



Board Policy No. 202

BACKGROUND INVESTIGATIONS

ADOPTED: 6/2016
RECENT AMENDMENT: 1/13/21
SEE ALSO: AR 202X

SUBJECT CATEGORY: SECTION 200, HUMAN RESOURCES
SUBSECTION: GENERAL
CONTROL DEPARTMENT: HUMAN RESOURCES

I. PURPOSE

The purpose of this policy is to protect the District's passengers, employees and assets by conducting background investigations on certain prospective employees, temporary ~~employees~~ workers and contractors and, in some instances, on current employees who are reclassified, transferred, promoted or demoted into a designated position. This policy also provides for safeguards to maintain confidentiality of information and data obtained through background investigations.

II. DEFINITIONS

"Applicant" means a person who is being considered for employment with AC Transit in one of the job classifications or positions within classifications designated in the Administrative Regulation, regardless of whether the person is currently employed by the District in a different job capacity, or has been previously employed by AC Transit in any capacity.

"Background Check or Background Investigation" means the process of legally obtaining and compiling criminal, commercial, and/or financial records of applicants or current District employees transitioning to a designated job classification or position.

"Background Check Review Committee", or "The Committee" means a group of District staff members selected by the General Manager or designee, including staff from the General Manager's Office/Equal Employment Opportunity (EEO) Compliance Office; the General Counsel's office; and Human Resources/Staffing Management; who are tasked with the review of applications, criminal background checks, and credit histories of applicants for designated classifications and positions.

"Conviction" means a plea of guilty or no contest, or a verdict or finding of guilt, regardless of whether a sentence was imposed by the Court. (See criminal history below for further clarification).

"Consumer Credit Report History" means a copy of a report that details an applicant's or employee's credit history. The report may include details such as the age of items within the credit history, the total number of active lines of credit, the total dollar amounts owed on outstanding debt(s), payment history, and any bankruptcy filings, judgments, and liens. It may also include a credit score. ~~Jobs requiring consumer credit reports fall into two categories:~~

~~1. Those job classifications or positions defined by California Labor Code Section 1024.5, including:~~

~~a. managerial positions (an employee covered by the executive exemption set forth in subparagraph (1) of paragraph (A) of Section 1 of Wage Order 4 of the Industrial Welfare Commission, 8 Cal. Code Regs. 11040.)~~

~~b. specific positions for which a credit check is required by law;~~

~~c. positions that involve regular access, for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment, to the information of any one person that includes the person's bank or credit card account information, social security number and date of birth;~~

~~d. positions in which the person is, or would be, any of the following: (1) a named signatory on a bank or credit card account of the employer, (2) authorized to transfer money on behalf of the employer and (3) authorized to enter into financial contracts on behalf of the employer;~~

~~e. positions involving access to confidential or proprietary information, including a formula, pattern, compilation, program, device, method, technique, process or trade secret that (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who may obtain economic value from the disclosure or use of the information, and (2) is the subject of an effort that is reasonable under the circumstances to maintain secrecy of the information;~~

~~f. positions involving regular access to cash totaling ten thousand dollars (\$10,000) or more of the employer, a customer, or client, during the workday.~~

~~2. All classifications and positions with duties related to federal grant funding, and information technology; per the U.S. Department of Transportation (DOT) and the FTA.~~

“Criminal History” means records maintained by the California Department of Justice (DOJ) pertaining to the identity and criminal history of any person. ~~The Committee is limited to the consideration of convictions only, and shall not consider criminal information related to conduct that did not result in convictions. The following records are also prohibited from consideration:~~

“Custodian of Records (COR) for Live Scan” means the General Manager, or designee, whose responsibility it is to ensure the confidentiality and security of all criminal history information requested and received. The COR must meet the requirements of the State of California, Department of Justice; for Custodian of Records for Live Scan Service.

~~1. Information detailed in California Labor Code Section 432.7;~~

~~2. Conviction information concerning a referral to, and participation in, any diversion program;~~

~~3. Information concerning convictions that have been judicially ordered sealed, expunged, or statutorily eradicated;~~

~~4. Information relating to any misdemeanor conviction for which probation has been successfully completed or otherwise discharged and case judicially dismissed pursuant to California Penal Code section 1203.4; or California Penal Code Section 4852.13 certificate of rehabilitation; or information relating to certain marijuana convictions precluded by Labor Code section 432.8; and~~

~~If the specific behavior at issue resulted in a conviction, the record of information may include name, date of birth, date of arrest, arresting agency, and booking numbers, charges, dispositions and similar data about the person as it related to said criminal conviction.~~

~~The District shall not ask an applicant for employment to disclose, orally or in writing, information concerning the conviction history of the applicant, including any inquiry about conviction history on any employment application, until the agency has determined the applicant meets the minimum employment qualifications, as stated in any notice issued for the position.~~

“Designated Classification or Position” means any classification or specific position within a broad classification that may be designated based upon the representative functions enumerated in the classification specification, or specific functions of a position enumerated in the Job Announcement; ~~for jobs within the EEO-1 categories of Executive/Mid-Level Officials and Managers, Professionals, Technicians, Administrative Support, Craft Workers, Operatives, Labors and Services Workers. The Human Resources Department makes all such designations, which may be reviewed by the General Counsel’s Office.~~ The current list of designated classifications/positions is attached to Administrative Regulation AR 202.

~~H. **Felony:** Defined by current legal standards for applicable penal code(s).~~

~~I. **Fiduciary Responsibility:** Held by employees with access to, custody of, and/or administration of property including financial instruments (cash, checks, accounts) belonging to AC Transit.~~

“Job Classification” means a composite of related job duties and functions that includes a job title, a definition; and the knowledge, skills, abilities, physical requirements and minimum qualifications required for the competent achievement of the stated functions.

“Live Scan Criminal Background Check” means a process by which an applicant’s or employee’s fingerprints are captured electronically, and transmitted to the California Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI), in order to determine whether an applicant, employee, or volunteer has a criminal history.

~~L. **Master Key Access:** A key or mechanical device, such as an electronic card, allowing entry to all or many parts of a facility.~~

“Nexus” means the relationship between specific criminal conduct and the duties of a specific job classification, or designated position within a classification.

~~**N. Pending Charge:** A criminal charge that has not been adjudicated at the time of first review by the Committee.~~

~~**O. Personally Identifiable Information:** Information that identifies or describes an individual, including but not limited to name, address, telephone number, family members, Social Security number, credit card numbers, and physical characteristics that would make the individual's identity easily discoverable.~~

“Position” means a single job held by an individual in a job classification, which may or may not have similar or identical duties or functions, as that of other positions in the same classification; and for which an individual has been hired, or provisionally hired.

~~**“Records Security Officer (RSO)/ Custodian of Records (COR)”** means the General Manager, or designee, whose responsibility it is to ensure the confidentiality and security of all criminal history information requested and received. The RSO must meet the requirements of the State of California, Department of Justice; for Custodian of Records for Live Scan Service.~~

~~**R. Suitability for Employment:** The determination of whether or not an individual meets or exceeds the hiring criteria for a position; including consideration of criminal background, and/or negative credit history, if any.~~

III. POLICY

A. General:

The District is committed to protecting its passengers, employees and assets by conducting background checks. In some instances, background checks are required by the Federal Transit Administration (FTA) for individuals under consideration for hire, as well as for current employees who are reclassified, transferred, demoted or promoted into designated job classifications or designated positions within classifications. In some instances, a background check may be required for current employees whose classification specification has been revised to include new assigned functions that are either safety sensitive or allow the employee new access to District assets.

Background checks for employment include, but are not limited to reviews of applicants' criminal conviction and credit histories, review of DMV records, pre-employment and on-going drug testing as required by the US Department of Transportation and, in some instances, verification of licenses, degrees or certificates and consumer credit reports.

AC Transit understands, and state and federal laws require, that the individual has a right to privacy and employees and others are prohibited from seeking, using, or disclosing personal information, except within the scope of their required duties and as required by law.

B. Consumer Credit Reports:

Jobs requiring consumer credit reports fall into two categories:

1. -Those job classifications or positions defined by California Labor Code Section 1024.5, including:
 - a. —managerial positions (an employee covered by the executive exemption set forth in subparagraph (1) of paragraph (A) of Section 1 of Wage Order 4 of the Industrial Welfare Commission, 8 Cal. Code Regs. 11040.)
 - b. specific positions for which a credit check is required by law;
 - c. positions that involve regular access, for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment, to the information of any one person that includes the person's bank or credit card account information, social security number and date of birth;
 - d. positions in which the person is, or would be, any of the following: (1) a named signatory on a bank or credit card account of the employer, (2) authorized to transfer money on behalf of the employer and (3) authorized to enter into financial contracts on behalf of the employer;
 - e. positions involving access to confidential or proprietary information, including a formula, pattern, compilation, program, device, method, technique, process or trade secret that (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who may obtain economic value from the disclosure or use of the information, and (2) is the subject of an effort that is reasonable under the circumstances to maintain secrecy of the information;
 - f. positions involving regular access to cash totaling ten thousand dollars (\$10,000) or more of the employer, a customer, or client, during the workday.
2. -All classifications and positions with duties related to federal grant funding, and information technology; per the U.S. Department of Transportation (DOT) and the FTA.

C. Criminal History Review for Employment:

The Committee is limited to the consideration of convictions only and shall not consider criminal information related to conduct that did not result in convictions. The following records are also prohibited from consideration:

1. Information detailed in California Labor Code Section 432.7;
2. Conviction information concerning a referral to, and participation in, any diversion program;
3. Information concerning convictions that have been judicially ordered sealed, expunged, or statutorily eradicated;
4. Information relating to any misdemeanor conviction for which probation has been successfully completed or otherwise discharged and case judicially dismissed pursuant to California Penal Code section 1203.4; or California Penal Code Section 4852.13 certificate of rehabilitation; or information relating to certain marijuana convictions precluded by Labor Code section 432.8; and

If the specific behavior at issue resulted in a conviction, the record of information may include name, date of birth, date of arrest, arresting agency, and booking numbers, charges, dispositions and similar data about the person as it related to said criminal conviction.

The District shall not ask an applicant for employment to disclose, orally or in writing, information concerning the conviction history of the applicant, including any inquiry about conviction history on any employment application, until the agency has determined the applicant meets the minimum employment qualifications, as stated in any notice issued for the position and the applicant has received a contingent offer of employment.

D. Denial of Employment:

1. No applicant for employment with AC Transit will be summarily disqualified from employment based solely on a criminal conviction and/or a negative consumer credit report. The District shall consider an applicant's prior criminal record and/or consumer credit report among multiple factors in making individual hiring decisions. AC Transit shall evaluate each applicant on a case-by-case basis to determine if the particular circumstances of the conviction(s) or credit history indicate whether or not the applicant is suitable for employment.
2. In determining whether there is a nexus between the applicant's criminal record and/or consumer credit report, and the job duties of the applied for job classification, the following will be considered:
 - a. The nature of the criminal conduct and/or consumer credit report at issue;

- b. The length of time since the criminal conviction and/or negative consumer credit information in relation to the time of the job application;
- c. The degree of rehabilitation evidenced by the applicant;
- d. The circumstances under which the crime(s) was (were) committed and/or the circumstances under which adverse entries on consumer credit report history occurred and any mitigating circumstances; and
- e. Whether the nature of the conviction(s) and/or negative consumer credit information in relationship to the particular duties of the job classification create a risk of endangerment to any person and/or property of the public and/or AC Transits' employees or assets.

If the District determines that a nexus exists between the criminal conduct and/or consumer credit report at issue, and the particular duties of the position or promotional opportunity, and a business necessity is established, AC Transit may deny employment to the applicant.

E. Costs of Acquisition:

The General Manager is hereby authorized to pay all costs associated with the acquisition of information in a background investigation. Any fees or charges incurred in conducting background investigations shall be a valid expenditure of AC Transit funds.

F. Finding of Necessity:

The Board finds that conducting background investigations for ~~particular-designated~~ classifications or positions is necessary in order to assist AC Transit in fulfilling its employment duties and fulfilling its duties under FTA guidelines.

G. Records:

The Custodian of the Records for Live Scan shall destroy all criminal history information as soon as a determination has been made regarding an applicant's or employee's suitability for employment or promotion. All criminal record information shall be treated as confidential and shall be maintained securely, separate from the personnel file, to prevent it from being accessed by unauthorized persons. Criminal record information shall be available only to those charged with determining the suitability for employment or promotion and shall not be transmitted to any third party.

G-H. Savings Clause:

If any section, subsection, sentence, clause, phrase or portion of this policy is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this policy.

IV. AUTHORITY

A. Board of Directors Authority:

The Board of Directors authorizes the General Manager or his/her designee to conduct background checks and the authority to adopt Administrative Regulations for administering and implementing this policy and to adopt procedures to secure confidentiality of such information gathered during background checks.

The Board of Directors also has the authority to amend the policy as it deems appropriate or otherwise required by law.

B. General Manager's Authority:

The General Manager has the authority to designate a ~~Records Security Officer who will be assigned duties as~~ Custodian of Records for Live Scan Service, as defined by the State of California Department of Justice requirements and any records obtained from employment screening service firms.

The General Manager shall enact an Administrative Regulation that provides procedures for administering the Background Investigations Policy.