

UC DAVIS CAMPUS
NON-ACADEMIC STAFF EMPLOYEE BACKGROUND CHECK
PROCESS FOR HANDLING SUBSEQUENT ARREST NOTIFICATIONS

Overview

UCD Campus employees whose positions have been designated as critical under the provisions of the UCD Campus Background Check Program Guidelines will undergo a criminal background check via Live Scan to the Department of Justice/Federal Bureau of Investigation. Once cleared and in the system, the Campus will regularly receive information regarding subsequent arrests (i.e. “hits”) for all employees who continue to occupy critical positions.

Access to Subsequent Arrest Information

Access to subsequent arrest information is strictly controlled. Failure to properly protect the confidentiality of information obtained from the Department of Justice can incur penalties under California Penal Code Section. 11140, 11142, and 11143.

The HR Director of Compensation/Benefits/Employment and the HR Director of Employee & Labor Relations are the two positions whose incumbents are authorized to receive and/or disclose information received from the Department of Justice regarding subsequent arrests.

California State Laws Define How Arrest Records May be Used by Employers

California Labor Code Section 432.7 generally prohibits employers from asking about arrest records. Furthermore, employers cannot ask applicants to disclose information about arrests that did not result in conviction. The review of initial background check findings is a responsibility of HR and departmental supervisors and managers are given no information other than that the employee passed or did not pass a background check (which means that any arrest or conviction information that is obtained during the background check was not deemed to be related to the duties of the position).

Therefore, it would be unlikely, and indeed a rare situation, that HR would inform a supervisor of a subsequent arrest “hit” of a current employee. This would only occur if there were a very direct connection (nexus) between the arrest and the job duties (i.e. theft – cash handling; rape –child care workers) or unique circumstances existing in a department or unit. If a direct connection is determined, then HR will advise on next steps. Personnel actions (i.e. administrative leave, dismissal) would only occur after a full and fair employment investigation is conducted and the employee is granted due

process in whatever action is taken. This would be an exceptional situation at the arrest stage because there are very few jobs where the arrest itself can be shown to have a sufficient direct connection to the job duties to rise to the level of an immediate personnel action.

There are some narrow exceptions to his Labor Code section for Peace Officers, hospitals, drug offences and sex offences (see below).

Registered Sex Offenders

California Penal Code Section 290.45 (a)(8) governs the use of information disclosed on the registered sex offender website. The UCD Police Department is responsible for working with employees who are required to register with local police authorities. Penal Code section 290.45(a)(8) allows that information can be disclosed “only to protect a person at risk” as defined in the section. The fact that we are a college campus and have many young students does not necessarily rise to the threshold of disclosure. The information on registered sex offenders cannot otherwise be used to discipline or discharge an existing employee.

HR Subsequent Arrest Protocol & Procedures

- When a subsequent arrest notification is received for a current UCD employee (i.e. conditional offer of employment, change in duties) Director of Compensation/Benefits/Employment or Director of Employee & Labor Relations, based on E&LR definition of sufficient nexus*, will determine if a meeting of additional HR staff is necessary.
Note: All subsequent arrest notices received for UCDHS employees are handled by UCDHS HR.
- The purpose of the meeting may include:
 -
 - Which additional facts can/should we obtain?
 - Are court records necessary and/or useful?
 - Should we meet with the employee?
 - Is immediate intervention necessary?
 - Is a reasonable cause investigation necessary?
 - Is administrative leave with pay appropriate?
- Reasonable effort will be made to contact the individual to obtain clarification/their view of the arrest notification.
- If an employee is placed on administrative leave with pay and the arrest is not substantiated, E&LR may meet with the employee and, if necessary, the department, to counsel/assist the employee in returning to work.

- Department involvement is determined on a case-by-case assessment.
- The Director of Student Judicial Affairs, will be notified on a case-by-case basis if a notice is received on a current student employee.

*Does sufficient nexus exist between the arrest and the functions of the position or some other critical employer interest (i.e., morale, licensure, loss of trust/confidence, customer confidence)?

Summary

Access to and use of subsequent arrest information is extremely limited. California Labor Law restricts the employer from taking unilateral action in such cases. Even in matters involving serious crimes, the fact of an arrest may not trigger any personnel action on the part of the employer, and any personnel actions must be preceded by a full and fair employment investigation before a decision about what the appropriate action might be. In any case where it is determined that a personnel action is required or immediate removal from the work site is necessary, the employee will be placed on administrative leave with pay during the proceedings and will remain a University employee until appropriate personnel processes are concluded. At that point, the employee will be accorded all rights of appeal available to them under the applicable personnel policy or collective bargaining agreement.

Revised: February 19, 2010