

EMPLOYMENT PRACTICES

DC
(LEGAL)

FORMER BOARD
MEMBER
EMPLOYMENT

A public junior college may not employ or contract with an individual who was a member of the board of the junior college before the first anniversary of the date the individual ceased to be a member of the board of trustees. *Education Code 130.089*

EMPLOYEE
INFORMATION

A person or entity, including a college district, that hires or recruits an individual for employment must ensure that the individual properly:

1. Completes section 1—"Employee Information and Verification"—on the Form I-9 at the time of hire and signs the attestation with a handwritten or electronic signature in accordance with 8 C.F.R. 274a.2(h), or if an individual is unable to complete the Form I-9 or needs it translated, someone may assist him or her in accordance with 8 C.F.R. 274a.2(b); and
2. Present to the employer or the recruiter or referrer for a fee documentation as set forth in 8 C.F.R. 274a.2(b)(1)(v) establishing his or her identity and employment authorization within the time limits set forth in 8 C.F.R. 274a.2(b)(1)(ii) through (b)(1)(v).

8 C.F.R. 274a.2(b)(1)(i)

I-9 FORMS

A person or entity, including a college district, must verify employment eligibility, pursuant to the Immigration Reform and Control Act, and complete Form I-9 by the following dates:

1. Within three business days of initial hiring.
2. An employer who hires an individual for employment for duration of less than three business days must comply at the time of hire.

An employer will not be deemed to have hired an individual if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times.

When an employer hires an individual whom that person or entity has previously employed, if the employer has previously completed the Form I-9 and complied with the verification requirements set forth in 8 C.F.R. 274a.2(b) with regard to the individual, the employer may (in lieu of completing a new Form I-9) inspect the previously completed Form I-9 and, if upon inspection of the Form I-9, the employer determines that the Form I-9 relates to the individual and that the individual is still eligible to work, that previously executed Form I-9 is sufficient if the individual is hired within three years of the date of the initial execution of the Form I-9 and the employer updates the Form I-9 to reflect the date of rehire.

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3. If an individual's employment authorization expires, reverification on the Form I-9 must occur not later than the date work authorization expires.

8 C.F.R. 274a.2(b)(1)(ii)-(iii), (vii)-(viii)

NEW HIRE
REPORTING

“Newly hired employee” means an employee who has not been previously employed by the employer or was previously employed by the employer but has been separated from that employment for at least 60 consecutive days.

Each Texas employer, including each college district, shall furnish to the State Directory of New Hires (Texas Attorney General's Office) in the state in which a newly hired employee works a report of all new hires that contains the following seven required data elements: the employee name, the employee address, the employee social security number, the employee's date of hire, the employer name, the employer address, and the federal employer identification number (FEIN).

Employers, at their option may also provide the following additional information in the report: the employee's date of birth and the employee's expected salary or wages, and employer payroll addresses for mailing of notice to withhold child support.

All employers shall report new hire information on a Form W-4 or an equivalent form by first class mail, telephonically, or electronically as determined by the employer and in a format acceptable to the Title IV-D agency. The Title IV-D agency reserves the right to decline any type of form that it deems as illegible or inappropriate for new hire report processing and requests employers who elect to submit new hire reports via hard copy to adopt the Employer New Hire Reporting Form supplied by the IV-D agency.

42 U.S.C. 653a(b)-(c); Family Code 234.104; 1 TAC 55.303(a)-(c)

DEADLINE

Employer new hire reports are due:

1. Not later than 20 calendar days after the date the employer hires the employee; or
2. In the case of an employer transmitting reports electronically, by two monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

Employer new hire reports shall be considered timely if postmarked by the due date or, if filed electronically, upon receipt by the agency.

1 TAC 55.303(d)

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PENALTIES	An employer college district that knowingly violates the new hire provisions may be liable for a civil penalty, as set forth at Family Code 234.105. <i>42 U.S.C. 653a(d); Family Code 234.105</i>
SOCIAL SECURITY NUMBERS	It shall be unlawful for any federal, state or local government agency, including a college district, to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his or her social security number. <i>5 U.S.C. 552a Note; PL 93-579, 7(b), 88 Stat. 1896 (1974)</i>
EXCEPTIONS	<p>The above provision shall not apply with respect to:</p> <ol style="list-style-type: none">1. Any disclosure which is required by federal statute.2. The disclosure of a social security number to a federal, state, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted before such date to verify the identity of an individual. <p><i>5 U.S.C. 552a Note; PL 93-579, 7(b), 88 Stat. 1896 (1974)</i></p> <p>It is the policy of the United States that any state (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such state (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security. <i>42 U.S.C. 405(c)(2)(C)</i></p>
STATEMENT OF USES	A federal, state, or local agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it. <i>5 U.S.C. 552a Note; PL 93-579, 7(b), 88 Stat. 1896 (1974)</i>
CRIMINAL HISTORY RECORDS OF CERTAIN APPLICANTS	Each institution of higher education, including each college district, is entitled to obtain from DPS criminal history record information maintained by DPS that relates to a person who is an applicant for a security-sensitive position at the institution. The institution may deny employment to an applicant for a security-sensitive position who fails to provide a complete set of fingerprints upon request.

“Security-sensitive position” means an employment position held by an employee who:

1. Handles currency;
2. Has access to a computer terminal;
3. Has access to the personal information or identifying information of another person;
4. Has access to the financial information of the college district or another person;
5. Has access to a master key; or
6. Works in a location designated as a security-sensitive area.

A security-sensitive position shall be so identified in the job description and advertisement for the position.

The criminal history record information may be used only for the purpose of evaluating applicants for employment in security-sensitive positions.

The criminal history record information may not be released or disclosed to any person except on court order or with the consent of the person who is the subject of the criminal history record information.

All criminal history record information shall be destroyed by the chief of police of the institution of higher education as soon as practicable after the individual becomes employed in a security-sensitive position and after the expiration of any probationary term of employment or, if the individual is not hired for a security-sensitive position, after the information is used for its authorized purpose.

Gov't Code 411.094; Education Code 51.215

A person, agency, department, political subdivision, or other entity that is authorized by Government Code Chapter 411, Subchapter F to obtain from DPS criminal history record information maintained by DPS that relates to another person is authorized to:

1. Obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to that person; or
2. Obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Gov't Code 411.087(a)

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RETIREEES

An institution of higher education, including a college district, may employ a person who has retired under the Teacher Retirement System (Government Code Title 8, Subtitle C Government Code) or the optional retirement program (Government Code Chapter 830) if:

1. The governing board of the institution determines that the employment is in the best interests of the institution; and
2. The person has been retired for at least 30 days before the effective date of the employment, except that a person retired under the optional retirement program may be rehired after retirement without a break in service.

The governing board may pay a person employed an amount considered by the governing board to be appropriate, notwithstanding any other provision of law.

Education Code 51.964

EMPLOYMENT
PREFERENCE FOR
FORMER FOSTER
CHILDREN

An individual who was under the permanent managing conservatorship of the Department of Family and Protective Services on the day preceding the individual's 18th birthday is entitled to preference in employment with a state agency, including a college district, over other applicants for the same position who does not have a greater qualification. An individual is entitled to an employment preference under this chapter only if the individual is 25 years of age or younger. *Gov't Code 672.002(a), .005*

EXCEPTIONS

This section does not apply to the position of private secretary or deputy of an official or department, or to an individual holding a strictly confidential relation to the employing officer. *Gov't Code 672.002(b)*

CONFLICT WITH
FEDERAL LAW OR
GRANT

To the extent that this preference conflicts with federal law or a limitation provided by a federal grant to a state agency, this section shall be construed to operate in harmony with federal law or limitation of the federal grant. *Gov't Code 672.003*

GRIEVANCE
PROCESS

An individual entitled to an employment preference under this section who is aggrieved by a decision of a state agency to which this section applies relating to hiring the individual, or relating to retaining the individual if the state agency reduces its workforce, may appeal the decision by filing a written complaint with the governing body of the state agency. The governing body of a state agency that receives a written complaint shall respond to the complaint not later than the 15th business day after the date the governing body receives the complaint. The governing body may render a different hiring decision than the decision that is the subject of the complaint

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if the governing body determines that the employment preference under this section was not applied. *Gov't Code 672.004*

CAMPUS PROGRAMS
FOR MINORS

A program operator may not employ an individual in a position involving contact with campers at a campus program for minors unless:

1. The individual submits to the program operator or the campus program for minors has on file documentation that verifies the individual within the preceding two years successfully completed the training and examination program on sexual abuse and child molestation; or
2. The individual successfully completes the campus program for minors' training and the examination program on sexual abuse and child molestation, which must be approved by the department, during the individual's first five days of employment by the campus program for minors, and the campus program issues and files documentation verifying successful completion.

The requirement does not apply to an individual who is a student enrolled at the institution of higher education or a private or independent institution of higher education, or at which the campus program is conducted, and whose contact with campers program operator district that operates a campus program for minors must:

1. Submit to the Texas Department of State Health Services (DSHS), on the form and within the time prescribed by DSHS, verification that each employee of the campus program for minors has complied with the training and examination requirements and the fee assessed by DSHS; and
2. Retain in the operator's records a copy of the required documentation for each employee until the second anniversary of the examination date.

"Campus program for minors" means a program that:

1. Is operated by or on the campus of an institution of higher education or a private or independent institution of higher education;
2. Offers recreational, athletic, religious, or educational activities for at least 20 campers who are not enrolled at the institution; and attend or temporarily reside at the camp for all or part of at least four days; and
3. Is not a day camp or youth camp as defined by Health and

Safety Code 141.002 or a facility or program required to be licensed by the Department of Family and Protective Services.

Education Code 51.976(a)(2), (b)–(d)

CONSUMER CREDIT
REPORTS

DEFINITIONS

“Adverse action” includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

“Consumer report” includes any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for employment purposes.

“Consumer reporting agency” means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

“Employment purposes,” when used in connection with a consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

15 U.S.C. 1681a(d), (f), (h), (k)

OBTAINING
REPORTS

A person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless:

1. A clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and
2. The consumer has authorized in writing (which authorization may be made on the document referred to in item 1) the procurement of the report by that person.

15 U.S.C. 1681b(b)(2)(A)

EXCEPTION

If a consumer described in 15 U.S.C. 1681b(2)(C) applies for employment by mail, telephone, computer, or other similar means, at any time before a consumer report is procured or caused to be

procured in connection with that application the person who procures the consumer report on the consumer for employment purposes shall provide to the consumer, by oral, written, or electronic means, notice that a consumer report may be obtained for employment purposes, and a summary of the consumer's rights under 15 U.S.C. 1681m(a)(3); and the consumer shall have consented orally, in writing, or electronically to the procurement of the report by that person. *15 U.S.C. 1681b(b)(2)(B)*

ADVERSE ACTION

In using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide the consumer to whom the report relates a copy of the report and a description in writing of the person's rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission. *15 U.S.C. 1681b(b)(3)*

Note: The following provisions apply to a college district that uses consumer reports.

ADDRESS
DISCREPANCIES

"Notice of address discrepancy" means a notice sent to a user by a consumer reporting agency described in 15 U.S.C. 1681a(p) pursuant to 15 U.S.C. 1681c(h)(1) that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency's file for the consumer.

A user, including a college district, must develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report, when the user receives a notice of address discrepancy.

If a college district regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which it received the notice of address discrepancy, a user must develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed is accurate to the consumer reporting agency from whom it received the notice of address discrepancy when the user can form a reasonable belief that the consumer report relates to the consumer about whom the user requested the report, establishes a continuing relationship with the consumer, and regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of address discrepancy relating to the consumer was obtained.

16 C.F.R. 641.1

DISPOSAL OF
RECORDS

Any person, including a college district, who maintains or otherwise possesses consumer information for a business purpose must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

“Consumer information” means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report. Consumer information also means a compilation of such records. Consumer information does not include information that does not identify individuals, such as aggregate information or blind data.

“Dispose,” “disposing,” or “disposal” means discarding or abandoning of consumer information, or the sale, donation, or transfer of any medium, including computer equipment, upon which consumer information is stored.

Reasonable measures to protect against unauthorized access to or use of consumer information in connection with its disposal include the following examples. These examples are illustrative only and are not exclusive or exhaustive methods for complying with the rule in 16 C.F.R. Part 682:

1. Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing consumer information so the information cannot practicably be read or reconstructed;
2. Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media containing a consumer report so that the information cannot practicably be read or reconstructed; or
3. After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of material, specifically identified as consumer information, in a manner consistent with this rule.

16 C.F.R. 682.1(b)–(c), .3