

Wisconsin Human Resources Handbook

Chapter 244

Reference Checks

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Sec. 244.010 Introduction

The goal of this policy is to provide a consistent approach to conducting reference checks on prospective employees, current employees, certain volunteers and contractors. Prior to making an appointment to a position, it is necessary to contact previous employers or volunteer organizations of an applicant to obtain information about the individual's training, experience, knowledge, skills, and abilities and verify his or her job history, including unpaid experience. A reference check may also include checking with school(s) or college(s) attended by the applicant to verify educational qualifications. A reference check serves as informational validation and is not scored or rated in any fashion.

Sec. 244.020 Statutory and Rule Authority

1. Wisconsin's Fair Employment Law, ss. 111.31-111.395, Wis. Stats., prohibits discrimination because of a criminal record or pending charge. However, it is not discrimination to decline to hire a person based on the person's arrest or conviction record if the arrest or conviction is substantially related to the circumstances of the particular job.
2. "Employment discrimination because of arrest record includes, but is not limited to, requesting an applicant, employee, member, licensee or any other individual, on an application form or otherwise, to supply information regarding any arrest record of the individual except a record of a pending charge, except that it is not employment discrimination to request such information when employment depends on the bondability of the individual . . ." s. 111.335(2)(a), Wis. Stats.
3. "An appointing authority shall maintain permanently an employee's disciplinary records in the employee's personnel file. Unless otherwise ordered by a court or, during the grievance process under s. 230.445, by the appointing authority, administrator, or commission, or unless otherwise agreed to in a settlement agreement, disciplinary records may not be removed from an employee's personnel file." s. 230.06(4), Wis. Stats.
4. "The administrator and the director shall provide an appointing authority with access to the personnel files of any individual who currently holds a position whom the appointing authority intends to make an offer of employment." s. 230.13(3)(c), Wis. Stats.

5. “An appointing authority may not make an offer of employment to any individual who currently holds a position unless the appointing authority has reviewed the personnel file of the individual.” s. 230.15(7), Wis. Stats.
6. “The director may require in connection with the application such supplementary work history, educational transcripts, statements of physicians or others having knowledge of the applicant, as needed for qualification evaluations.” s. 230.16(1)(am), Wis. Stats.
7. “Except as provided in subd. 2., the director may not request a person applying for a position in the civil service, on an application or otherwise, to supply information regarding the conviction record of the applicant, or otherwise inquire into or consider the conviction record of the applicant before the applicant has been certified for the position. This paragraph does not prohibit the director from notifying an applicant for a position in the civil service that, by law or policy, a particular conviction record may disqualify an applicant from employment in a particular position.” s. 230.16(1)(ap)1., Wis. Stats.
8. “If a particular conviction record disqualifies applicants for a certain position in the state civil service, the director may request a person applying for the position to supply information regarding the conviction record of the applicant, or otherwise inquire into or consider the conviction record of the applicant, to determine whether the applicant’s conviction record disqualifies him or her for the position before the applicant is certified for the position.” s. 230.16(1)(ap)2., Wis. Stats.
9. “All selection criteria, including minimum training and experience requirements, for positions in the classified service shall be job-related in compliance with appropriate validation standards and shall be subject to the approval of the director. All relevant experience, whether paid or unpaid, shall satisfy experience requirements.” s. 230.16(4), Wis. Stats.
10. “An employer who, on the request of an employee or a prospective employer of the employee, provides a reference to that prospective employer is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from all civil liability that may result from providing that reference. The presumption of good faith under this subsection may be rebutted only upon a showing by clear and convincing evidence that the employer knowingly provided false information in the reference, that the employer made the reference maliciously or that the employer made the reference in violation of s. 111.322.” s. 895.487(2), Wis. Stats.

Sec. 244.030 Definitions

The following are definitions of terms used in this handbook chapter.

1. **Agency:** “Any board, commission, committee, council, or department in state government or a unit thereof created by the constitution or statutes if such board, commission, committee, council, department, unit, or the head thereof, is authorized to appoint subordinate staff by the constitution or statute, except the Board of Regents of the University of Wisconsin System, a legislative or judicial board, commission, committee, council, department, or unit thereof or an authority created under subch. II of ch. 114 or under ch. 231, 232, 233, 234, 237, 238, or 279. “Agency” does not mean any local unit of government or body within one or more local units of government that is created by law or by action of one or more local units of government.” s. 230.03(3), Wis. Stats.
2. **Employee:** “Any person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go or work or be at any time in any place of employment.” s. 101.01 (3), Wis. Stats. Under s. 895.487(1)(a), Wis. Stats., this includes a former employee.
3. **Employer:** “Any person, firm, corporation, state, county, town, city, village, school district, sewer district, drainage district, long-term care district and other public or quasi-public corporations as well as any agent, manager, representative or other person having control or custody of any employment, place of employment or of any employee.” s. 101.01 (4), Wis. Stats.

4. **Reference:** “A statement about an employee's job performance or qualifications for employment and includes a statement about an employee's job performance or qualifications for employment provided pursuant to the settlement of a dispute between the employer and employee or provided pursuant to an agreement between the employer and employee relating to the termination of the employee's employment.” s. 895.487(1)(c), Wis. Stats.
5. **Reference Check:** Process of obtaining information directly or through a third-party vendor regarding the candidate’s training, experience, knowledge, skills, and abilities and includes verification of the candidate’s job history, including unpaid experience.

Sec. 244.040 Obtaining Employment References

Typically, the hiring supervisor checks the top candidates’ references, as the person best aware of the technical requirements of the job and what skills and traits will be a good fit. Alternatively, a human resources (HR) staff member or other management representative may check references.

Job related reference information is required as part of the recruitment and selection process. It is imperative that references be obtained for those candidates being considered for appointment. Such reference checks should be based only on job-related factors.

References from past employers may in some cases be significantly distorted either positively or negatively based on factors not known to the prospective new supervisor. Therefore, when checking references, ensure that only factual job-related information is requested about candidates. The information requested should be an objective evaluation of the candidate’s training, experience, skills, and abilities as related to the duties and responsibilities of the job for which the individual is being considered.

Sec. 244.050 Guidelines for Checking Employment References:

1. Inform the candidates that you will be checking references. This is important to prevent unnecessary issues with current employers.
2. Reference checks will be limited to the top candidate(s). Conducting unnecessary reference checks may create false expectations in candidates regarding their place in the selection process. In addition, an unnecessary reference check could jeopardize a candidate’s status with their current employer if the candidate did not intend for the employer to be aware of the job search.
3. Prior to making an offer of employment, at least three references will be obtained, two of which will be supervisory references, including the top candidate’s current supervisor whenever possible. In cases where the candidate has limited work experience, (students, member of the military, etc.) teachers or other community leaders will suffice. Peer and subordinate references may be of use but do not satisfy the requirement of a supervisory reference. In the event three references cannot be obtained, the supervisor will contact assigned HR staff to assess efforts and determine whether there are sufficient references to move forward.
4. The Candidate Reference Check form ([DOA-5201](#)) or alternate authorized reference checking software will be utilized. Law enforcement positions are excluded from this requirement and may use alternate reference forms. Other occupational areas requiring alternate reference forms must be identified to DPM.
5. References may be collected via any form of business communication (i.e., mail, e-mail, phone, secure fax, or reference checking software). Providing the reference check form to a previous supervisor via email may allow the person more time to gather their thoughts and fill out the form in more detail. Collecting references via phone may provide more candid responses. Follow-up questions are easier to ask via phone than email. Note: Follow-up questions via phone may asked when conducting a reference or using reference checking software.

6. References will generally cover at least the last 5-10 years of work history if available. References not provided by the candidate may be contacted if known (former supervisor(s) of state employee, etc.).
7. Appropriate professional references include supervisors of any volunteer work, committees, clubs, athletic teams, associations, and teachers or professors. Do not rely on letters of reference provided by the candidate.
8. If the appointment of a **former** state employee is being considered, the employee's personnel file, if available, will be reviewed by human resources, as the appointing authority's designee.
9. If the appointment of a **current** state employee is being considered, no offer of employment can be made unless the personnel file of the individual has been reviewed by human resources, as the appointing authority's designee, and a reference check from the current supervisor is completed. Refer to [Wisconsin Human Resources Handbook Chapter 104](#) for more information.
10. If information related to protected status violations, sexual misconduct, prior discipline, etc., is discovered during the reference check, the supervisor will alert human resources staff who will confer with the agency HR manager for assistance.
11. Questions related to marital status, childcare/family concerns, medical conditions, lifestyle, etc. are prohibited. If this information is received during a reference check, such information shall be kept confidential, will not be considered when making the hiring decision, and should not be recorded or forwarded on.
12. Supervisors are prohibited from asking "off the record" questions and conducting informal or superfluous reference checks or background information checks such as information on public court records. Human resources staff are responsible for conducting criminal history or related background investigation to provide evaluation of the nexus between previous acts and the position in question. Refer to [Wisconsin Human Resources Handbook Chapter 246](#) for more information.
13. Agencies may require an applicant to sign a Confidential Information/Record(s) Release Authorization form ([DOA-5202](#)), or alternate authorized form or reference checking software, to facilitate the reference checking process.

Sec. 244.060 Required Sexual Misconduct and Harassment Questions

To ensure all factors about a candidate are understood and to promote an open dialogue, each of the following questions, which are included in the attached reference form, must be asked when checking references for all positions, including limited-term, project, seasonal, permanent, and unclassified employees.

1. To your knowledge, has it been determined that the candidate has ever engaged in any incident of workplace sexual misconduct or sexual harassment, while employed with your company? If so, what were the circumstances and outcome?
2. Did the candidate resign during a pending investigation of an allegation of sexual abuse or sexual harassment in the workplace before the investigation was completed? If so, what were the circumstances and outcome?

In addition, the following question must be asked for any positions that may have contact with inmates or juvenile offenders:

Has the candidate ever been found to have engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution or place of detention?

Sec. 244.070 Providing Employment References

Employees have a reasonable expectation of being able to predict the contents of an employment reference, based upon the feedback and evaluations received during their employment with State of Wisconsin. Therefore, references will be based on objective, accurate and verifiable facts. This policy clarifies information that may or may not be provided, considering both the Wisconsin Open Records Law and the statutes which close certain records to the public.

When providing employment references for a current or former employee, the following information **may** be provided:

1. the employee's start and termination dates;
2. salary information including base pay, add-ons, other supplemental pay, and merit awards;
3. classification title and working title if applicable;
4. description of duties and responsibilities;
5. if the employee was involuntarily terminated, may provide the fact that the employee was terminated for cause as determined by an investigation, as well as known work rule violations, or terminated for cause as a result of performance;
6. factual information regarding job performance; however, no documents can be released by a supervisor. Any request for documents must be routed to human resources.

The following information **may not** be provided:

1. responses to "off the record" questions; or volunteering information not requested;
2. employment information for time periods in which the respondent did not supervise the employee;
3. arrest and conviction record information;
4. pending disciplinary action;
5. union membership or union activity;
6. complaints, lawsuits, grievances, or similar actions filed by the employee;
7. the terms of a settlement agreement between the employee and the employer. A disciplinary letter removed from the employee's personnel file as a result of the settlement will not be discussed;
8. statements about the employee's social or private life, marital status, sexual orientation, or other areas not directly related to job performance may not be provided. The Wisconsin Fair Employment Act, in conjunction with 2019 Executive Order 1, prohibits discrimination by reason of age, race, religion, creed, color, disability, physical condition, developmental disability, marital or familial status, sex, national origin, ancestry, sexual orientation, gender identity or expression, arrest record, conviction record, military service or veteran status, genetic information, political affiliation, use or nonuse of lawful products off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters;
9. information that cannot be supported by specific examples. For example, instead of saying the employee generally has an attendance problem, indicate the specific numbers, such as being tardy four times in the past six months;

10. information regarding disability or reasonable accommodations. (It is permissible for a former supervisor to discuss accommodations with a new supervisor after the employee has been offered a job to facilitate accommodations on the new job site.)

Sec. 244.080 Requests for Information Regarding Candidates

Application materials are prohibited from release under s. 230.13, Wis. Stats. and ss. ER-MRS 6.08 (2) and (3), Wis. Adm. Code. Additionally, the background check process used by all departments includes information obtained through the Department of Justice's (DOJ) TIME system and specifically prohibits the sharing of information collected from TIME with anyone other than the original recipient. This prohibition does not prevent access to the information by other members of HR or individuals tasked with making nexus determinations for the agency.

Sec. 244.090 Records Retention

All documentation on reference checks is considered part of the recruitment and selection process and must be kept in accordance with the [General Records Schedule for Human Resources and Related Records](#). The schedule currently requires retention from the event date plus four calendar years under HR000013. Recruitment and Selection records consist of the interview questions, interview notes and evaluations, resumes, simulation tests, reference checks, background check forms for applicants not selected, non-select letters, and any other related information used in the evaluation of applications. This documentation will be forwarded to human resources upon completion of the hiring process.

Sec. 244.100 Administrative Information

This chapter was created and published in July 2020 to provide guidance on reference checking for human resources staff and supervisors.