

CHAPTER 1

Hiring

Helpful Websites

www.wsp.wa.gov

www.wsp.wa.gov/crime/crimhist.htm

www.ftc.gov

www.dshs.wa.gov/newhire/

PRE-EMPLOYMENT INQUIRIES

Regulations under the Washington State Law Against Discrimination and other discrimination laws limit pre-employment inquiries. Regulations regarding pre-employment inquiries apply to application forms, pre-employment interviews, and any other type of interrogation of persons seeking employment. Rules also apply when inquiries are made to persons other than the applicant and when inquiries are made by third parties on the employer's behalf. Employers should review job application forms and interview practices to ensure compliance with these laws.

It is an unfair practice to inquire about age, race, creed, color, national origin, sex, sexual orientation, genetic information, marital status, military discharge or military status, or disability before, during, or after employment unless there is a legitimate employment-based need. The Washington State Human Rights Commission (WSHRC) has issued guidelines for pre-employment inquiries. These guidelines are designed to assist management in interviewing prospective employees based on the commission's interpretation of what are unfair practices under the Law Against Discrimination. The guidelines also incorporate suggestions developed by the Equal Employment Opportunity Commission (EEOC) under the Americans with Disabilities Act (ADA).

These guidelines do not cover every possible question. The examples serve only as samples to assist employers in selecting applicants. Interview questions must not give the applicant the impression that a particular protected group will be favored or disfavored. Questions that convey this impression to a reasonable person are prohibited even if they are not made with the intent of unlawful discrimination.

Interviewers must cautiously avoid not only intentional discrimination, but also the possibility that their expressions and actions may be so interpreted. A good rule of thumb is to ask all applicants the same job-related questions. The last two sets of questions below are general, job-related inquiries around which to focus an interview.

	YOU CANNOT ASK	YOU CAN ASK
NAME	<p>“What is the origin of your name?” (Also, do not say “Kowalski—that’s Polish, isn’t it?”)</p> <p>“Has your name been changed by marriage or court order?”</p>	<p>“Do any of the references listed on your application know you by a different name than your present name? If yes, what name?”</p> <p>“Were you known under any other name at any school listed on your application? If yes, what name?”</p> <p>“Have you ever worked for this company or an affiliated company under a different name?”</p> <p>“Have you ever worked for a competitor of this company under a different name? If yes, what name did you use?”</p>
NATIONAL ORIGIN	<p>“What is your national origin?”</p> <p>“Where were you born?”</p> <p>“What is your mother tongue?”</p> <p>“What is your parents’ national origin?”</p> <p>“What country did your ancestors come from?”</p> <p>“Do you read, write, or speak Spanish (or another foreign language)?” (Unless based on job requirements.)</p>	<p>No questions about national origin. (See the discussion of the Federal Immigration Reform and Control Act of 1986 in the section on Inquiries About Citizenship below, as well as in Chapter 5.)</p>
COLOR OR RACE	<p>Any questions concerning race or color of skin, eyes, hair, etc.</p>	<p>No questions about race or color.</p>
RELIGION OR CREED	<p>“What is your religion?”</p> <p>“What church do you go to?”</p> <p>“Who is your minister?”</p> <p>“What are your religious holidays?”</p>	<p>No questions about religion or creed.</p>

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SEX	Any questions regarding the applicant's sex.	No questions regarding the applicant's sex.
GENETIC INFORMATION	Any questions regarding the applicant's genetic information.	No questions regarding the applicant's genetic information.
ADDRESS/ RESIDENCE	<p>"Do you own your home or rent?"</p> <p>"Do you live with your husband (or wife)?"</p> <p>"With whom do you live?"</p>	<p>"Can you be reached at this address? If not, would you care to leave another?"</p> <p>"Can you be reached at these telephone numbers? If not, would you care to leave another?"</p>
AGE	Any questions that imply a preference for persons under 40 years of age.	<p>"If under 18, can you provide a birth certificate or other proof of your age?"</p> <p>"If under 18, can you provide a work permit?"</p>
HEIGHT AND WEIGHT	<p>"How tall are you?"</p> <p>"How much do you weigh?"</p>	No questions about height and weight.
MARITAL STATUS	<p>"Is it Mrs. or Miss?"</p> <p>"Are you married?"</p> <p>"Are you divorced?"</p> <p>"Are you separated?"</p> <p>"Are you engaged?"</p> <p>"Are you widowed?"</p> <p>"Are you single?"</p>	No questions concerning marital status.
FAMILY	<p>"How many children do you have?"</p> <p>"Who takes care of your children while you are working?"</p>	<p>"Do you have any commitments that would prevent you from working regular hours?"</p> <p>"Can you work overtime if needed?"</p>

	YOU CANNOT ASK	YOU CAN ASK
	<p>“What does your husband think about you working outside the home?”</p> <p>“What does your husband (or wife) do?”</p> <p>“What is your husband’s (or wife’s) salary?”</p>	<p>“Are you now or do you expect to be engaged in any other business or employment? If yes, what kind of business or employment is it? How much time does it require?”</p>
PREGNANCY AND HEALTH	<p>“Are you pregnant?”</p> <p>“When was your most recent pregnancy terminated?”</p> <p>“Do you plan to become pregnant?”</p> <p>Any other questions about medical history concerning pregnancy and related matters.</p>	<p>“How long do you plan to stay on the job?”</p> <p>“Estimate the number of work days you missed in the last year.”</p> <p>“Would you be able to work the hours required for this job on a regular basis?”</p>
DISABILITY	<p>“Have you applied for or received worker’s compensation?”</p> <p>“Do you have any disabilities?”</p> <p>Under the Americans with Disabilities Act, you may not ask about the need for accommodation. See a more detailed discussion in the section on disability below.</p> <p>“How many days were you out on sick leave last year?”</p>	<p>“Are you able to perform the tasks listed on the job description we shared with you, with or without accommodations?”</p> <p>“Would you describe how you would perform these tasks?”</p> <p>General questions about attendance, such as, “How many days of work did you miss at your prior job last year?”</p>

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RELATIVES	Names and addresses of any relatives other than those already employed by the company or by a competitor.	<p>“Do you have any relatives employed by this company? If so, what are their names? What is their relationship to you?”</p> <p>“Do you have any relatives employed by a competitor of this company? If so, what are their names? What is their relationship to you?”</p>
EDUCATION	<p>“Who paid for your educational expenses while you were in school?”</p> <p>“Did you go to school on a scholarship?”</p> <p>“Do you still owe on loans taken out during school?”</p>	<p>“Are you presently enrolled in or do you intend to enroll in school?”</p> <p>“What subjects did you excel at in school?”</p> <p>“Did you participate in extracurricular activities?”</p> <p>“Why did you select _____ as your major?”</p> <p>“Did you work at an outside job while at school? Doing what? What did you like/dislike about your job during school?”</p> <p>“Are you interested in continuing your education? Why? When? Where?”</p> <p>“Did your education prepare you for the job you are seeking with us? In what ways?”</p>
MILITARY SERVICE	<p>“Have you served in the army of a foreign country?”</p> <p>“What type of discharge did you receive from the U.S. military service?”</p>	<p>“Have you served in the U.S. military?”</p> <p>“Did your military service experience and training provide you with skills you could put to use in this job?”</p>

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	“Can you provide your discharge papers?”	“How did you feel about your stay in the army (navy, etc.)?”
EXPERIENCE, SKILLS, AND ACTIVITIES		<p>“Do you have any special skill or knowledge?”</p> <p>“Are your skills recent?”</p> <p>“When did you last use a calculator (or any other machine or skill)?”</p> <p>“Do you enjoy being active in community affairs?”</p> <p>“Are there any activities which have provided you with experience, training, or skills which you feel would be helpful to a position with us?”</p> <p>“How will your involvement in _____ (activities) affect your work here?”</p>
ORGANIZATIONS	For a list of all organizations, clubs, societies, and lodges to which the applicant belongs.	About a specific organization membership, excluding any organization the name or character of which indicates the race, color, creed, sex, sexual orientation, marital status, religion, national origin, or ancestry of its members. Use the community activities question under “Experience” above: “Do you enjoy being active in community affairs?”
PHOTOGRAPHS	An applicant to submit a photograph either mandatorily or optionally before hiring.	For a photograph after hiring for identification purposes.
PRIOR EMPLOYMENT	“How did your husband (wife) (parents) (children) feel about your job with _____ company?”	<p>“Would you tell me about your last (or present) job?”</p> <p>“What were your major responsibilities?”</p>

YOU CANNOT ASK**YOU CAN ASK**

“Of all your responsibilities, which presented the most difficulty to you?”

“What were some of the more challenging aspects of your last (or previous) job?”

“How much and what type of training did you receive on your last (or present) job?”

“What position did your immediate supervisor hold?”

“What were his or her major responsibilities?”

“Do you feel you were treated fairly at your last place of employment?”

“What were your advancement options? Were they realized?”

“In what ways do you feel your previous employment will help you in performing the job we have open?”

“Describe a typical day on your last job.”

“What were some of the problems you encountered in performing your last job?”

“How did you overcome problems you faced there?”

“Which problems frustrated you the most?”

“Of these jobs indicated on your application, which did you enjoy the most, and why?”

“What were all the reasons for leaving your last job?”

	YOU CANNOT ASK	YOU CAN ASK
GENERAL	<p>“Have you even declared personal bankruptcy?”</p>	<p>“Have you ever been discharged from any position? If so, for what reasons?”</p> <p>“What kind of work would you most like to do?”</p> <p>“What do you consider your strong points?”</p> <p>“What do you consider your weak points?”</p> <p>“What is your strongest personal quality or qualification?”</p> <p>“What is your weakest area?”</p> <p>“Are there certain activities you feel more confident in performing than others? What are they and why do you feel that way?”</p> <p>“Why do you feel you are qualified for this job?”</p> <p>“What are your specific goals in a job?”</p> <p>“What specific job factors are important to you? Why?”</p> <p>“What job factors would you like to avoid in a job? Why?”</p> <p>“What do you want from your next job that you are not getting from your present (previous) job?”</p> <p>“What is your real career objective? What have you done or intend to do outside your job to help you reach this objective?”</p>

These guidelines do not prohibit an employer from making inquiries about gender, race, age, marital status, etc., after an individual is hired, unless the records are used in connection with

discrimination. To guard against improper use, personnel records should be maintained to limit information access which could cause discrimination allegations. For example, supervisors may not need access to forms upon which employees list their birth date, race, or medical history.

As an exception to the pre-employment inquiry guidelines noted above, affirmative action employers, such as federal contractors, may make inquiries about an applicant's gender and race. Such requests must be accompanied by an explanation of purpose. A sample employment application form with a tear-off sheet designed to support an affirmative action program is included as APPENDIX 1-A.

REFERENCE CHECKS

Before hiring an applicant, employers should at least try to obtain information concerning the applicant's performance from prior employers. Employers should ask questions concerning job-specific work duties and behavior the applicant would have if hired. Additionally, employers should attempt to verify the applicant's reason for leaving and eligibility for rehire.

Washington law makes employers immune from civil liability if they give honest and accurate job references on current or former employees. Employees may sue only if the employer responded to a reference request with information that was knowingly false, deliberately misleading, or was made with reckless disregard for the truth. The statute, RCW 4.24.730, advises, but does not require, employers to maintain records of job references given in an employee's personnel file.

Nevertheless, employers may find it hard to obtain useful information from reference checks. Past employers are often unwilling to provide information about a former employee, and many follow a policy of only verifying employment dates, position held, and salary. A signed release from the employee may increase the likelihood of obtaining more substantive reference information from a former employer. However, employers with strict reference check policies may still refuse to offer more than the bare minimum. Even in a world of neutral references, employers should at least verify positions held, dates of employment, and final pay.

Strategy Tips

Reference Checks

- Include a release and waiver of defamation or other claims above the signature line on the application form (see APPENDIX 1-A).
- Request applicants sign a separate form authorizing former employers to answer specific questions about job performance and conduct (see APPENDIX 1-B).
- Send a form to former employers requesting job-related information (see APPENDIX 1-C).

INQUIRIES ABOUT CITIZENSHIP

According to the WSHRC, it is improper to ask whether an applicant is a United States citizen because this might divulge the applicant's ancestry or national origin.

The Federal Immigration Reform and Control Act, however, makes it illegal to hire individuals not authorized to be employed in the United States. Under that Act, employers must ask new employees for documentation to verify their identity and employment eligibility. For further discussion of this Act and its requirements, see Chapter 3 on Immigration.

In recognition of this federal law, the WSHRC allows applicants to be asked:

“Are you prevented from becoming employed in the United States because of visa or immigration status?”

The employer may also note on the application that:

“Documentation proving legal right to work in the United States will be required upon hiring.”

Similarly, the Department of Justice allows applicants to be asked:

“Are you legally authorized to work in the United States?”

“Will you now or in the future require sponsorship for employment visa status?”

ENGLISH LANGUAGE REQUIREMENTS

Requiring that applicants speak fluently, whether English or another language, is permitted if this is required for effective job performance. Employers should avoid applying fluency requirements with broad ranges of dissimilar positions, and instead focus on proficiency requirements for each particular job. For example, an employee may need minimum proficiency in speaking English to qualify as an assembly line worker, but also need proficiency in written English for a position as manager at the same company. Additionally, “English-only rules” may be used only if needed to promote safe or efficient operation of an employer’s business. Employers may base employment decisions on an applicant’s accent only if effective oral communication in English is required to perform the job duties and a foreign accent materially interferes with the ability to communicate in English.

INQUIRIES ABOUT HIV AND OTHER INFECTIOUS DISEASES

HIV status is a protected characteristic under the Washington Law Against Discrimination. Therefore, employers should not inquire whether an applicant (or current employee) has AIDS or is HIV positive. Furthermore, although it is proper to require a physical examination of all applicant-finalists in a particular job category after an offer of employment is made, the discovery that someone is HIV positive or has AIDS is not grounds for withdrawing an offer unless it substantially interferes with the ability to do the job or poses a direct threat. Additionally, an employee with AIDS who is otherwise qualified to work may be entitled to accommodation, like any other disabled worker.

For a more in depth discussion of AIDS in the workplace, see Chapter 2 on Health Issues.

INQUIRIES ABOUT DISABILITY

The ADA protects qualified disabled individuals from discrimination by prohibiting any pre-employment inquiries about a disability. The ADA applies to employers with 15 or more employees.

Under the ADA, employers may not seek any information whether a job applicant has a disability, or about the nature or severity of a disability, either on application forms, during job interviews, or in background or reference checks. Employers may ask applicants questions about their ability to perform specific job functions, tasks, or duties, as long as these questions are not phrased in terms of a disability and are asked uniformly of all candidates. Interviewers may also ask all applicants to describe or demonstrate how they will perform a job, with or without accommodation.

General questions about attendance are permissible, but not inquiries about use of sick leave or worker's compensation claims. Additionally, employers may not make any medical inquiry or conduct any medical examination prior to making a conditional offer of employment. Employers may make job offers contingent on the results of a medical examination or on the responses to medical inquiries if the examination or inquiry is required of all entering employees in the same job category, regardless of disability.

An employer may withdraw a contingent job offer based on the results of a medical examination only if the applicant cannot perform essential job functions (even with reasonable accommodation) or would pose a direct threat (i.e., a significant risk of substantial harm) to the health or safety of the applicant or to others. Employers who wish to require medical examinations of applicants should consult with legal counsel because the ADA imposes significant limitations on the use of medical examinations.

Properly conducted medical examinations or inquiries should be job-related or consistent with business necessity. If certain criteria of the exams or inquiries screen out employees with disabilities, the exclusionary criteria must be job related and consistent with the needs of the employer's operations. Further, it must be shown that the applicant is unable to perform the essential job functions even with reasonable accommodations by the employer.

Any information obtained through a physical examination or inquiry regarding the medical condition or health history of an applicant must be collected and maintained on separate forms and in separate medical files. Employers must treat this information as a confidential medical record, except under specified circumstances. For example, the employer may inform an employee's supervisors or managers regarding necessary accommodations and necessary restrictions on the worker's duties. An employer can also inform first aid and safety personnel, when appropriate, if the disability might require emergency treatment.

INQUIRIES ABOUT ARRESTS OR CONVICTIONS

Although many employers may believe that arrest and conviction inquiries provide relevant and crucial information about a potential employee, employment discrimination agencies have historically discouraged or even prohibited such questions. Generally, questions about *arrest* records receive greater scrutiny than questions about *conviction* records. An arrest may not result in a conviction or plea, and the concept of "innocent until proven guilty" may cause arrest information to be viewed as unreliable or inaccurate. It is important to note, however, that convictions result not just from guilty findings after a trial, but also from "Alford pleads," pleading "guilty," or pleading "no contest." The result is a conviction unless the conviction is expunged or the individual is pardoned.

Federal Guidance

On April 25, 2012, the EEOC issued updated Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act

of 1964 (the “Guidance”). This Guidance, unlike a statute or regulation, is not binding on a court. It does, however, signal how the EEOC views an employer’s use of arrest and conviction records when making employment decisions.

The crux of the Guidance is that an employer’s consideration of an individual’s arrest and conviction records in making employment decisions may, in some instances, give rise to an employment discrimination claim under Title VII based on race and/or national origin. Title VII recognizes two types of employment discrimination claims: “disparate treatment” claims (i.e., intentional discrimination based on a protected characteristic) and “disparate impact” claims (i.e., when facially neutral policies or practices have the effect of disadvantaging a protected group). The Guidance notes that the improper use of an applicant’s arrest and conviction records could conceivably give rise to both types of claims. However, the Guidance focuses on disparate impact claims. The EEOC assumes that the use of criminal history information in hiring disadvantages African-Americans and Hispanics who statistically are arrested and convicted at a higher rate than their representation in the general population.

The EEOC’s Guidance reiterates its view that arrest records are of limited value because the fact that an arrest occurred does not establish that the underlying criminal conduct occurred. The EEOC views criminal convictions differently than arrests because a record of a conviction “will usually serve as sufficient evidence that a person engaged in particular conduct, given the procedural safeguards associated with trials and guilty pleas.”

The EEOC maintains that employers must establish that their use of criminal history information to screen job applicants must be “job-related and consistent with business necessity.” The Guidance states that an “employer needs to show that the policy operates to *effectively link* specific criminal conduct and its dangers with the risks inherent in the duties of a particular position.” The Guidance offers two methods for employers to establish that consideration of an applicant’s conviction record is “job-related and consistent-with-business-necessity.”

First, an employer could use tests set forth in the EEOC’s Uniform Guidelines on Employee Selection Procedures to statistically “validate” the relationship between the criminal conduct and disqualification to perform the duties of a particular job. Statistical validation is complex and costly—particularly for smaller employers.

Second, an employer may target specific types of convictions related to specific jobs, and use a case-by-case analysis for each applicant focused on the three factors (derived from *Green v. Missouri Pacific Railroad*): (1) the nature and gravity of the offense; (2) the time that has passed since the offense and/or completion of the sentence; and (3) the nature of the job held or sought. The Guidance describes how these factors should be used, but most importantly takes the position that an “individualized assessment” should be made by an employer in virtually all instances before the employer disqualifies an individual for employment based on past criminal conduct. To that end, the Guidance enumerates a number of specific factors for an employer to consider in this assessment, including but not limited to the facts or circumstances surrounding the offense or conduct and the length and consistency of employment history before and after the offense or conduct. See a full text of the Guidance at http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

This recent EEOC Guidance has been criticized. It nevertheless signals to employers how the EEOC will view hiring policies and practices related to arrests and convictions. From the EEOC’s point of view, automatic exclusions based on convictions are not compliant, and an individualized assessment is needed to comply with Title VII. The EEOC did acknowledge that if a federal law prohibits employment of an individual who has been convicted of particular offenses, that

complying with these other federal laws will not violate Title VII. Employers should also check Washington and other state laws to be sure they are complying with state restrictions on criminal record inquiries as well as laws that limit employment in particular occupations of individuals who have been convicted of particular crimes. Though the EEOC did not concede that state laws will preempt its Guidance, it is important to remember that federal and state courts are not literally bound by and do not have to defer to the Guidance. Therefore, if a state or federal law or regulation prohibits particular employers, such as a Department of Social and Health Services (DSHS)- or Department of Health (DOH)-licensed facility, from hiring individuals with particular convictions, such employers should comply with these types of laws.

Washington Regulations

Previously, WSHRC regulations prohibited employers from inquiring about arrest records. Under old regulations, it was “an unfair practice for any employer to refuse to hire or otherwise discriminate against a person in employment because he or she has been arrested,” and “[p]re-employment inquiries as to arrests [were] an unfair practice.” However, the WSHRC repealed this regulation and no longer enforces an absolute ban on such inquiries. Employers should still avoid inquiries about arrests that are not job related, if they could disproportionately or adversely affect minorities.

Although current WSHRC regulations do not prohibit arrest or conviction inquiries, they regulate how this information should be handled or treated. Generally, “[a]ny pre-employment inquiry or the keeping of any record of protected status before employment for a discriminatory purpose is prohibited. . . . unless the particular quality inquired about is a bona fide occupational qualification.” (See WAC 162-12-130) More specifically, the WSHRC’s regulations provide examples of fair and unfair pre-employment inquiries in the context of arrest and conviction inquiries:

Arrests

“Because statistical studies regarding arrests have shown a disparate impact on some racial and ethnic minorities, and an arrest by itself is not a reliable indication of criminal behavior, inquiries concerning arrests must include whether charges are still pending, have been dismissed, or led to a conviction of a crime involving behavior that would adversely affect job performance, and the arrest occurred within the last ten years.” *See* WAC 162-12-140(3)(b).

Convictions

“Statistical studies on convictions and imprisonment have shown a disparate impact on some racial and ethnic minority groups. Inquiries concerning convictions (or imprisonment) will be considered to be justified by business necessity if the crimes inquired about relate reasonably to the job duties, and if such convictions (or release from prison) occurred within the last ten years.” *See* WAC 162-12-140(3)(d).

Current WSHRC regulations expressly provide they do not apply to employers required by another law or regulation to check convictions regardless of the date they occurred.

WSHRC regulations also remain vulnerable to issues that invalidated earlier versions of the regulations. The Washington Court of Appeals has ruled that individuals with convictions are not a protected group under the Washington Law Against Discrimination. Consequently, any employer

may be justified in inquiring about arrests or conviction records older than 10 years, especially if the crimes are relevant to a particular position.

Strategy Tips

Practical Advice For Employers Using Conviction Records

- Consider inquiring only about convictions within the last 10 years, unless justified by business necessity, or required by other laws or regulations covering your particular industry or business.
- Allow job applicants to explain convictions, or conduct a follow-up inquiry to evaluate candidate credibility. You can check criminal court files to verify if a candidate's explanation is complete and accurate.
- Analyze positions carefully to ensure that a criminal record inquiry is closely related to job skills, performance, and responsibilities.
- Document why inquiries into conviction records are essential to job duties/performance, and why this is a "business necessity."
- Inquire about convictions with all applicants, or all applicants for a particular position.
- The more recent the job-related arrest or conviction, the more likely it should disqualify an applicant.

Obtaining Criminal Records Under RCW 10.97

The Washington State Criminal Records Privacy Act (RCW 10.97) provides that certain criminal history record information (CHRI) may be disseminated to the public in certain circumstances, without restriction:

- Conviction records; and
- Criminal history records related to an incident occurring within the last 12 months for which a person is currently being processed by the criminal justice system.

The general public can request these types of CHRI from the Washington State Patrol (WSP) for a small fee without consent of the subject of the record. (For more information, consult the Washington State Patrol's website at www.wsp.wa.gov/crime/crimhist.htm.)

Washington Law: Crimes Against Persons and Certain Civil Adjudications

For most employers, there are no applicable laws mandating a criminal background check on applicants and employees. Washington law, however, *requires* certain employers to run background checks and to verify criminal conviction records with the state patrol. Employers must *inquire* about an applicant's criminal history and certain civil adjudications for jobs having unsupervised access to children or developmentally disabled adults. Nursing homes, hospitals, and other licensed health care facilities also are required to obtain written disclosure statements and check such

applicant’s conviction records through the WSP. They may not employ individuals convicted of certain “crimes against persons.”

Positions With Unsupervised Access to Children or the Developmentally Disabled

Employers considering hiring an employee, or engaging a contractor or a volunteer, who will have unsupervised access to children under the age of 16, developmentally disabled persons or vulnerable adults (functionally disabled persons 60 years of age and older) are required to inquire about the applicant’s criminal history under RCW 43.43.830. The statute applies to any Washington business or organization, state agency, or governmental entity that “educates, trains, treats, supervises, houses or provides recreation” to vulnerable adults, the disabled, or children, or “that provides child day care, early learning, or early learning childhood education services.” Covered employers must ask each applicant to complete a disclosure statement which asks whether he or she has been convicted of *any* crime. Convictions include juvenile and adult offenses, unless the conviction was expunged, pardoned, annulled, or the subject of a certificate of rehabilitation. Even deferred or suspended sentences count as convictions unless the conviction record is expunged according to law.

Covered employers (other than those licensed by the Department of Health or the Department of Social and Health Services) also *may* verify the applicant’s conviction record by requesting a transcript of the applicant’s conviction record from the WSP. Although verifying an individual’s record with the state patrol is not required, a covered employer’s failure to verify such information on a prospective employee or volunteer may create civil liability if such failure constitutes gross negligence. Prior to requesting the WSP record check, the employer must notify the individual that the request will be made. The WSP requires a processing fee before providing employers with criminal histories/conviction records under this statute, but waives the fee for nonprofit organizations and school districts. Employers must notify an individual of the WSP’s response and offer to provide a copy of the report within 10 days of receipt. Employers may use information obtained under RCW 43.43.834 only in making the initial hiring decisions. Further dissemination of the information is prohibited and may subject the employer to civil damages.

Nursing Homes, Hospitals, and Other DSHS/DOH Licensed Facilities

Nursing homes and other facilities licensed by the DSHS, and hospitals or other facilities licensed by the DOH providing care and treatment to children and vulnerable adults have additional obligations under RCW 43.43.842. Washington law prohibits these entities from hiring or retaining any employee, directly or by contract, or from accepting any volunteer or student, who: (1) is a respondent in an active protective order under RCW 74.34.130; (2) has been convicted of a crime against persons (see list of such crimes in APPENDIX 1-D); (3) has been convicted of a crime related to financial exploitation or abuse of a vulnerable adult; or (4) has been found in a disciplinary board final decision to have abused or exploited a vulnerable adult. All such licensed facilities must:

- Inform the applicant of the background inquiry;
- Require the applicant to complete a Crimes Against Persons Disclosure Statement (see APPENDIX 1-D);
- Require the applicant to sign a statement acknowledging that the facility will verify the completed disclosure statement by checking convictions with the WSP (included in APPENDIX 1-D);

- Verify the applicant's disclosure statement through the WSP;
- Inform the applicant of the results of the WSP check within 10 days;
- Provide the applicant with a copy of the WSP report and notify the applicant of such availability; and
- Notify appropriate licensing or certifying agencies of any termination or other adverse personnel action taken because an employee committed a "crime against children or other persons" or because of crimes relating to the financial exploitation of a vulnerable adult.

Nursing homes, hospitals, and other DSHS- or DOH-licensed facilities are prohibited from hiring or employing any individual who has been: (1) convicted of a crime against persons; (2) convicted of a crime related to financial exploitation; or (3) found in a civil adjudication proceeding to have abused a vulnerable adult or is the subject of an active protective proceeding. However, the statute allows certain individuals with conviction records to be employed, notwithstanding a record of a crime against persons. Covered employers *may* consider applicants who have been convicted if:

- The offense was simple assault, fourth-degree assault, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;
- The offense was prostitution, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;
- The offense was third-degree theft, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;
- The offense was second-degree theft, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment; or
- The offense was forgery, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment.

Though applicants who meet these exceptions are not automatically disqualified from employment, nothing in the statute requires the employment of any person against a licensee's judgment. RCW 43.43.842(2).

Other Criminal Record Checks

RCW 43.43.815 also provides that employers can obtain conviction records from the WSP under other circumstances: (1) securing a bond required for employment; (2) conducting pre-employment or post-employment evaluations whenever the employee or applicant "may have access to information affecting national security, trade secrets, confidential or proprietary business information, money or items of value"; or (3) assisting an investigation of suspected employee misconduct where the misconduct may also constitute a criminal offense under the laws of the United States or any state. These categories are broad, and allow employers to check conviction records on many applicants and even some existing employees. Employers should be very careful in handling records requested under this statute, and limit access to those involved in the hiring decision, background check, or investigation of misconduct. The employer must notify the individual within 30 days of receiving the WSP records, or immediately upon concluding an

investigation if such records were requested to assist in an investigation of employee misconduct. The employer also must make criminal conviction records available to the employee for inspection upon request. Any individual harmed by violation of RCW 43.43.815 may bring a lawsuit against an employer to stop the wrongful conduct and for damages and attorneys' fees. Violation of the statute is also a misdemeanor.

Employers should note that the limitations under RCW 43.43.815 do not apply to employer requests for conviction information under RCW 10.97, discussed above. There are no court decisions reconciling the unfettered access granted under RCW 10.97 with the arguably more limited access granted in RCW 43.43. The Washington State Patrol's website implicitly acknowledges that anyone, at any time, can request criminal history information under RCW 10.97 without limit.

CREDIT HISTORY

Some employers, especially those in the financial-services industry, want to evaluate an applicant's credit history. An applicant's credit history could be relevant, especially if a position requires a large deal of financial responsibility (e.g., the employee will have discretion in handling large sums of money and/or making financial decisions for the employer). Credit reports may provide information about an applicant's financial responsibility such as history of late payments, debt levels, bankruptcy filings, and general financial health.

However, 11 U.S.C. § 525(b) of the Bankruptcy Code makes it illegal for a private employer to fire or discriminate with respect to employment against an individual solely because he or she filed bankruptcy, was "associated" with an individual who filed bankruptcy, was insolvent before or during filing of the bankruptcy, or has not paid a debt that is dischargeable or was discharged in bankruptcy. Additionally, a public employer is prohibited from refusing to hire, fire, or otherwise discriminate with respect to employment against any individual solely for those same reasons.

Employers who use the services of a consumer reporting agency to obtain credit information on applicants and employees must also comply with the Fair Credit Reporting Act (FCRA), discussed in detail below, before obtaining a credit report on an applicant or current employee.

FAIR CREDIT REPORTING ACT

Any employer who engages a consumer reporting agency to obtain a consumer report or any investigative consumer report on an employee or applicant must comply with the federal and the Washington Fair Credit Reporting Act (collectively referred to as FCRA). The FCRA does not apply if the employer itself checks employment references or contacts government agencies (such as the Washington State Patrol) to obtain information in public records. The FCRA is implicated only when the employer uses a third-party "consumer reporting agency" to check address, references, education or conviction records, credit histories, or the validity of Social Security numbers. Failure to comply with the FCRA when using a consumer reporting agency engenders a significant risk of liability to the employer.

The FCRA definition of "consumer reporting agency" is broad enough to include almost any person or organization engaged by an employer to obtain information about an applicant or employee. The definition includes any person or agency that engages in the practice of assembling or evaluating consumer credit information or other consumer information for the purposes of furnishing consumer reports to third parties. This is because a "consumer report" is defined as a written or verbal communication by a consumer reporting agency concerning a person's

creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used to determine a person's eligibility for credit or insurance, for employment purposes, or for any other purposes under FCRA's Section 604. An "investigative consumer report" is a report that includes information about a person's character, reputation, personal characteristics, or mode of living based on interviews with neighbors, friends, associates, or others with whom he/she is acquainted or who may have knowledge regarding such information. Thus, employers that use vendors to obtain such information must comply with the FCRA requirements detailed below.

Washington's FCRA also prohibits employers from obtaining a "consumer report" for employment purposes when any information contained in the report bears on the creditworthiness, credit standing, or credit capacity of a job applicant or employee unless: (1) the credit-related information is *substantially related* to the current or potential position for which an applicant has applied; and (2) the credit report is required by law. Employers relying on the first exception must disclose the reasons for using the credit information to the applicant in writing. Examples where this exception would most likely apply include situations where an employee will be handling money or sensitive personal financial data. There is a further exception that applies to current employees, as opposed to applicants. An employer is allowed to request a credit-related consumer report if the employer "has reasonable cause to believe that the employee has engaged in specific activity that constitutes a violation of law." These Washington FCRA requirements are not replicated in the federal FCRA, and thus may not be applicable to a Washington employer's staff who are employed in another state. An employer should always check the FCRA laws of the other states where it has employees.

FCRA Requirements

Employers must make two disclosures under the federal and Washington FCRA: one to the applicant/employee and one to the consumer reporting agency providing the report. The disclosure to the employee/applicant must be a clear, stand-alone document and may not be part of the job application. To the employee/applicant, the employer must: (1) make a clear and conspicuous written disclosure that a consumer report may be obtained for purposes of considering the applicant for employment; and (2) obtain that employee/applicant's written consent to obtaining the report. If the employer decides to procure an investigative consumer report, it must also provide the consumer with: (1) written notice that the report may include information about the applicant's character, reputation, personal characteristics, and mode of living, as applicable; (2) written notice of the applicant's right to a disclosure of the nature and scope of the investigation requested; and (3) a summary of the applicant's rights under the FCRA. (See example of an authorization and disclosure form in APPENDIX 1-E.) Copies of sample FCRA rights summaries are available from the Consumer Financial Protection Bureau website at www.consumerfinance.gov/learnmore. Always check the CFPB website for the most current summary of the FCRA rights.

If the applicant/employee requests disclosure of the nature and scope of the investigation, a written description of the investigation must be mailed or delivered within five days after receiving the request, or after first requesting the report, whichever is later.

Before obtaining the report from the consumer reporting agency, the employer must certify to the consumer reporting agency providing the report that: (1) appropriate disclosure has been made to the applicant/employee; (2) the employer received written consent from the applicant/employee; (3) the report will not be used illegally; and (4) the employer will abide by any other legal

requirements before taking adverse action based on the report. The consumer reporting agency usually prepares this form and requires the employer to complete and return it.

Note:

A consumer reporting agency may not provide consumer reports containing medical information unless the applicant or employee expressly consents to release of medical information in addition to authorizing the consumer report. Employers who wish to gather such medical information should consult with counsel before obtaining such information, as gathering and using medical information before the last stage of the hiring process could violate the disability discrimination laws.

Adverse Action Based on the Report

The FCRA also prescribes limitations on employers taking any adverse action against the employee or applicant based in whole or in part on the information provided in the report. Before taking any adverse action, the employer must provide the applicant or employee with the following information:

- Copy of the report;
- Name, address and toll-free number of the consumer reporting agency, with a statement that the agency did not make and cannot explain the decision;
- Description of the employee's/applicant's rights under the Acts (the consumer reporting agency usually provides this description with the report); and
- Reasonable opportunity to respond to any information in the report under dispute by the employee/applicant.

If the employer takes an adverse action, it must also provide the applicant/employee with: (1) a notice of the contemplated action (e.g., an adverse decision regarding hiring, promotion, reassignment, or retention); and (2) later notice of the actual "adverse action." The individual must also be informed that she or he has the right to obtain a free report from the consumer reporting agency within 60 days and to dispute the accuracy and completeness of the information with the agency. Additional disclosure requirements apply if the employer obtained and relied upon the applicant/employee's credit score. Samples of both types of adverse action letters are provided in APPENDICES 1-F and 1-G.

If an employer using consumer reporting information negligently or willfully fails to comply with any requirement imposed by the FCRA, the employer may be liable to the employee/applicant for actual damages, costs, and attorneys' fees (or nominal damages up to \$1,000 if no actual damages exist). In the case of willful noncompliance, punitive damages may be awarded. Potential liability for noncompliance with the FCRA can be substantially reduced if the employer can show that at the time of the violation, it maintained reasonable procedures to assure compliance.

CHILD SUPPORT ENFORCEMENT INFORMATION – NEW HIRE REPORTING

As part of a nationwide effort to collect child support payments, Washington requires employers to report the hiring of new employees to the Department of Social and Health Services. All employers are required to report all newly hired or rehired employees within 20 days of hiring. In the case of an employer transmitting reports magnetically or electronically, the employer shall report all newly hired or rehired employees by two monthly transmissions, if necessary, not less than 12 days nor more than 16 days apart. A rehire is an employee who returns to work after a 60-day period regardless of the reason for absence. Each report must include employee information (name, address, Social Security number, and date of birth) and employer information (business name, business address, Federal Employer Identification Number (FEIN)). Employers submitting employees' W-4 forms must add employees' dates of birth to the W-4 form (after the last name on the name line). At this time, the Division of Child Support does not require that employers submit date of hire information, even though Washington regulations (WAC 388-14A-8200) list such information as required.

Note:

Employers may obtain more information on new hire reporting at

<http://www1.dshs.wa.gov/newhire/>; or by email to <mailto:dcshire@dshs.wa.gov>.

Employers failing to report are subject to a civil penalty of \$35 per month per employee, or \$500 if failure to report is the result of a conspiracy between the employer and the employee not to supply the required report or to supply a false report. The Division of Child Support recommends that employers keep new hire records for 12 months.

APPENDIX 1-A

Application for Employment

LAST NAME		FIRST NAME		MIDDLE		WE ARE AN AFFIRMATIVE ACTION EMPLOYER. TO ASSIST US WE REQUEST THAT YOU PROVIDE THE FOLLOWING INFORMATION, WHICH WILL NOT BE USED IN EVALUATING YOUR APPLICATION. (COMPLETION OF THIS SECTION IS OPTIONAL)		
PHONE	EMAIL ADDRESS	TODAY'S DATE		DATE AVAILABLE FOR WORK				
POSITION APPLIED FOR		SALARY DESIRED						
PRESENT ADDRESS		CITY	STATE	ZIP				SEX
FORMER ADDRESS		CITY	STATE	ZIP		ETHNIC ORIGIN		FOR COMPANY USE ONLY
FORMER ADDRESS		CITY	STATE	ZIP				JOB GROUP
IN EMERGENCY, NOTIFY		EMERGENCY PHONE						
ARE YOU OVER THE AGE OF 18? YES NO		WILL VISA OR IMMIGRATION STATUS PREVENT LAWFUL EMPLOYMENT? YES NO				HISPANIC OR LATINO WHITE BLACK OR AFRICANAMERICAN NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER ASIAN AMERICAN INDIAN OR ALASKA NATIVE TWO OR MORE RACES		

Note:

For the printed version of this resource, this page is an optional tear-off slip for use by employers, such as federal contractors who are required to maintain affirmative action plans. It should be printed either on carbonless paper overlapping the top portion of the first page of the application or as a separate form. The tear-off slip must be separated immediately from the basic application form before anyone involved in the hiring decision sees the application. Note that *separate* invitations to voluntarily self-identify as disabled or a veteran must be extended by affirmative action employers, after extension of a conditional job offer.

LAST NAME		FIRST NAME		MIDDLE	
PHONE	EMAIL ADDRESS	TODAY'S DATE		DATE AVAILABLE FOR WORK	
POSITION APPLIED FOR			SALARY DESIRED		
PRESENT ADDRESS		CITY	STATE	ZIP	
FORMER ADDRESS		CITY	STATE	ZIP	
FORMER ADDRESS		CITY	STATE	ZIP	
IN EMERGENCY, NOTIFY		EMERGENCY PHONE			
ARE YOU OVER THE AGE OF 18? YES NO		WILL VISA OR IMMIGRATION STATUS PREVENT LAWFUL EMPLOYMENT? YES NO			

EDUCATION RECORD

NAME OF SCHOOL	LOCATION	DID YOU GRADUATE?	YEAR OF GRADUATION OR LEFT SCHOOL	MAJOR / MINORS	DEGREE RECEIVED
HIGH SCHOOL					
COLLEGE					
COLLEGE					
OTHER					
OTHER					

EMPLOYMENT RECORD

EMPLOYER	EMPLOYMENT DATES	SALARY	POSITION	ELIGIBLE FOR REHIRE?
NAME	FROM	STARTING	STARTING	YES
ADDRESS	TO	ENDING	ENDING	NO
SUPERVISOR	REASON FOR LEAVING			
NAME	FROM	STARTING	STARTING	YES
ADDRESS	TO	ENDING	ENDING	NO
SUPERVISOR	REASON FOR LEAVING			
NAME	FROM	STARTING	STARTING	YES
ADDRESS	TO	ENDING	ENDING	NO
SUPERVISOR	REASON FOR LEAVING			

LIST PERIODS OF UNEMPLOYMENT OF MORE THAN 30 DAYS, AND EXPLAIN

THIS COMPANY IS AN EQUAL OPPORTUNITY EMPLOYER AND DOES NOT UNLAWFULLY DISCRIMINATE ON THE BASIS OF RACE, SEX, SEXUAL ORIENTATION, AGE, COLOR, RELIGION, NATIONAL ORIGIN, GENETIC INFORMATION, MARITAL STATUS, VETERAN STATUS, DISABILITY STATUS, OR ANY OTHER CHARACTERISTIC PROTECTED BY FEDERAL, STATE, OR LOCAL LAW. PLEASE LET US KNOW IF YOU NEED ACCOMMODATIONS IN ORDER TO PARTICIPATE IN THE APPLICATION PROCESS.

PERSONAL DATA

WHO REFERRED YOU TO US?
HAVE YOU BEEN CONVICTED OR PLEADED NO CONTEST TO THE FOLLOWING CRIMES: [NOTE: CONSIDER EDITING THIS QUESTION TO ONLY INQUIRE ABOUT CONVICTIONS RELATING REASONABLY TO JOB DUTIES, CONVICTIONS OCCURRING WITHIN THE LAST TEN YEARS, OR SPECIFIED CONVICTIONS THE EMPLOYER MUST CHECK UNDER INDUSTRY SPECIFIC LAWS OR REGULATIONS.]
IF YES, INDICATE OFFENSE, DATE, COURT & DISPOSITION. (A CONVICTION WILL NOT NECESSARILY DISQUALIFY AN APPLICANT FROM EMPLOYMENT.)
ARE YOU ABLE TO PERFORM, WITH OR WITHOUT ACCOMMODATION, THE ESSENTIAL DUTIES OF THE JOB FOR WHICH YOU ARE APPLYING?

U.S. MILITARY SERVICE

BRANCH OF SERVICE	DATE IN	DATE OUT	WHERE SERVED	SPECIALTY
-------------------	---------	----------	--------------	-----------

EXPERIENCE

_____ ADDING MACHINES	_____ BOOKKEEPING	_____ TYPIST	_____ WPM
_____ SUPERVISION	_____ STATISTICAL CLERK	_____ DICTATING EQUIPMENT	
_____ PROGRAMMING	_____ RECEPTIONIST/SWITCHBOARD	_____ WORD PROCESSING (SOFTWARE)	
_____ OFFICE MACHINES (SPECIFY)	_____ LIBRARY	_____ COMPUTER (TYPES)	
INDICATE ANY OTHER SKILLS RELATED TO THE POSITION YOU ARE SEEKING			

I CERTIFY THAT THE INFORMATION GIVEN ABOVE IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT IF I AM EMPLOYED, DISCOVERY THAT I GAVE FALSE OR INCOMPLETE INFORMATION DURING THE APPLICATION PROCESS MAY RESULT IN IMMEDIATE DISMISSAL.

I FURTHER CERTIFY THAT I AM NOT ENGAGED IN ANY OUTSIDE ACTIVITY OR BUSINESS THAT COULD BE CONSIDERED IN CONFLICT WITH [EMPLOYER'S] INTEREST OR THOSE OF ITS CUSTOMERS, NOR WILL I BECOME ENGAGED IN SUCH ACTIVITY OR BUSINESS IF EMPLOYED.

I AUTHORIZE [EMPLOYER] TO SOLICIT INFORMATION REGARDING MY CHARACTER, GENERAL REPUTATION, PREVIOUS EMPLOYMENT AND SIMILAR BACKGROUND INFORMATION, AND TO CONTACT ANY AND ALL FORMER EMPLOYERS AND REFERENCES I HAVE GIVEN ON MY APPLICATION. I HEREBY RELEASE ANYONE CONNECTED WITH ANY SUCH REQUEST FOR INFORMATION FROM ALL CLAIMS, LIABILITIES AND DAMAGES FOR ANY REASON ARISING OUT OF THE FURNISHING OF SUCH INFORMATION. IF EMPLOYED, I RELEASE [EMPLOYER] FROM ANY LIABILITY FOR FUTURE REFERENCES IT MAY PROVIDE REGARDING MY WORK HISTORY WITH [EMPLOYER].

IN CONSIDERATION OF MY EMPLOYMENT, I AGREE THAT MY EMPLOYMENT WILL BE AT-WILL AND CAN BE TERMINATED WITH OR WITHOUT CAUSE, AND WITH OR WITHOUT NOTICE AT ANY TIME, AT THE OPTION OF EITHER [EMPLOYER] OR MYSELF. I UNDERSTAND THAT NO REPRESENTATIVE OF [EMPLOYER], HAS ANY AUTHORITY TO ENTER INTO ANY AGREEMENT FOR EMPLOYMENT FOR ANY SPECIFIED PERIOD OF TIME, OR TO MAKE ANY AGREEMENT CONTRARY TO AT-WILL EMPLOYMENT.

IF EMPLOYED, I FURTHER AGREE THAT IF [EMPLOYER] ADVANCES ANY PAID LEAVE BEFORE IT HAS BEEN ACCRUED, OR ADVANCES ANY WAGES OR LOANS ME ANY MONEY DURING THE COURSE OF MY EMPLOYMENT, OR IF I LOSE, DAMAGE, OR FAIL TO RETURN ANY [EMPLOYER] PROPERTY, [EMPLOYER] IS AUTHORIZED TO DEDUCT FROM MY WAGES SUFFICIENT FUNDS TO REPAY SUCH LOANS OR ADVANCES OR TO REPLACE ITS PROPERTY.

SIGNATURE _____

APPLICANT DATE

APPENDIX 1-B

Reference Information Release

TO: _____

DATE: _____

ATTENTION: Personnel Records Custodian

The person identified has recently applied for a position with us, has supplied the following information about prior employment with your organization, and has signed below authorizing this employment verification request. Please take a moment to respond to our inquiry. A self-addressed envelope is enclosed for your convenience.

Name of Applicant

Dates of Employment

Position Last Held

Final Rate of Pay/Base

Employee's Stated Reason for Leaving

Date

Signature

PLEASE SUPPLY THE FOLLOWING INFORMATION:

Is the above information correct? Yes _____ No _____.

If not, please insert your corrections above.

Performance rating on last review _____

Attendance record _____

Your further comments concerning this individual would be appreciated.

Date

Signature

Title

AUTHORIZATION AND RELEASE:

I hereby authorize [Potential Employer] to solicit and receive all information relating to my employment with any previous employer and to verify the accuracy of the information on the attached form. I also hereby authorize any previous employer to provide information about me to [Potential Employer] and I release any previous employer and [Potential Employer] and all of their respective affiliates, parent corporations, related entities, officers, directors, agents, employees, insurers, and all persons acting on their behalf from any and all claims and liabilities of any nature (including costs and attorneys' fees) arising from such inquiry and investigation or the supplying of information for such investigation.

Date

Signature of Applicant

SAMPLE

APPENDIX 1-C

Reference Check Questions

Name of Applicant _____

Name of Reference _____ Position Held _____

Company _____

1. What dates was the applicant employed by your company? _____ to _____

2. What was applicant's position with you? _____

What was the applicant's last job title? _____

3. What were the applicant's responsibilities? _____

4. Did applicant advance while employed with you? _____ Yes _____ No

If yes, when and in what capacity? _____

If no, do you feel applicant could have advanced, and to what level? _____ Yes _____ No

5. What areas do you feel were this applicant's strengths? _____

6. In what areas do you feel we could help the applicant develop? _____

7. Under what circumstances did applicant leave your employ? _____

8. Is applicant eligible for rehire? _____ Yes _____ No

If not, why? _____

9. How would you rate applicant's work performance?

Below average _____ Average _____ Above average _____ Excellent _____

What was the rating on the applicant's last performance appraisal? _____

10. How would you rate applicant's absences and tardiness?

Poor _____ Fair _____ Good _____ Excellent _____

11. How did applicant get along with coworkers/supervisors/customers? _____

12. How would you rate the applicant's safety consciousness? _____

13. Is there anything else you feel we should know about the applicant (his/her work performance, etc.)?

What was your experience with the applicant in _____ [list position's performance criteria]?

Signature _____ Date _____

APPENDIX 1-D

Crimes Against Persons Disclosure Statement

Pursuant to the requirements of Chapter RCW 43.43.830 et seq., [insert legal name of employer] must ask you to complete the following disclosure statement. Convictions include both adult and juvenile convictions as a result of judge or jury verdicts, guilty pleas, “Alford” pleas, or pleas of “nolo contendere.” Convictions also include offenses for which you received a deferred or suspended sentence, unless the record has been expunged according to law. Convictions do not include offenses that have been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of pardon, annulment, or other equivalent procedure based on a finding of innocence. This information will be maintained in accordance with state law.

Have you ever been convicted, either as a juvenile or an adult, of any of the following crimes against children or other persons, or crimes relating to drugs?

Yes	No		Yes	No	
___	___	Aggravated murder	___	___	Child abuse or neglect as defined in RCW 26.44.020
___	___	First- or second-degree murder	___	___	First- or second-degree custodial interference
___	___	First- or second-degree kidnapping	___	___	First- or second-degree custodial sexual misconduct
___	___	First-, second-, or third-degree assault	___	___	Malicious harassment
___	___	First-, second-, or third-degree assault of a child	___	___	First-, second-, or third-degree child molestation
___	___	First-, second-, or third-degree rape	___	___	First- or second-degree sexual misconduct with a minor
___	___	First-, second-, or third-degree rape of a child	___	___	Commercial sexual abuse of a minor (patronizing a juvenile prostitute)
___	___	First- or second-degree robbery	___	___	Child abandonment
___	___	First-degree arson	___	___	Promoting pornography
___	___	First-degree burglary	___	___	Selling or distributing erotic material to a minor
___	___	First- or second-degree manslaughter	___	___	Custodial assault
___	___	First- or second-degree extortion	___	___	Violation of child abuse restraining order
___	___	Indecent liberties	___	___	Child buying or selling
___	___	Incest	___	___	Prostitution

Yes	No	
___	___	Vehicular homicide
___	___	First-degree promoting prostitution
___	___	Communication with a minor
___	___	Unlawful imprisonment
___	___	Simple assault
___	___	Sexual exploitation of minors
___	___	First- or second-degree criminal mistreatment

Yes	No	
___	___	Felony indecent exposure
___	___	Criminal abandonment
___	___	Manufacturing a controlled substance
___	___	Delivery of a controlled substance
___	___	Possession of a controlled substance with intent to manufacture or deliver
___	___	Endangerment with a controlled substance
___	___	Or any of these crimes as they may have been renamed

Have you ever been convicted of any of the following crimes relating to financial exploitation where the victim was a “vulnerable adult”? A “vulnerable adult” is a person of any age who lacks the functional, mental, or physical ability to care for him/herself; has been found to be incapacitated under Chapter RCW 11.88; has a developmental disability as defined by RCW 71A.10.020; has been admitted into a state-licensed or required-to-be-licensed assisted living facility, nursing home, adult family home, soldiers’ home, residential habilitation center, or any other DSHS-licensed facility; receives services from home health, hospice, or home care agencies licensed or required to be licensed under RCW 70.127; receives services from a provider who contracts with DSHS to provide services for the person in his/her home; or who self-directs his or her own care and receives services from a personal aide under Chapter RCW 74.39.

Yes	No	
___	___	First-, second-, or third-degree extortion
___	___	First- or second-degree robbery
___	___	First-, second-, or third-degree theft

Yes	No	
___	___	Forgery
___	___	Or any of these crimes as they may have been renamed

Have you ever been convicted of any other crime besides the ones listed above? Yes ___
 No ___

If “yes” what was the crime? _____

If your answer was “yes” to any of the above, please also provide the city, state, and court where you were convicted, the date(s) of the conviction(s), the sentence(s) imposed, and if you served time in prison or jail, the date of your release.

Are you the respondent in any active protective order related to a vulnerable adult under RCW 74.34.130? Yes ___ No ___

If “yes” please provide the case number and court where such proceedings are pending or took place:

Have you ever had an agency or a court make a finding against you in a civil adjudication proceeding that you committed any of the following acts against a child or vulnerable adult?

Yes	No	
___	___	1. Domestic violence?
___	___	2. Abuse?
___	___	3. Sexual abuse?
___	___	4. Neglect?
___	___	5. Exploitation?
___	___	6. Abandonment?
___	___	7. Violation of a professional licensing standard?
___	___	8. Financial exploitation?

If your answer is “yes” to any of the findings in a civil proceeding, provide the type of proceeding, the parties involved, the date(s) of the finding(s), and explain the details of any findings and penalties/restrictions imposed.

UNDER PENALTY OF PERJURY, I certify that the above information is true, correct, and complete. I understand that if I am hired, I can be discharged for any misrepresentations or omissions in the above statement. I also understand that if I am hired, my employment is conditioned on receipt of a satisfactory report from the Washington State Patrol.

Signature: _____

Name (print): _____

Date of Birth: _____

Alias/Other Names Used: _____

Today’s Date: _____

We also may request a criminal history record information report on you from the Washington State Patrol (WSP). If you are hired before the WSP report is available, **YOUR EMPLOYMENT WILL BE CONDITIONED UPON THE RECEIPT OF A SATISFACTORY REPORT.**

You will be notified of the WSP's response within ten days after we receive the report. We will make a copy of the report available to you upon your request.

SAMPLE

APPENDIX 1-E

Disclosure and Authorization of Consumer Report

[Insert name of employer] may request a “consumer report” or an “investigative consumer report” from/through [insert name of consumer reporting agency], for the purpose of evaluating you for employment, and/or, if hired, for promotion, reassignment, and retention or other employment related purposes. A “consumer report” is based on public records sources; an “investigative consumer report” would also include personal interviews with your neighbors, friends or associates.

A report may contain information on any criminal convictions, verify your residence addresses, education record, and/or social security number, search social network sites, blogs or other information available on the Internet, or make inquiries about your character, general reputation, personal characteristics and/or prior employment. [CUSTOMIZE: As the job for which you have applied or are being considered involves either having access to our accounts payable or receivable, payroll system and/or other financial records, handling our [or our clients’/customers’/third parties’] funds, having access to or signing authority on our [or our clients’/customers’/third parties’] bank accounts, or having a business credit card in [employer’s name], the report that we will obtain will include a credit report.]

Under the Fair Credit Reporting Act (“FCRA”), if information in such a report is relied on to make an adverse employment decision, before the decision is final, you will be provided with a copy of the report along with a description of your rights under the FCRA.

If an investigative consumer report is requested, you have the right to request, in writing, within a reasonable time, that we make a complete and accurate disclosure of the nature and scope of the investigation we requested. Such disclosure will be made to you within 5 days of the date on which we receive the request from you, or within 5 days of the time the report was first requested, whichever is later in time.

AUTHORIZATION

I authorize [insert name of employer] to obtain “consumer reports” (including “investigative consumer reports”) about me for the purposes of evaluating me for employment, promotion, reassignment, retention or other employment related purpose. [I expressly understand that as it is substantially related to the job for which I applied or am being considered, that I am giving my authorization for [insert name of employer] to also obtain a credit report through [insert name of consumer reporting agency.]

Signature

Print Name

Date

It is important that all blank spaces be completed appropriately

Print Full Name _____
(First) (Full Middle Name) (Last)

Provide any other name(s) used in the past 10 years and include dates of name changes:

Social Security Number: _____

Date of birth: _____ Place of birth: _____

Complete addresses of all physical residence(s) for the past ten years: (Use back page for additional addresses)

Address: _____ City, State, Zip: _____

From: _____ To: _____

Address: _____ City, State, Zip: _____

From: _____ To: _____

Address: _____ City, State, Zip: _____

From: _____ To: _____

Address: _____ City, State, Zip: _____

From: _____ To: _____

Para informacion en español, visite www.consumerfinance.gov/learnmore o escribe a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20006.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, D.C., 20006.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment - or to take another adverse action against you - must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
 - a person has taken adverse action against you because of information in your credit report;
 - you are the victim of identity theft and place a fraud alert in your file;
 - your file contains inaccurate information as a result of fraud;
 - you are on public assistance; or
 - you are unemployed but expect to apply for employment within 60 days.

In addition, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.consumerfinance.gov/learnmore for additional information.

- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your creditworthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.consumerfinance.gov/learnmore for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete, or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.consumerfinance.gov/learnmore.
- **You may limit “prescreened” offers of credit and insurance you get based on information in your credit report.** Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 888-5-OPTOUT (888-567-8688).
- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.consumerfinance.gov/learnmore.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. For information about your federal rights, contact:

TYPE OF BUSINESS:	CONTACT:
1.a. Banks, savings associations, and credit unions with total assets of over \$10 billion and their affiliates. b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the Bureau:	a. Bureau of Consumer Financial Protection 1700 G Street NW Washington, DC 20006 b. Federal Trade Commission: Consumer Response Center - FCRA Washington, D.C. 20580 (877) 382-4357
2. To the extent not included in item 1 above: a. National banks, federal savings associations and federal branches and federal agencies of foreign banks b. State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act	a. Office of the Comptroller of the Currency Customer Assistance Group 1301 McKinney Street, Suite 3450 Houston, TX 77010-9050 b. Federal Reserve Consumer Help Center P.O. Box 1200 Minneapolis, MN 55480

TYPE OF BUSINESS:	CONTACT:
c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations d. Federal Credit Unions	c. FDIC Consumer Response Center 1100 Walnut Street, Box #11 Kansas City, MO 64106 d. National Credit Union Administration Office of Consumer Protection (OCP) Division of Consumer Compliance and Outreach (DCCO) 1775 Duke Street Alexandria, VA 22314
3. Air carriers	Asst. General Counsel for Aviation Enforcement & Proceedings Department of Transportation 400 Seventh Street SW Washington, D.C. 20590
4. Creditors Subject to Surface Transportation Board	Office of Proceedings, Surface Transportation Board Department of Transportation 1925 K Street NW Washington, D.C. 20423
5. Creditors Subject to Packers and Stockyards Act	Nearest Packers and Stockyards Administration area supervisor
6. Small Business Investment Companies	Associate Deputy Administrator for Capital Access United States Small Business Administration 409 Third Street, SW, 8th Floor Washington, D.C. 20416
7. Brokers and Dealers	Securities and Exchange Commission 100 F St. NE Washington, D.C. 20549
8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations	Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090
9. Retailers, Finance Companies, and All Other Creditors Not Listed Above	FTC Regional Office for region in which the creditor operates <u>or</u> Federal Trade Commission: Consumer Response Center - FCRA Washington, D.C. 20580 (877) 382-4357

APPENDIX 1-F

Notice Of Contemplated Adverse Action

[Insert date]

«First Name» «Last Name»
«Address 1»
«City», «State» «Postal Code»

Dear Applicant:

As you authorized during your employment process with *Company Name*, [insert name of Consumer Reporting Agency] has recently completed a pre-employment background check as part of *Company Name* employee selection process. We are providing you a copy of the report which we received from [Consumer Reporting Agency] and informing you that there is information in this report which, if accurate, would prevent us from offering you employment at this time. A copy of the report is enclosed. A summary of your rights under the Fair Credit Reporting Act is also enclosed.

Please understand that [Consumer Reporting Agency] does not make *Company Name's* employment decisions and is not able to provide you specific reasons why *Company Name* may not be offering you employment at this time. If you want that information, contact the undersigned.

[Include if report contained Credit Score: The Consumer Report contained a credit score of [###] on a range of [0] to [###]. The score was created on [date] by [person or entity]. The key factors that [Consumer Reporting Agency] relied on include [in order of importance, list factors which adversely affected score].]

If, after reviewing the enclosed report, you believe that the information contained in the report is inaccurate, under the law, you have the right to dispute, directly with [Consumer Reporting Agency] any information in this report. [Consumer Reporting Agency] will investigate the disputed information free of charge and either report the current status of the disputed information or delete the item(s) within 30 days of receiving your dispute. [Consumer Reporting Agency] will provide information of the dispute to any person who provided the information you disputed within 5 business days of receiving your notice of dispute. If the information is found to be inaccurate or incomplete or cannot be verified, [Consumer Reporting Agency] will promptly delete that item or modify it.

You have the right to obtain an additional free copy of [Consumer Reporting Agency's] report if you request it from [Consumer Reporting Agency] within 60 days of when you receive this notice.

If you wish to receive this additional free copy or if you wish to dispute the accuracy of the report, you may contact [Consumer Reporting Agency] at: [insert Consumer Reporting Agency's address, toll free phone number, fax number].

Sincerely,

[NAME OF EMPLOYER]

[insert job title of person signing on behalf of company]

Enclosures: Consumer Report; Summary of Rights Under the Fair Credit Reporting Act

APPENDIX 1-G

Notice Of Adverse Action

[Insert date]

«First Name» «Last Name»
 «Address 1»
 «City», «State» «Postal Code»

Dear Applicant:

As we stated in our letter to you dated [insert date of the notice of *contemplated* adverse action], *Company Name* has recently completed a background check as part of our employee selection process. The consumer report (report) we obtained contained information that fell outside our hiring guidelines. A copy of that report, and a summary of your rights under the Fair Credit Reporting Act, along with contact information for the [Consumer Reporting Agency] office that prepared that report, were included in our earlier letter.

Because of the duties and responsibilities of the job conditionally offered to you, a credit report was obtained as part of this report. The FCRA also requires disclosure of your credit score if it was obtained and used as part of our decision. [Your credit score is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.] Your credit score is [CREDIT SCORE], which was obtained from [Consumer Reporting Agency], and created on [DATE]. Scores from [Consumer Reporting Agency] can range from a low of [LOW SCORE] to a high of [HIGH SCORE].

The key factors that adversely affected your credit score are:

- [FACTOR ONE]
- [FACTOR TWO]
- [FACTOR THREE]
- [FACTOR FOUR]

[If you wish to [obtain a copy of your credit report/dispute information contained in it], you may contact [Consumer Reporting Agency] or the credit bureau(s) which provided the report at:

- Experian: [ADDRESS], [PHONE], [WEBSITE URL]
- Equifax: [ADDRESS], [PHONE], [WEBSITE URL]
- TransUnion: [ADDRESS], [PHONE], [WEBSITE URL]

The purpose of this letter is to confirm that as a result of the information contained in the report, *Company Name* will not be offering you employment at this time. [Consumer Reporting Agency] did not make this decision and is unable to provide you the specific reasons why this action was taken. If you want to discuss our decision, please contact the undersigned.

Under the Fair Credit Reporting Act (FCRA), you have the right to dispute, directly with the [Consumer Reporting Agency] any information in its report. [Consumer Reporting Agency] will reinvestigate the disputed information free of charge and either report the current status of the disputed information or delete the item(s) within 30 days of receiving your dispute. [Consumer Reporting Agency] will provide notification of the dispute to any persons who provided the information you disputed within 5 business days of receiving your notice of dispute. If the information is found to be inaccurate or incomplete or cannot be verified, [Consumer Reporting Agency] will promptly delete that item or modify it.

We are reminding you again that you have the right to obtain an additional free copy of the [Consumer Reporting Agency's] report if you request it from [Consumer Reporting Agency] within 60 days of when you received your first notice.

Again, if you wish to dispute the accuracy of the report, you may contact [Consumer Reporting Agency] at: [insert Consumer Reporting Agency's address, toll free phone number, and fax number].

Sincerely,

[NAME OF EMPLOYER]

[insert job title of person signing on behalf of company]

SAMPLE