

BEYOND THE BACKGROUND CHECK

2022 HIGHER EDUCATION COMPLIANCE CONFERENCE

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1

Beyond the Background Check

Agenda

- Why Do Background Checks
- Routine Background Check Components
- Misconduct Screenings
- Questions



| 2

2

Former Arizona candidate Bobby Wilson, who killed his mother, sues college that fired him

James St. James, Millikin University Prof Revealed To Have Killed His Family 46 Years Ago, Keeping Job

Amy Bishop, Alleged UAH Shooter, Killed Brother In 1986

Penn State professor murdered 3 in 1965
University recently learned he was paroled by Texas governor

3

Beyond the Background Check

Rationale

- Avoid headlines, protect institution's reputation
- Prevent harm to the institution, faculty, and staff
- Set standard of conduct from point of hire
- Demonstrate organizational due diligence

4

Beyond the Background Check

Poll

Does your institution have a background check policy?

- Yes
- No
- If not sure

5

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Background Check Policies

- Who is subject to the checks?
- Who pays for the checks?
- How are findings evaluated?

6

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Elements of Routine Background Check

- Social Security number trace
 - All counties lived and worked in
 - Looking for criminal convictions
- National sex and violent offender registry check
- If international, run check in that country as available

7

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Elements of Routine Background Check

- Drivers: motor vehicle record check
- Healthcare and childcare: credential/license check
- High-level executive: credit check

8

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Who is Checked?

- New hires
- Existing employees moving to new position
- Adjunct faculty, visiting scholars, other affiliate faculty and staff paid by other entities
- A specific employee or group of employees in connection with job responsibilities

9

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What about Student Employees?

- Undergraduate and graduate: sex and violent offender registry check
- Performed by hiring department
- Same check as required for volunteers

10

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Evaluation of Findings

- Nature and seriousness of offense
- Nature of position
- Length of time since conviction

11

N.Y.U. Will Not Hire Scientist Accused of Harassment After Backlash

Lawsuit Describes Alleged Pattern of Abuse by Former UChicago Professor John Comaroff

USA TODAY: Former Fresno State president mishandled sexual harassment allegations

Lawmakers seek investigation into Cal State chancellor's handling of sexual harassment

Colleges routinely fail to ask about new hires' history of sexual harassment

12

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Rationale

- Demonstrate commitment to institution's values
- Prevent future misconduct
- Prevent injury to others
- Protect institution's reputation
- Hold individuals accountable for misconduct

13

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Poll

Does your institution have a policy or procedure on misconduct screenings?

- Yes
- No
- If not sure

14

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Misconduct Screening Policy

- Who pays for the screenings?
- Which conduct is subject to the screening?
- From whom do you accept screening information?
- Who responds to requests from other organizations?
- How are findings evaluated?

15

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Elements of Misconduct Screenings

- Disclosure of
 - Finding of misconduct at current or former employment or postsecondary education
 - Ongoing investigation into allegations of misconduct
 - Departure from employment or enrollment during pendency of investigation
- Verification of disclosure
- Evaluation of disclosure

16

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Issues to Consider

- Scope
- Finding vs. accusation of violation
- Pending matters
- Time limits

17

Beyond the Background Check

Who is Screened

- New Hires
- Existing employees moving into new positions
- Adjunct faculty, visiting scholars, other affiliate faculty and staff paid by other entities

18

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What about Student Employees?

- Undergraduates and/or graduate students
- Teaching, resident and/or lab assistants
- Sensitive positions (cash, security, minors)

19

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Verification of Disclosures

- Who performs the task?
- From whom will the institution accept confirmation or explanation of the disclosure?
- What if there is no response?

20

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Evaluation of Disclosures

- Who performs the task?
- How does the institution evaluate the seriousness of the misconduct?
- What is sufficient "good conduct" or remorse?
- What weights are assigned to the former and proposed positions?
- How should the length of time that has elapsed since the misconduct be evaluated?

21

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University of Washington (UW)

- Washington state law and UW policy
 - Prohibit UW from hiring candidates for staff and covered student employment who do not complete and sign a sexual misconduct declaration prior to start of employment, and
 - Require UW to conduct a sexual misconduct verification on final candidate's current and past postsecondary educational institution employers prior to offer of employment.
- Disclosure covers substantiated findings of sexual misconduct, current investigations and where individual left a position during an investigation into a violation.
- Final candidates are required to provide an explanation for any positive response.

22

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University of Washington (UW) Cont'd

- Failure to complete and provide accurate information will result in disqualification from employment and withdrawal of any offer of employment.
- Policy applies to covered student employees.
- Covered student employees include undergraduate and graduate students who have positions such as reader/grader, tutor, research assistant and teaching assistant because position affords authority over other students.

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University of Wisconsin

Final candidates must be asked the following:

- In any previous employment, have you ever been found to have engaged in any sexual violence or sexual harassment?
- Are you currently under investigation for allegations of sexual violence or sexual harassment against you?
- Have you ever left employment during an active investigation into allegations of sexual violence or sexual harassment that were made against you?

Beyond the Background Check

University of Wisconsin Cont'd

References must be asked the following:

- Was the candidate ever found to have engaged in any sexual violence or sexual harassment?
- Is the candidate currently under investigation for allegations of sexual violence or sexual harassment that were made against the candidate? (current employer)
- Did the candidate leave employment during an active investigation into allegations of sexual violence or sexual harassment that were made against the candidate? (previous employer)

25

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Purdue University

Goals of Operating Procedures for Misconduct Screenings:

- Safest possible environment for students, faculty, staff and visitors
- To preserve university resources
- To uphold the reputation and integrity of Purdue

26

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Purdue University Cont'd

Misconduct screening applies to all new hires (and some existing employees moving to a new position) except:

- Individuals employed by outside staffing agencies
- Individuals appointed to positions not on university payroll

Misconduct broadly defined:

Conduct in violation of a law or any policy of a candidate's current or prior employer or a postsecondary educational institution attended by the candidate. Policies include, but are not limited to, those addressing discrimination, harassment, sexual violence, workplace violence, academic or research misconduct, or financial misconduct.

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Purdue University

- Disclosure of misconduct reviewed by Human Resources in consultation with the senior leader of hiring unit and legal counsel.
- Relevant Factors to be considered in evaluating a disclosure of misconduct include:
 - Nature and severity of the conduct at issue;
 - When and under what circumstances the conduct occurred;
 - Whether the conduct involved an abuse of power or authority, such as involvement of subordinate employees or students;
 - Nature of the position for which the candidate is being considered;
 - Candidate's subsequent conduct and work history; and
 - Evidence of rehabilitation.

Beyond the Background Check

References - Policies

- University of Washington [Sexual Misconduct Disclosure Policy](#)
- University of Wisconsin-Madison
 - Policy on [Recruitment, Assessment, and Selection of Academic Faculty, Limited and University Staff Employees](#) (see Sec. V 5 A)
 - [Sexual Harassment/Sexual Violence Reference Check Policy FAQ](#) (PDF)

Beyond the Background Check

References - Headlines

- [Am y Bishop, Alleged UAH Shooter, Killed Brother in 1986](#), by Frank James, NPR's The Two-Way, February 13, 2010
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- [James St. James, Milk University Prof Revealed to have Killed His Family...](#), HuffPost, August 2, 2013 and updated December 6, 2017
- [Penn State Professor Murdered 3 in 1965](#), by Bill Schackner, Post-Gazette, July 26, 2003

Beyond the Background Check

References - Headlines

- [Colleges Routinely Fail to Ask about New Hires' History of Sexual Harassment](#), by Susan Fortney and Theresa Morris, The Conversation, March 23, 2022
- [Former Fresno State President Mishandled Sexual Harassment Allegations](#), by Justin Walker and Karen Alvarez, USA Today, February 4, 2022
- [Law suit Describes Alleged Pattern of Abuse by Former UChicago Professor John Comaroff](#), by Erin Choi, Chicago Tribune, February 16, 2022
- [Lawmakers Seek Investigation into Cal State Chancellor's Handling of Sexual Harassment](#), by Kenny Jacoby, USA Today, February 4, 2022
- [NYU Will Not Hire Scientist Accused of Harassment After Backlash](#), by Ashley Wong, The New York Times, May 3, 2022

31

QUESTIONS

32