

**University of Arkansas Division of Agriculture  
Criminal Background Check and Substance Abuse  
Testing Policy and Procedure**

**Purpose:**

The University of Arkansas Division of Agriculture (“Division of Agriculture”) is committed to providing a high quality, safe, and secure environment for its workforce, partners, and clients. One practice to aid in providing a safe and secure work environment is the use of criminal background checks and substance abuse testing for prospective or incumbent employees. Therefore, the Division of Agriculture will implement this policy to conduct both criminal background checks and substance abuse testing (collectively "background checks"). This policy is also designed to implement University of Arkansas Systemwide Policies and Procedures, UASP 470.1.

This policy does not create any right to procedural or substantive due process of law beyond that mandated by federal and state laws, if any, nor does it create any contract rights to any applicant or employee. Furthermore, this policy is subject to all policies of the Board of Trustees of the University of Arkansas.

**Policy:**

The Division of Agriculture will conduct criminal background checks and/or substance abuse testing for a final candidate for employment to a position that has been designated as safety-security sensitive, based on the nature of the job responsibilities rather than on the nature of appointment, such as full-time, part-time, temporary, or graduate assistant.<sup>1</sup> These positions will include classified, non-classified and faculty positions. Current employees of the Division of Agriculture who are moving through transfer, promotion, or otherwise into a position that has been designated as safety-security sensitive will also be required to undergo a criminal background check and/or substance abuse testing.<sup>2</sup>

**Criminal Background Checks:**

A criminal background check shall be limited to criminal convictions. Use of arrests on charges not followed by convictions shall not be considered in making hiring decisions unless it is determined by the hiring authority (after consultation with the director of human resources and, as appropriate, the compliance officer and/or legal counsel) that the alleged conduct was actually committed and is related to the position sought.<sup>3</sup> The following groups of positions have been identified as security sensitive and will require criminal background checks:

- Positions with access to master keys or with other unrestricted facility access.

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<sup>1</sup> Background checks will also be required for volunteers if the functions to be performed are determined to be safety-security sensitive.

<sup>2</sup> This excludes faculty rank promotions.

<sup>3</sup> This determination will be made upon a preponderance of evidence standard.

- Positions required to handle checks and/or cash on a frequent and regular basis.
- Positions with access to modify business or financial records after the transactions have been processed.
- Positions with broad access to personally identifying, confidential information, e.g., social security numbers.
- Positions with access to computer infrastructure, servers, systems, security, and applications that have data deemed to be sensitive.
- Positions that provide care or supervision to minors as an assigned job responsibility.
- Positions for Division of Agriculture senior executives that are assigned a high level of authority with broad access to sensitive and confidential information.

#### Substance Abuse Testing:

Substance abuse testing will include a urine analysis and will be a 5-panel screening unless otherwise required by law. Alteration or falsification of a substance abuse test will be grounds for employment disqualification or termination. The following groups of positions have been determined to be safety sensitive and will require substance abuse screening:

- Positions which serve primarily as bus or van drivers and any position that requires a Commercial Driver's License.

Subsequent random substance abuse testing may also be conducted for incumbents.

#### **Procedure:**

The Director of Human Resources (Cooperative Extension Service) or the Personnel Officer (Agricultural Experiment Station), collectively referred to as "Human Resources," will maintain a list of specific positions and the type of required checks/testing based upon the criteria outlined above.

The Division of Agriculture will incorporate the following steps into its hiring process in regards to positions that have been identified as safety-security sensitive:

- A third-party vendor will conduct the background checks. Human Resources will identify at least one employee at AES and one at CES who will coordinate with the third party vendor in the processing of the background checks.
- The job vacancy announcement will indicate that the position is subject to pre-employment criminal background and/or substance abuse testing.
- Once a hiring supervisor has identified a final candidate for employment to a position and **prior** to making an offer of employment, a background check will be conducted. The hiring supervisor will submit the final candidate through the online hiring approval

process as usual. When the candidate is submitted to AA/EEO for approval, the Affirmative Action Officer will notify Human Resources to initiate the background check. Human Resources will send an e-mail to the final candidate explaining the process to consent to the background check(s) and the web link(s) to the third party vendor. After conducting the background check(s), the respective third party vendor will inform Human Resources of the results of the background check(s). If the results indicate no convictions or substance abuse, the Affirmative Action Officer will notify the hiring supervisor that the candidate is viable for employment and an offer of employment may be extended.

- If the background check reveals criminal conviction(s) or the presence of illegal drugs, Human Resources shall send the candidate a “pre-adverse action disclosure” notice containing the adverse information and the source of such information. The applicant will be given five (5) working days after receiving the pre-adverse action disclosure to submit, in writing, an explanation or clarification, a request for further review, relevant medical information explaining the positive drug test results, or to otherwise contest the validity of the background check. The existence of a criminal conviction does not automatically disqualify an individual from employment and appropriate consideration shall be given to the nature of the conviction and the relatedness of the conviction to the duties and responsibilities of the position.
- The hiring department will be responsible for all fees and costs associated with any of the initial background check test processes. However, if an applicant or incumbent timely challenges the validity of the initial substance abuse test results, the Division may permit a second substance abuse test on the condition that: (1) the Division has sole discretion in determining the type of substance abuse test to be administered and the company to perform the testing; and (2) the applicant/incumbent pays all fees and costs for the second test up front. If a second test is permitted under the above procedures and the results of the second test are clean, then the Division will reimburse the applicant/incumbent for the costs and fees associated with the second test.
- After the time for submitting a written response to the pre-adverse action disclosure has passed, Human Resources will consult with, as appropriate, the General Counsel, the Office of Affirmative Action, and the appropriate Associate Vice President and notify the hiring supervisor if the candidate is eligible to hire or promote. If any adverse action is taken, Human Resources will provide the candidate with an “adverse action notice”; which will include the notice of the adverse action taken, a statement that the consumer reporting agency did not make the adverse decision; name, address, and phone number of the consumer reporting agency that supplied the report.
- A decision to hire or promote an applicant with adverse, job-related background check information shall require the approval of the appropriate Associate Vice President, who shall document the reasons for such employment decision.
- Additional information regarding disqualification criteria for applicants and incumbent employees is contained in the UASP 470.1.

- The results of the background checks, and any related documentation, will be maintained for three years in Human Resources. Access to background check results shall be restricted to authorized persons with a specific, job-related need to know purpose. Background check records and substance abuse information will be stored separately from other employee application records or personnel files.
- A criminal background check will not be required for a current employee applying to a safety-sensitive position if the employee has a criminal background check on file that is dated within the last two years from the date of application to the new position.

### **Incumbents**

The Division of Agriculture reserves the right to conduct criminal investigation, including background checks, on current employees when the employee is charged with any crime that adversely affects his/her suitability for continued employment, or during the course of an administrative investigation. A criminal conviction or arrest on a felony charge may furnish the basis for discharge.

In addition, substance abuse testing may be required for any employee in the case of vehicle or power equipment accidents or in situations where there is reasonable suspicion of use or distribution of alcohol or illegal substances on the job or at the work site or reasonable suspicion that an employee is under the influence of alcohol or drugs on the job or at the work site.

**AUTHORIZATION**

**(Applicants will sign this electronically online)**

I have carefully read and understand this Disclosure and Authorization form and the attached summary of rights under the Fair Credit Reporting Act. By my signature below, I consent to the release of consumer reports and investigative consumer reports prepared by a consumer reporting agency, such as HireRight, Inc., to the University of Arkansas Division of Agriculture and its designated representatives and agents. I understand that if the University of Arkansas Division of Agriculture hires me, my consent will apply, and the University of Arkansas Division of Agriculture may obtain reports, throughout my employment.

I also understand that information contained in my job application or otherwise disclosed by me before or during my employment, if any, may be used for the purpose of obtaining consumer reports and/or investigative consumer reports.

By my signature below, I authorize law enforcement agencies, learning institutions (including public and private schools and universities), information service bureaus, credit bureaus, record/data repositories, courts (federal, state and local), motor vehicle records agencies, my past or present employers, the military, and other individuals and sources to furnish any and all information on me that is requested by the consumer reporting agency.

By my signature below, I certify the information I provided on this form is true and correct. I agree that this Disclosure and Authorization form in original, faxed, photocopied or electronic (including electronically signed) form will be valid for any reports that may be requested by or on behalf of the University of Arkansas Division of Agriculture.

Applicant Last Name \_\_\_\_\_ First \_\_\_\_\_ Middle \_\_\_\_\_

Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_

Social Security # \_\_\_\_\_ Date of Birth (for ID purposes only) \_\_\_\_\_

Present Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Driver's License # \_\_\_\_\_

## SAMPLE PRE-ADVERSE NOTICE

Name of Applicant/Employee  
Street Address  
City State Zip

Dear Applicant/Employee,

When you applied for the [Job Title] position at the University of Arkansas Division of Agriculture ("Division of Agriculture"), you consented to a background check conducted by a consumer reporting agency.

The Division of Agriculture contracted with HireRight, Inc., whose address and telephone number are: 5151 California Avenue, Irvine, CA 92617, Telephone: 1-866-521-6995.

HireRight, Inc. has reported to us the following information:

[Insert disqualifying information]

Based on this information, you may not be extended an offer of employment. HireRight, Inc. has not made this decision and is not able to explain why the decision was made.

The Division of Agriculture is enclosing a copy of the report and a summary of your rights under the federal Fair Credit Reporting Act. You have the right to obtain a free copy of your file from HireRight, Inc. if you request the report within sixty (60) days. You also have the right to dispute directly with HireRight, Inc. regarding the accuracy or completeness of any information provided by them.

If you believe the information listed above is not accurate, please contact [Jamie Bentley, 479-575-4746 or Jill Williams, 501-671-2149] within five (5) business days of receipt of this letter. The Division of Agriculture will not make a final decision regarding your application until [insert date]. This will give you an opportunity to contact us if you want to dispute the report submitted by HireRight, Inc.

Sincerely,

Human Resources

Enclosures:     Report  
                      FTC Summary of Rights

**SAMPLE ADVERSE NOTICE**

Name of Applicant/Employee  
Street Address  
City State Zip

Dear Applicant/Employee,

I am writing to advise you that we are unable to continue to consider you as a candidate for the [Job Title] position at the University of Arkansas Division of Agriculture (“Division of Agriculture”). This determination was influenced by information contained in a consumer report, made at our request provided by:

HireRight, Inc.  
5151 California Avenue, Irvine, CA 92617,  
Telephone: 1-866-521-6995

Under the federal Fair Credit Reporting Act we are required to make the following disclosure to you:

You have the right to obtain a free copy of your file from the consumer-reporting agency if you make a request with the agency within sixty (60) days. Enclosed with our letter to you dated [date of Pre-Adverse Notice], you were provided with a copy of the report we received from HireRight, Inc. You also have the right to obtain from the consumer reporting agency, free of cost, an additional copy of the report. You also must be provided with a copy of the Federal Trade Commission’s summary of Consumer Rights, which is enclosed herein. The summary was also included with our letter to you dated [date of Pre-Adverse Notice].

You have the right to dispute directly with the consumer reporting agency the accuracy or completeness of any information provided by the consumer reporting agency. The consumer reporting agency did not make the adverse employment decision and is not able to explain why the decision was made.

Sincerely,

Human Resources

Enclosure:     FTC Summary of Rights