

UNIVERSITY OF ILLINOIS
URBANA-CHAMPAIGN SENATE

General University Policy
(Final; Information)

GP.16.01 Advice of the Committee on General University Policy on Resolution 16.04

At the request of the Senate Executive Committee, the Committee on General University Policy (GUP) reviewed the previous version of Resolution 16.04 and provided detailed feedback about where the comments in it were incomplete and/or misleading. Selectively quoting certain external documents, or invoking them for support in cases where they do not apply, led to some serious misrepresentations of the claims made in these documents regarding the potentially discriminatory impact of certain criminal background check policies. The Chair of GUP also met personally with the authors to review these concerns.

The current version addresses some of these concerns, but a majority of the misstatements remain, including some of the most serious ones. We list below the GUP criticisms that were not addressed in this version of the resolution.

We have enumerated the “whereas” paragraphs, and present these comments in order of each:

Paragraph 2. Refers to a portion of the *Statutes* dealing only with the conditions for potentially dismissing tenured faculty members, not with hiring policy.

Paragraph 3. This clause asserts a value that we all share, and implies that the Background Check policy is not in compliance, without specifying why.

Paragraph 5. The UI policy is available online for quotation: “A criminal record or history will not automatically exclude an individual from being considered for or being offered employment with the University” (<http://www.ahr.illinois.edu/background/Policy.pdf>). This is a more reliable source than a quotation from a newspaper article.

Paragraph 6. The Background Check policy does not cover arrests or “a criminal history record,” only convictions. Further, any such record that has been “ordered expunged, sealed, or impounded” would not be available to the organization carrying out the background checks.

Paragraph 7. Same comment as on para 3, above.

Paragraphs 8 and 9. Selective quotation here results in misrepresentation of the EEOC Enforcement Guidance. Here is the full wording of the relevant section (p. 9):

With respect to criminal records, there is Title VII disparate impact liability where the evidence shows that a covered employer’s criminal record screening policy or practice disproportionately screens out a Title VII-protected group **and the employer does not demonstrate that the policy or practice is job related for the positions in question and consistent with business necessity.**
http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf

The sponsors are also advised that the UA policy does not “screen out” applicants, given that the background check is not applied until a provisional offer has already been extended, and that (again) “a criminal record or history will not automatically exclude an individual from being considered for or being offered employment with the University” (<http://www.ahr.illinois.edu/background/Policy.pdf>). They may also wish to consult the published guidelines for campus implementation, which outline (pp. 4-5) the criteria to be followed by the

review committee's individualized assessment of cases where applicants are determined to have a criminal conviction history, including "the **relatedness** of the offense/conduct to the position being sought" (p. 5). (<http://www.ahr.illinois.edu/background/Guidelines.pdf>)

Paragraph 11. It is not clear which document is being cited here, as no reference is given. However, the following passage is found in Section 4 of the January 29, 2013 Directive found at http://www.dol.gov/ofccp/regs/compliance/directives/Dir306_508c.pdf:

"Policies that exclude people from employment based on the mere existence of a criminal history record and that do not take into account the age and nature of an offense, for example, are likely to unjustifiably restrict the employment opportunities of individuals with conviction histories. Due to racial and ethnic disparities in the criminal justice system, **such policies** are likely to violate federal antidiscrimination law."

If this is the passage alluded to in para 11, the sponsors have misrepresented the content of the Directive.

Paragraph 13. The campus implementation plan fully aligns with the five AAUP principles presented in RS.16.02:

that a candidate must authorize a background check in writing;

that the candidate must be given a copy of the final report;

that no adverse action may be taken on the basis of the report unless and until the prospective employee has had an opportunity to contest or clarify its accuracy;

that if a report is retained in a successful candidate's file, it should be corrected to remove all inaccuracies;

that all irrelevant personally identifiable information in a faculty member's file should be destroyed.

GENERAL UNIVERSITY POLICY

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