments at all campuses. The University will pick up this cost centrally and not pass it on to colleges or departments. In the long run, the cost represents inexpensive insurance against claims that could be made against us if there are acts committed by academic employees who would not have been hired if the University had done its due diligence before making the appointment.