



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 14

MEETING DATE: August 21, 2019

SUBJECT: Staff Background Check Policy

SUBMITTED FOR: Consent **Deliberation and Action** **Receive and File**

RECOMMENDATION

Staff recommends the Board amend the Access Criminal History for SCERS Employment Policy to incorporate newly enacted law for accessing and reviewing the criminal history background of prospective SCERS employees.

PURPOSE

This item complies with the 2019-20 Strategic Management Plan goal and objective to promote transparency, fairness, and compliance with laws and regulations.

DISCUSSION

In 2008, the Board adopted a policy authorizing staff to access and review the criminal history of prospective SCERS employees. The purpose of that policy was to safeguard financial assets and confidential member information maintained by SCERS, as SCERS employees have access to both. In 2018, the Board made minor amendments to that policy and reaffirmed it.

On January 1, 2018, a new employment law (Government Code section 12952) came into effect. That law imposes various restrictions on the manner in which employers collect and consider a job applicant's criminal history information.

Going forward, staff will continue to (1) carefully screen prospective employees for law-abidingness, while (2) complying with the intricate procedures set forth in Section 12952. For ease of compliance, staff recommends consolidating the authorization to perform criminal background checks, and the procedures for doing so, into a single document. Staff further recommends renaming that document "Staff Background Check Policy."

ATTACHMENTS

- Staff Background Check Policy – New version
- Staff Background Check Policy – Redlined version of prior “Access Criminal History for SCERS Employment Policy”

Prepared by:

/S/

Stephen Lau
General Counsel

Reviewed by:

/S/

Eric Stern
Chief Executive Officer



STAFF BACKGROUND CHECK POLICY

PURPOSE

This Policy authorizes the Sacramento County Employees' Retirement System (SCERS) to access summary criminal history information prior to employing any person as an important preventive measure for safeguarding confidential information and SCERS' financial and other assets, and maintaining the highest levels of fiduciary responsibility.

POLICY

SCERS shall consider a person's criminal conviction history in determining whether such person is suitable for employment at SCERS. Accordingly, SCERS is hereby authorized to access local, state and federal summary criminal conviction history information for prospective employees, including prospective contract employees and volunteers. SCERS' consideration of a person's criminal conviction history is subject to the following rules and procedures:

1. SCERS will not inquire into or consider the conviction history of a job applicant until after SCERS has made a conditional offer of employment to the applicant, and the applicant has accepted such conditional offer.
2. SCERS will not consider any of the following while conducting a conviction history background check in connection with any application for employment: (a) an arrest not followed by conviction, except as permitted in paragraph (1) of subdivision (a) and subdivision (f) of Section 432.7 of the California Labor Code; (b) referral to or participation in a pretrial or post-trial diversion program; and (c) convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law.
3. When SCERS intends to deny an applicant a position of employment solely or in part because of the applicant's conviction history, SCERS shall make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position, which shall include consideration of the following by SCERS: (a) the nature and gravity of the offense or conduct; (b) the time that has passed since the offense or conduct and completion of the sentence; and (c) the nature of the job held or sought.
4. SCERS will provide job applicants with written notification of its preliminary decision that an applicant's conviction history disqualifies the applicant from employment, and such written notification shall include the following information: (a) notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the job offer; (b) a copy of the conviction history report, if any; (c) an explanation of the applicant's right to respond to the notice of the employer's preliminary decision before the decision

becomes final, and the deadline by which to respond; (d) notice that the applicant's response to the preliminary decision may include submission of evidence challenging the accuracy of the conviction history report that is the basis for rescinding the job offer, evidence of rehabilitation and evidence of mitigating circumstances, or both.

5. If SCERS makes a final decision to deny an applicant employment solely or in part because of an applicant's conviction history, SCERS shall notify the applicant in writing of the following: (a) the final denial or disqualification; (b) any existing procedure SCERS has for the applicant to challenge the decision or request reconsideration; and (c) the applicant's right to file a complaint with the Department of Fair Employment and Housing regarding the final decision.

6. SCERS shall not disseminate information about a person's criminal history information to any person or entity (including any private entity) not permitted to access such information by law.

BACKGROUND

SCERS' systems and business practices require that many staff members have access to confidential member information including Social Security numbers, birthdates, home addresses and bank account information. In addition, many SCERS staff members are trusted with handling financial transactions.

Given SCERS' duty to safeguard confidential information and to protect against fraud, the Board has determined that criminal history information should be obtained for any person selected for SCERS employment.

California Penal Code Sections 11105(b)(11) and 13300(b)(11) require the governing board of a county or district to specifically authorize access to summary criminal history information for employment purposes.

California Government Code Section 12952 sets out certain rules governing an employer's consideration of a job applicant's criminal conviction history.

RESPONSIBILITIES

Executive Owner: General Counsel

POLICY HISTORY

Date	Description
8-21-2019	Staff to recommend Board revise and rename policy
01-17-2018	Board approved amended policy in revised format
06-19-2008	Board adopted policy; Resolution 2008-14



~~ACCESS CRIMINAL HISTORY FOR SCERS EMPLOYMENT STAFF BACKGROUND CHECK POLICY~~

~~Revision Date: January 17 August 21, 20198 Policy
Number: 053~~

PURPOSE

This Policy authorizes the Sacramento County Employees' Retirement System (SCERS) to access summary criminal history information prior to employing any person as an important preventive measure for safeguarding confidential information and SCERS' financial and other assets, and maintaining the highest levels of fiduciary responsibility.

POLICY

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~~SCERS is hereby authorized to access local, state and federal summary criminal history information for any person selected for SCERS employment (including volunteers and contract employees), subject to the condition that SCERS shall not disseminate the information to any person or entity (including any private entity) not permitted to access such information by law.~~

~~SCERS shall not consider a person who has been convicted of a crime eligible for employment (including volunteers and contract employees); except that such conviction may be disregarded if it is determined that mitigating circumstances exist, or the conviction is not related to the employment in question.~~

~~1. SCERS will not inquire into or consider the conviction history of a job applicant until after SCERS has made a conditional offer of employment to the applicant, and the applicant has accepted such conditional offer.~~

~~2. SCERS will not consider any of the following while conducting a conviction history background check in connection with any application for employment: (a) an arrest not followed by conviction, except as permitted in paragraph (1) of subdivision (a) and subdivision (f) of Section 432.7 of the California Labor Code; (b) referral to or participation in a pretrial or post-trial diversion program; and (c) convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law.~~

3. When SCERS intends to deny an applicant a position of employment solely or in part because of the applicant's conviction history, SCERS shall make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position, which shall include consideration of the following by SCERS: (a) the nature and gravity of the offense or conduct; (b) the time that has passed since the offense or conduct and completion of the sentence; and (c) the nature of the job held or sought.

4. SCERS will provide job applicants with written notification of its preliminary decision that an applicant's conviction history disqualifies the applicant from employment, and such written notification shall include the following information: (a) notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the job offer; (b) a copy of the conviction history report, if any; (c) an explanation of the applicant's right to respond to the notice of the employer's preliminary decision before the decision becomes final, and the deadline by which to respond; (d) notice that the applicant's response to the preliminary decision may include submission of evidence challenging the accuracy of the conviction history report that is the basis for rescinding the job offer, evidence of rehabilitation and evidence of mitigating circumstances, or both.

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6. SCERS shall not disseminate information about a person's criminal history information to any person or entity (including any private entity) not permitted to access such information by law.

BACKGROUND

~~Prior to adoption of this Policy, SCERS accessed criminal history information prior to employing a person in an executive staff position. Other SCERS staff positions are filled from County employment lists. Although applicant information may be screened to see if it is consistent with applicant responses, criminal history is generally not accessed for County-approved job candidates.~~

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Given SCERS' duty to safeguard confidential information and to protect against fraud, the Board has determined that criminal history information should be obtained for any person selected for SCERS employment.

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RESPONSIBILITIES

Executive Owner: ~~Chief Operations Officer~~ General Counsel

POLICY HISTORY

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Retirement Board Order

Sacramento County Employees' Retirement System

Before the Board of Retirement
August 21, 2019

MOTION:

Staff Background Check Policy

THE BOARD OF RETIREMENT hereby accepts the recommendation of staff to approve the Staff Background Check Policy.

I HEREBY CERTIFY that the above order was passed and adopted on August 21, 2019 by the following vote of the Board of Retirement, to wit:

AYES: Fowler, Kelly, DeVore, Diepenbrock, Gin, Lamera, Matré, O'Neil, Petersen

NOES: None

ABSENT: None

ABSTAIN: None

A blue ink signature of Richard B. Fowler II, written in a cursive style.

Richard B. Fowler II
Board President

A blue ink signature of Eric Stern, written in a cursive style.

Eric Stern
Chief Executive Officer and
Board Secretary