

 <p style="text-align: center;">STATE OF HAWAI'I DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT POLICIES AND PROCEDURES</p>	POLICY NO. 301.007	NO. of PAGES 8
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TITLE: <p style="text-align: center;">PRE-EMPLOYMENT SUITABILITY INVESTIGATIONS</p>	APPROVED: <i>Ryker J. Wada</i> Ryker Wada, Director	

I. POLICY

The State of Hawai'i, Executive Branch, as an employer is committed to hiring qualified candidates who are of reputable and responsible character and maintaining a safe working environment for its employees and members of the public who access Executive Branch services. As part of the examination process, the Department of Human Resources Development (DHRD) will determine whether selectees meet employment suitability requirements for the selected position, which includes employment-related verifications and background checks for criminal conduct that bear a rational relationship to the duties and responsibilities of the position and are consistent with business necessity.

Although this policy does not apply to volunteers, departments who utilize volunteers in their programs shall use their discretion to make sure they are suitable for employment.

II. RATIONALE

To establish policy, responsibilities and procedures for employment-related verification and background checks; to ensure that all departments conduct necessary employment-related verification and background checks in accordance with all applicable federal and state laws, as well as State of Hawai'i policies; to promote a safe work environment and to establish procedures for making prudent employment decisions based upon comprehensive job-related information; and to assist in the hiring of qualified candidates, while ensuring compliance as an equal opportunity employer.

III. SCOPE

Employment Suitability Check is the examination process, which shall test for fitness and performance ability of a selectee for a position. Prior to appointment, each Selectee in the Executive Branch must be deemed suitable for employment. The review of employment references, dismissals from employment, convictions, separation of less than honorable discharge from military service, nature of the offense, date of offense, age at time of the offense, and sufficiency of rehabilitation in relation to the selected position are part of the examination process. Executive Branch Departments with statutory authority are authorized to conduct their own suitability clearances; however, such suitability clearances must be done in

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accordance with this Policy. This Policy does not supersede specific background check requirements imposed by law or as a condition of funding from any Federal agency.

IV. DEFINITIONS

“Adverse Employment Action” means an employment action, such as not hiring an Applicant, firing a current employee, or not selecting an employee for a promotion, that is taken based on the content of an Employment Suitability Check.

“Applicant” means an individual applying for a position within the Executive Branch whether it be a civil service or non-civil service position.

“Conditional Offer” means the offer of employment pending the successful verification during the Employment Suitability Check.

“Director” means the Director of the Department of Human Resources Development.

“Due Process” means, for purposes of this specific policy, a course of formal proceedings carried out regularly and in accordance with established rules and principles allowing an applicant or employee a fair opportunity to dispute an unfavorable finding (i.e. via administrative review, internal complaint and appeal to the Merit Appeals Board).

“Employment Suitability Check” means checking relevant criminal history records, driving records if driving is a bona fide occupational requirement of the position, a query of the national sex offender registry, inquiry into employment and/or military work history, as appropriate, and other checks as required by State or Federal Law. This is done after a Conditional Offer is made and accepted by an Applicant.

“Employment Suitability Investigation” means further review and seeking additional information as appropriate, of an Applicant’s criminal history, driving record, employment history, or other pertinent records, if the suitability check reveals areas of concern such as convictions that may relate to the duties of the position, terminations from employment, etc. This is also done after a Conditional Offer is made and accepted by an Applicant. This is typically initiated if the hiring department discovers adverse information, or the DHRD Certifier notes a possible suitability issue while assessing whether initial clearance can be given to an appointment.

“Executive Branch” means the Office of the Governor; Office of the Lt. Governor; Departments of Accounting and General Services; Agriculture; Attorney General; Business, Economic Development and Tourism; Budget and Finance; Commerce and Consumer Affairs; Defense; Hawai’i State Public Library Systems; Hawaiian Home Lands; Health; Human Resources Development; Human Services; Labor

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and Industrial Relations; Land and Natural Resources; Public Safety; Taxation; Transportation; and University of Hawai'i (civil service only).

“Intern” means an individual, typically a student, who is hired into an exempt position, with the intent of providing training and real life practical work experience to the individual in their chosen field. Interns are not intended to replace civil service employees. Internships may be paid or unpaid.

“Non-civil service” includes exempt, 89-day appointment, temporary appointment outside of the list (TAOL) and interns.

“Reference Check” means formal checks with an Applicant’s current and former employers conducted by the hiring department, with the Applicant’s signed authorization. These should be done prior to making a Conditional Offer and documented in writing for the record. Section 663-1.95 of the Hawai'i Revised Statutes gives qualified immunity to employers who provide a truthful job reference about a current or former employee to a prospective employer.

“Selectee” means a prospective or current employee that was selected for a position and given a Conditional Offer of employment.

“Statutory Authority” means the authority granted to the department to conduct Employment Suitability Checks as prescribed by the Hawai'i Revised Statutes.

“Suitable” means the employee has successfully undergone the Employment Suitability Check and is cleared for employment with the State of Hawai'i, Executive Branch in the position for which the Selectee is being considered.

“Unsuitable” means based on the results of the Employment Suitability Check, the selectee has been deemed not suited for employment with the State of Hawai'i, Executive Branch in the position for which he/she was being considered. In situations where criminal conduct is at issue, the selectee will only be deemed unsuitable for criminal conduct where the specific criminal conduct, and its dangers, bear a rational relationship to the duties and responsibilities of the position, are linked with the risks inherent in the duties of a particular position, and are consistent with business necessity.

V. GENERAL PROVISIONS

The DHRD will conduct all Employment Suitability Checks for all selectees of civil service positions unless a department has statutory authority to do it on their own.

Non-civil service appointment Employment Suitability Checks are done by each respective department and forwarded to DHRD for review if the individual is recommended to be Unsuitable, except for departments that have statutory authority to deem an applicant Unsuitable.

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Post Conditional Offer Employment Suitability Checks will include checks of the criminal history record, driving record (if applicable), employment records as applicable, a query of the national sex offender registry and other checks as required by State or Federal law.

All Employment Suitability Checks must be done in compliance with applicable State and Federal laws, and DHRD's Discrimination and Harassment Free Workplace Policy (601.001).

VI. PROCEDURES

- A. Department programs are required to complete an employment Reference Check on Selectees being considered for hire in the respective Executive Branch Departments.

Employers who are asked for reference checks may be informed of the qualified immunity they're given under Section 663-1.95 of the Hawai'i Revised Statutes for a truthful job reference. Hawai'i Revised Statutes §663-1.95 Employers' Job Reference Immunity states in part: "An employer that provides a prospective employer information or opinion about a current or former employee's job performance is presumed to be acting in good faith and shall have a qualified immunity from civil liability for disclosing the information and for the consequences of the disclosure."

- B. Departmental Human Resources Officer (DHRO) shall make a final assessment that the recommended Selectee's five (5) year employment history (previous and/or current) has satisfied the selection interview testing for fitness and performance ability of the examination process.
- C. For Civil Service Positions:
1. For non-delegated positions, DHRO shall make a Conditional Offer of employment to the Selectee and upon acceptance, contact the DHRD respective certifier for initial clearance.
 2. Upon acceptance of the Conditional Offer of employment, Departments shall issue the HRD 329a (Attachment A) to provide the Selectee with procedures to obtain the criminal history report. The Selectee shall complete, sign and date the HRD 329b, Request for Fingerprint Clearance for State Civil Service, Non-Civil Service and Exempt Employment (Attachment B) OR HRD 329c, Request for Criminal History Record Clearance for State Civil Service, Non-Civil Service and Exempt Employment (Attachment C) and other forms as required by State or Federal law.
 - a) HRD 329b: Upon receipt of the fingerprint report, forward it to DHRD if there are any concerns, i.e. convictions.

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- b) HRD 329c: Upon receiving the completed HRD 329c form, the Department shall request a criminal history record report, and request a suitability investigation if there are any concerns.
3. DHRD Certifier will review the confidential questionnaire on the application and inform the DHRO whether initial clearance is approved or not.
 - a) If the initial clearance is not approved, certifier will initiate an investigation with the DHRD's Suitability Branch.
 - b) DHRO shall submit the HRD 329e, Request for Employment Suitability Clearance (Attachment D), and all pertinent documents, including but not limited to, employment reference checks, criminal history reports, to DHRD.
 - c) DHRD's Suitability Branch shall complete an investigation and will inform the Department in writing of the outcome of the suitability investigation. Where criminal conduct is evaluated, DHRD's Suitability Branch will conduct an individualized assessment to determine whether the conviction bears a rational relationship to the duties and responsibilities of the position, consistent with business necessity.
 - d) DHRD Suitability Branch will, before taking any Adverse Action, provide the selectee with a notice that includes a copy of the consumer report DHRD relied on in making the decision, and any notices required by State and/or Federal law. By providing the individual with notice in advance, the individual has an opportunity to review the report and explain any information. DHRD's Suitability Branch will consider additional information from the selectee to assist in its determination as to whether Unsuitability is job related and consistent with business necessity.

The notice to selectee will also, as appropriate, inform the selectee of his/her due process rights (e.g., administrative review, etc.).

4. DHRD's Suitability Branch will provide the DHRO with the suitability investigation and final employment determination.
 - a) DHRO may not concur with DHRD's decision and has the authority to overturn the decision. In such cases, the DHRO is fully responsible for notifying the Selectee, and for the Administrative Review (Ad Review), Internal Complaint

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Process (ICP) and the Merit Appeals Board (MAB) processes which is all part of the Due Process.

- b) If the Suitable recommendation is approved, DHRD will notify the selectee of their clearance, as appropriate and the DHRO will proceed with final hiring process. All documentation shall remain in the hiring Department's possession.

D. For Non-Civil Service Positions

1. Departments are given the authority to conduct suitability investigations for non-civil service positions. DHRO shall make a Conditional Offer of employment to the Selectee.
2. Upon acceptance of the Conditional Offer of employment, Departments shall issue the HRD 329a to provide the Selectee with procedures to obtain the criminal history report. The Selectee shall complete, sign and date the HRD 329b, Request for Fingerprint Clearance for State Civil Service, Non-Civil Service and Exempt Employment OR HRD 329c, Request for Criminal History Record Clearance for State Civil Service, Non-Civil Service and Exempt Employment and other forms as required by State or Federal law.
 - a) HRD329b: Upon receipt of the fingerprint report, conduct a suitability investigation if there are any concerns, i.e. convictions.
 - b) HRD329c: Upon receiving the completed HRD 329c form, the Department shall request a criminal history record report, and conduct a suitability investigation if there are any concerns.
3. DHRO will review the confidential questionnaire on the application to determine whether initial clearance is approved or not. If the initial clearance is not approved, the department will conduct a suitability investigation.
4. If the Department deems the Selectee unsuitable, the Department will submit all documents for DHRD's review, with the Department's rationale for determining the Selectee as Unsuitable.
5. DHRD will review the available documentation, including, if applicable, any criminal history reports, the individual's employment history, etc.
 - a) If DHRD does not concur with the unsuitable recommendation, DHRD shall return the case to the department.

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- b) If DHRD concurs with the unsuitable recommendation, DHRD shall write to the selectee to notify them of this decision. DHRD will also notify the selectee of his/her due process rights.
- E. Departments choosing to make a departmental policy that provides more protection than this policy, required in conjunction with a federal law or regulation, may do so after receiving approval from DHRD. Submit the departmental policy and the federal law/regulation to the Employee Staffing Division of DHRD for approval.
- F. Departments may submit the relevant documentation and request that DHRD's Suitability Branch conduct a suitability investigation if the Department learns of information that may impact the Selectee's fitness and ability to perform the job (e.g., previously undisclosed terminations, traffic violations for positions requiring driving, etc.).
- G. Any potential falsification issue must be referred to DHRD's Suitability Branch for an employment suitability investigation.

VII. SECURITY OF INFORMATION

- A. All information relating to an employment suitability investigation must be kept in a separate folder from the official personnel file and kept in a secured cabinet or office.
- B. The criminal history record information must be secured and handled in compliance with applicable State and Federal requirements (e.g., Federal Bureau of Investigation) and any applicable Departmental rules, requirements, etc.
- C. Once the disposition date is reached, all items must be destroyed, in accordance with applicable State and Departmental policies, procedures, etc.

VIII. AUTHORITIES AND REFERENCES

- § 76-1, Hawai'i Revised Statutes
- § 76-29 (3), Hawai'i Revised Statutes
- § 78-2.7, Hawai'i Revised Statutes
- § 90-2, Hawai'i Revised Statutes
- § 378-2.5(a) (b) (c), Hawai'i Revised Statutes

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§ 663–1.95, Hawai'i Revised Statutes

§ 831.3.1(b), Hawai'i Revised Statutes

§ 14-1-3 (3), Hawai'i Administrative Rules, *General Responsibilities of Director*

§ 14-3.01-11(a) (7) (8), Hawai'i Administrative Rules

Attachments:

Attachment A: HRD 329a - Instruction for Obtain a Criminal History Check

Attachment B: HRD 329b - Request for Fingerprint Clearance for State Civil Service, Non-Civil Service and Exempt Appointment (if an FBI check is required)

Attachment C: HRD 329c - Request for Criminal History Record Clearance for State Civil Service, Non-Civil Service and Exempt Employment

Attachment D: HRD 329e – Request for Employment Suitability Clearance