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TO: Agency Human Resources Directors

FROM: Patricia M. Almond, Administrator
Division of Merit Recruitment and Selection

SUBJECT: Conducting Background Checks

Due to recent stories covered in the media, the Office of State Employment Relations would like to reemphasize the State's policy on background checks. The *Wisconsin Human Resources Handbook Chapter 246—Securing Applicant Arrest and Conviction Information* and s.111.322 and s.111.335, Wis. Stats., give more specific information regarding the State's policy.

The Wisconsin Fair Employment Act prohibits discrimination against job applicants and current employees because of arrest or conviction records. However, agencies have the responsibility to the public to ensure that programs are carried out in a legal, effective, safe, and humane manner. "Notwithstanding s. 111.322, it is not employment discrimination because of arrest record to refuse to employ or license, or to suspend from employment or licensing, any individual who is subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the particular job or licensed activity." s. 111.335(1)(b), Wis. Stats. In addition, "notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the job or licensed activity." s. 111.335(1)(c)1., Wis. Stats. "Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ in a position in the classified service or in a position described in s. 230.08(2)(k) a person who has been convicted under 50 USC, Appendix, section 462 for refusing to register with the selective service system and who has not been pardoned." s. 111.335(1)(cv), Wis. Stats. Additional exceptions related to state employment may be found under s. 111.335, Wis. Stats.

Background checks are recommended in circumstances when someone's past arrest or conviction record would relate to the job they are being considered for. It is important to note that when reviewing arrest and conviction records that only records that are job related may be considered. Some considerations when looking at different jobs to determine if they are job related are:

- The nature and scope of the job's public, inmate, patient, or client contact.
- The amount of access to confidential or sensitive information.
- The access to property, equipment, or funds (cash and negotiable instruments).

Jobs where it may be appropriate to conduct background checks would be, but not limited to, the following: those working in the correctional or mental health institutions and centers, or nursing homes; protective occupations; those with financial or procurement responsibilities; pharmaceutical; and jobs working with children.

If it is determined that background checks are necessary for the job, agencies should document the rationale for the background checks and how and when this information will be requested from the applicants. Additionally, a statement should be included in the job announcement alerting applicants that background checks will be conducted as part of the selection process. Background checks may be conducted at any point in the recruitment and selection process, as long as they are done prior to an offer of employment.

The Office of State Employment Relations highly recommends agencies review their internal policies on a regular basis regarding conducting background checks. Specifically, agencies should review their policies to ensure that there is a procedure in place to determine when it is appropriate to consider applicants' arrest and conviction records. The policy should also be clear as to when background checks will be made (i.e., what types of jobs will warrant background checks) and who should be consulted on the appropriateness of a background check and the outcome of the background check.

By ensuring that all state agencies have an established policy in place on the use of background checks, the State will be better suited to maintain fair employment, while ensuring the safety and protection for individuals and the agency. For further questions on background checks, please contact me at (608) 266-1499.