Chapter 3 – Recruitment & Selection

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Chapter 3 – Recruitment & Selection

Section I
General Principles and Employment Information

It is the objective of this policy to establish and promote recruitment and selection practices that cultivate an exceptional, diverse and well-trained workforce that is engaged in continuous learning and capable of meeting the mission of the Virginia Social Services System.

Purpose

The purpose of this policy is to ensure that the recruitment and selection process for employees is conducted efficiently and consistently; and that employees are hired without regard to race, color, religion, gender, age, national origin, disability, marital status, pregnancy, or political affiliation.

Scope

This policy applies to all current employees, applicants for employment, and contract employees (hereafter "Employee"). This policy also applies to interns and volunteers.

Application

Each LDSS must assure the fair and equitable application of the recruitment and selection process. Therefore, all aspects of this policy should be applied in an unbiased and impartial manner. Any hiring authority who knowingly disregards the requirements of this policy, or who is found to have deliberately misused this policy, shall be subject to disciplinary action up to and including termination.

A. Definitions

1. Active Application Period

   The period of time during which an application for a specific position under recruitment by an agency may be considered.

2. Application Closing Date

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The last date that a state application can be received by the recruiting agency in order for the applicant to be considered for the recruited position. The application must be received on that date by the close of business or other time specified by the agency in the posting notice.

3. Applicant Pool

   All persons who apply by the application closing date for a specific position for which an agency is recruiting.

4. Background Check

   Review of an individual's work and personal history to determine if a candidate is suitable for certain positions. Depending upon the nature of the position for which the candidate is being considered, types of background checks that may be conducted include:

   a) academic record and verification of licenses and certifications,
   b) employment history, including references,
   c) financial history,
   d) credit reports,
   e) criminal history,
   f) driving record,
   g) a fingerprint-based criminal history report, and/or
   h) other records or information related to the candidate's suitability for the position.

5. Bona Fide Occupational Qualification ("BFOQ")

   A job qualification or requirement that is not necessarily based on merit, education, or experience, but that is necessary to the operation of a particular business and reasonably related to the performance of a particular job.

6. Competencies

   The knowledge, skills and underlying behaviors that correlate with successful job performance and positively impact the success of the employee and the organization. Competencies emphasize the attributes and activities that are required for an organization to be successful. Competencies may be behavioral or technical.

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7. Continuous Recruitment

   A method of recruiting that allows agencies to receive and consider applications on an ongoing basis for those positions for which vacancies constantly exist or frequently recur.

8. Disabilities

   A physical or mental impairment that substantially limits a major life activity.

9. Dual Incumbency

   Hiring a candidate into a position that is occupied by another employee for a short period of time, normally 30 days or less:

   a. to allow for a period of orientation for the new employee before the current employee separates; or
   b. when the current employee is on leave (with or without pay) and a separation date has been established.

9. Fair Credit Reporting Act

   A federal law that protects the privacy rights of individuals. Information obtained through certain background checks or investigations may be subject to the Fair Credit Reporting Act (FCRA).

10. Hiring Authority

    The individual making the hiring decision.

11. Human Resources (“HR”)

    The division within the Department of Social Services that assists local departments of social services with development, implementation and compliance with employment policies.

12. Job Announcement

    A statement, posting notice, or advertisement that a position is to be filled.

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13. Knowledge, Skill, Ability ("KSA")

A component of a position's qualification requirements, based in part on definitions in the federal "Uniform Guidelines on Employee Selection Procedures," found in volume 29 of the Code of Federal Regulations at Part 1607, section 16.

a. Knowledge

A body of information applied directly to the performance of a function. It usually is information of a factual or procedural nature, which makes possible adequate performance of the work.

b. Skill

A present, observable competence to perform a learned psychomotor act.

c. Ability

A demonstrated competence to perform observable behavior, or a behavior that results in an observable product. Ability denotes current competence in doing specific job content actions; it does not denote a person's capacity to acquire this competence, nor can it be inferred from years of experience. Those involved in the hiring process should take care not to confuse an ability, which is currently demonstrable, with an aptitude, which is the potential for acquiring an ability.

14. Open-Until-Filled Recruitment

A method of recruiting for hard-to-fill positions that allows agencies to receive and consider applications without deadline until the position has been filled.

15. Reasonable Accommodations

Modifications or adjustments in a work site program or job that make it possible for a qualified employee with a disability to perform the tasks

or duties required by the position or for an applicant to progress through the hiring process.

16. Recruitment Management System

    The automated personnel system that identifies and publicizes positions covered under the Virginia Personnel Act for which the Commonwealth and local departments of social services are actively recruiting.

17. Recruitment

    The process by which an agency seeks qualified candidates by posting or advertising a position that the agency intends to fill through a competitive selection process.

18. References

    Information obtained from former employers, supervisors, co-workers or others regarding a candidate's work performance or behavior. This information is used by the hiring agency along with other information collected during the hiring process to determine the candidate's suitability for the advertised position, and ultimately to determine which candidate is best suited for employment.

19. Screening

    The process of evaluating the qualifications of individuals in an applicant pool against established position qualifications to determine:

    a. which applicants in the pool meet minimum and/or preferred qualifications; and
    b. which applicants qualify for an interview based on agency selection criteria.

20. Selection

    The result of the hiring process that identifies the applicant best suited for a specific position.

21. Selection Panel

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The group of individuals (two or more) that interviews job applicants for selection or for referral to the hiring authority for selection.

22. Veteran

    Any person who has received an honorable discharge and has (i) provided more than 180 consecutive days of full-time, active-duty service in the armed forces of the United States or reserve components thereof, including the National Guard, or (ii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs. (See Va. Code § 2.2-2903 [D].)

23. Work Profile

    A written job description.

B. General Principles

The following principles apply to all aspects of this policy and for procedures and guidelines described herein.

1. Persons With Disabilities

    a. When requested, agencies must provide reasonable accommodation throughout the hiring process to applicants with disabilities who are being considered for employment.

2. Equal Employment Opportunity

    a. Each agency must take action consistent with the Equal Employment Opportunity policy in Chapter 1 to ensure that its recruitment and selection procedures are conducted without regard to race, color, religion, gender, age, national origin, disability, marital status, pregnancy, or political affiliation.

    b. Additional requirements, including Affirmative Action Plans, are needed when the employer is the recipient of federal funding. Refer to Chapter 1 for policy on Affirmative Action Plans.

    Guidelines regarding pre-employment inquiries applicable to job application forms, pre-employment interviews, and any

other type of questioning of persons seeking employment are provided in the Chapter Appendix.

C. Terms and Conditions of Employment

For reliable and current information regarding the terms and conditions of employment for each category of employee, refer to Chapter 2, Classification and Compensation.

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SECTION II
BACKGROUND AND RECORD CHECKS

Purpose

The purpose of this policy is to provide procedures that will be used for the administration and use of background, criminal, and driving record checks.

Scope

This policy applies to all prospective and current employees, interns and volunteers.

A. Use of Background and Record Checks

There is a duty imposed on employers to avoid negligence in the hiring and retention of employees. A claim of negligence arises when an employee injures a co-worker or third party and a claim is made that the employer should not have hired or retained the employee because the employer knew or should have known that the employee posed a threat of harm to others. Therefore each LDSS should conduct a thorough and careful background check of applicants and be conscientious in its supervision of employees.

B. Types of Background Checks

1. Criminal Record

   For each applicant, intern and volunteer, the LDSS may request a state and national criminal record check prior to employment; the criminal background record check may be requested for all employees at any time during the course of employment.

   a. If the criminal record reveals a conviction for, or arrest awaiting final disposition of the crimes set forth in § 63.2-1719 of the *Code of Virginia* ("barrier crimes"), the following may occur:
      (1) A prospective employee, intern or volunteer will not be offered an employment, an internship, or volunteer position with the LDSS; or

      (2) A current employee, intern or volunteer will be subject to termination if the criminal record reveals a conviction for crimes set forth § 63.2-1719 of the *Code of Virginia* ("barrier crimes"). If there is an arrest waiting final disposition, the employee will be placed on leave without

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pay and the intern or volunteer will be terminated. For current employees, an exception from termination may be made if the conviction is "old" and the employee has not shown any connection between work performance and the conviction.

For a list and description of "barrier crimes", refer to the Chapter Appendix.

b. If the criminal record reveals a conviction for, or an arrest waiting final disposition, for a crime other than a "barrier crime" that is job related and may impact on the ability to perform the assigned duties:

(1) A prospective employee, intern or volunteer may not be offered employment or an internship or volunteer position with the LDSS if the crime is relevant (as to the criminal act, the date which such conviction occurred, the circumstances regarding the criminal conduct, etc.) to the performance of the particular job.

(2) An employee, intern or volunteer may be terminated if the crime is relevant (as to the criminal act, the date which such conviction occurred, the circumstances regarding the criminal conduct, etc.) to the performance of the particular job.

2. Driving Record

a. For each applicant, intern, volunteer, and employee whose position requires a driver's license and/or who transports clients of the LDSS or who drives a motor vehicle as part of the position responsibilities, an LDSS may request a driving record check from the Virginia Department of Motor Vehicles or other state if the individual has resided in that state during the past seven years.

b. If the driving record reveals the presence of any negative points on the record, the prospective or current employee, intern or volunteer may not be offered a position.

3. Central Registry Record

a. A record check through the Virginia Department of Social Services' Central Registry will be conducted on each prospective and/or current employee, intern or volunteer for founded complaints of abuse or neglect.

b. If the record check reveals the presence of a founded complaint of abuse or neglect, the prospective employee, intern or volunteer will not be offered a position with the LDSS.

c. If the record check reveals a founded complaint of abuse or neglect for any current employee, intern or volunteer, the current employee, intern or volunteer will be terminated from their position with the LDSS.

4. Other Background Checks

a. Credit History

For those positions that involve financial transactions or the disbursement of funds, a credit history records check may be conducted. An employee applying for or holding such a position may be required, at the discretion of the LDSS, to consent to such a records check. If the credit history is such that there is doubt or concern with the ability of the employee to exercise the fiduciary duties and obligations of the position with the highest degree of care or if the bonding agent declines to bond the individual, the applicant may not be hired, or the employee may be terminated.

b. Child Support History

For those positions which involve child support functions for the LDSS, a child support history records check may be conducted. Employees applying for or holding such positions may be required, at the discretion of the LDSS, to consent to such a records check. If the child support history is such that there is doubt or concern with the ability of the employee to exercise the duties and obligations of the position with the highest degree of care and objectivity, the applicant may not be hired, or the employee may be terminated.

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Section III
Probationary Period

Purpose

The purpose of this policy is to set forth the requirements regarding probationary period and conditional status.

Scope

This policy applies to employees with regular, temporary and restricted status.

A. Conditions for Probationary Status

1. Required Probationary Period

   The following employees must serve a probationary period:

   a. All new employees.

   b. Employees who are hired from another local LDSS or the Virginia Department of Social Services.

   c. Employees who are re-employed following more than a thirty (30) day break in service.

2. Probationary Period

   a. Every employee newly hired by a LDSS must serve a twelve-month probationary period. This probationary period may be extended by the LDSS to eighteen months when because of circumstances outside the employee's or the LDSS' control an extension serves the legitimate interest of the LDSS.

   b. The probationary period shall begin on the first day of employment or classification change. Temporary employment does not count in calculating the time period for probation.

   c. The probationary period must be extended for leaves of absence in excess of 14 calendar days. The extension is limited to an amount of time equal to the leave of absence.

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d. A separation for more than 30 days that is not on an approved leave is considered a break in service and a new probationary period must be served.

e. At the LDSS' option, an employee who has been unable to satisfactorily perform due to circumstances beyond the employee's control or due to a disability may have the probationary period extended for a period no greater than one-half the length of the original probationary period. Any such extension of the probationary period must be mutually agreed to by the employee and the Director prior to the end of the probationary period.

3. At-Will Employment

An employee who is on probationary status is employed as an at-will employee and should have no expectation of continued employment beyond the probationary period. During the probationary period an employee can be terminated for any reason with or without notice or cause.

B. Rights and Benefits During Probationary Period

1. Grievance Procedure

a. An employee does not have a right to use the grievance procedure during the period of probationary status.

2. Evaluation

a. It is the expectation that an employee's performance will be continually monitored and appropriate performance coaching provided throughout the probationary period. There is no formal process for such performance coaching.

b. A formal evaluation of the employee's performance must be completed at the end of the first eleven months of the probationary period. If the evaluation is satisfactory the employee will attain regular or restricted status (depending on whether they are in permanent or restricted positions) with the LDSS at the end of the twelve month probationary period.

c. An unsatisfactory performance evaluation more than likely will result in the termination of the employee.

3. Benefits

   An employee in probationary status has the same benefits as other employees in non-probationary status. Such benefits may include health plan participation, leave accrual, and retirement.

C. Conclusion of the Probationary Status

1. An employee must be notified when they move from probationary status to regular status or restricted status.

2. If an employee is to be terminated at the end of the probationary period, the reasons for such removal must be documented.

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Appendix I: Recruitment and Selection Guidelines and Forms

A. General Considerations

1. Health and Physical Condition

   An applicant's disability cannot be considered in connection with the hiring process. The sole inquiry is whether the applicant can perform the essential functions of the job, with or without reasonable accommodation.

   Although employers may not ask disability-related questions, i.e., questions that are likely to elicit information about a disability, or require medical examinations at the pre-offer stage, they may utilize a wide variety of assessment methods to evaluate whether an applicant is qualified for the job.

   The law does not require that employers make accommodations for persons who are not "otherwise qualified". Therefore, the first step an employer should take is to determine whether the applicant is qualified for the position sought.

   An individual with a disability is qualified for a job if, with or without reasonable accommodation, the individual can perform the essential functions of the job. If the applicant is qualified, the employer must then assess whether the accommodation is reasonable. Prior to making a job offer, an employer may inquire into the need for and type of reasonable accommodation required by an applicant only when the employer could reasonably believe that an applicant will need such accommodation to perform the functions of the job (e.g., an applicant who is in a wheel chair). If there is no obvious disability, an inquiry can only be made after a conditional offer of employment is made. An accommodation is reasonable if it is not an undue hardship for the employer or poses a serious safety risk. After reasonable accommodations have been identified and agreed upon, the most qualified applicant should be selected regardless of any disability or need for accommodation.

2. Age / Birth Date

   The Age Discrimination in Employment Act of 1967 (ADEA) prohibits discrimination against individuals who are forty years old or older. Although asking for an applicant's date of birth does not per se violate the ADEA, such

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a request may tend to either deter older applicants from applying or could permit a discriminatory inference of age discrimination if the applicant is not hired. Questions that indirectly reveal an applicant's age are also impermissible such as asking an applicant what year he or she graduated from high school or college. This information could be obtained after a conditional offer of employment is made.

3. Name / Marital Status

   Discrimination based on sex is prohibited. An applicant's marital status may be considered gender specific information and may violate the law. Virginia law prohibits using marital status as criteria in making employment decisions. An inquiry as to an applicant's maiden name could be found to violate the law because it seeks to determine whether the applicant is married (it also elicits gender specific information).

4. Immigration Status

   The Immigration Reform and Control Act (IRCA) prohibits intentional discrimination on the basis of national origin or citizenship status. The IRCA also requires employers to verify identity and work eligibility status of all new hires. Form I-9 must be completed for each newly hired employee, within three (3) days of hire. If the employer is unable to verify the identity and work eligibility of a new hire within three (3) business days of hire, the employee must be terminated.

   In order to complete Form I-9, new employees must be provided with a list of acceptable documents as indicated on Form I-9. New employees must present original or certified copies of the documents to the employer for review, so that their identity and work eligibility status can be verified. Note that there are numerous forms of work visas and each has special limiting conditions. Therefore, two items must be checked: (1) type of work allowed and for whom; and (2) visa expiration date. If an applicant is not a citizen and is allowed to work on the visa, the employer should check to see if the work permission is limited to a particular employer or for a soon-to-expire time period. Copies of these documents and the Form I-9 should be retained in a separate confidential personnel file. A list of the types of visas is found in the appendix.

5. Veterans Preference

Preference in the hiring process shall be given to veterans. If an agency uses a scored test by which to evaluate applicants, veterans must receive a credit of an additional 5% of his or her score or, if the applicant is a veteran having a service-connected disability rating fixed by the United States Veteran's Administration, he or she must receive a credit of an additional 10% of his or her score. To be eligible for such an increase in score, the applicant must first achieve a passing score on the test or examination.

However, because most LDSS recruitments do not use scored tests, the challenge for agencies is to apply a preference that is equivalent to the 5% increase veterans receive on test scores (10% for veterans with a disability rating from the United States Veterans Administration). The following guidelines are designed to help agencies achieve this required level of preference.

Initial screening: Applicants are screened to identify those who meet the minimum requirements for the position – the equivalent of achieving a passing score on a test. No preference is given. Applicants must meet the required criteria at a minimum or better level on their own.

Preference applied after initial screening phase: After the initial screening, veteran status is noted for the candidates. The employment application provides preliminary notice of veteran status; the agency may need to follow up to identify the exact status of veteran applicants. At this stage, preference shall be given by treating veteran status as a preferred qualification. Further preference shall be given if the veteran applicant also has a service-connected disability rating by treating the veteran's disabled status as a second preferred qualification. Adding a preferred qualification criterion for veteran status and, if applicable, a second preferred criterion for disabled veteran status will therefore result in the veteran applicant and the disabled veteran applicant receiving the additional preference.

NOTE: Department HR advises that job postings and/or advertisements not state veteran and disabled veteran as preferred qualifications.

6. Affirmative Statement

The following statement should appear on all recruitment documents, including the recruitment announcement: "An Equal Opportunity/Affirmative Action Employer." It is advisable that recruitment materials assure that the LDSS is an equal opportunity employer. The LDSS does not discriminate on

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the basis of race, religion, color, age, sex, marital status, national origin, alienage, citizenship, disability or any other federally protected status.

7. Pursuant to *Code of Virginia* § 2.2-2804, any person who has failed to meet the federal requirement for the Selective Service shall be ineligible for employment by or service for the Commonwealth, or a political subdivision of the Commonwealth, including all boards and commissions, departments, agencies, institutions, and instrumentalities. A person shall not be denied employment under this section by reason of failure to present himself for and submit to the federal registration requirement if: (a) the requirement for the person to so register has terminated or become inapplicable to the person and (b) if the person shows by a preponderance of the evidence that the failure of the person to register was not a knowing and willful failure to register.

   Applicants who have not registered as required by *Code of Virginia* § 2.2-2804, must present verification from the Selective Service System that they have met the requirements of the *Code of Virginia*.

8. Work profiles

   Work profiles should be developed for every position before the recruitment commences. This document is essential in screening applicants as well as engaging the applicant in a meaningful job-related discussion during the interview. This will also serve to protect the employer in the event the applicant is rejected or later discharged on the basis that the minimum qualifications for the position were not met. The job description should include:

   a. A job title which accurately describes the duties and the relative level of importance of the position. Do not give a job a more prestigious title than warranted to compensate for noncompetitive compensation.

   b. The name of the LDSS, whether the position is exempt or non-exempt under the FLSA, part-time or full time, regular, restricted, temporary or emergency position.

   c. The purpose of the job and how it fits into the mission of the organization.

   d. The essential functions of the job, including physical functions such as lifting, bending, or climbing.

e. The specific job responsibilities, listing the most significant first (time spent or importance to the employer).

f. The minimum qualifications for the position, including skills that are critical to successful job performance, and educational degrees, licenses and certifications that are required. Consider using "equivalent experience" as an alternative to a degree. These requirements must be job related.

B. Posting Positions To Be Filled

1. Initial Steps

Before posting positions, agencies should:

a) analyze the vacant position and work unit to which it is assigned to determine if any changes have occurred;

b) update the Work Profile to reflect current duties and responsibilities;

c) determine the knowledge, skills, abilities/competencies (KSA) necessary or preferred for the position;

d) determine if the position is assigned to the proper role and make role changes as necessary;

e) identify any education qualifications required by law for the position;

f) identify any BFOQs; and

g) determine recruitment options.

2. Recruitment Options

Agencies should select the recruitment option that best fits their needs before posting a vacancy. The decision should be based on factors such as the diversity of the agency's workforce and the availability of qualified applicants.

If initial recruitment does not result in an adequate applicant pool, agencies may re-open recruitment as necessary.

Agencies may use one of five options when conducting recruitment:

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a. Open

Recruitment is open to all applicants. Open recruitment announcements may be prepared by the LDSS or Department HR. When underutilization of minorities and females exists in the EEO-4 category of the position to be filled, the open Recruitment Announcement must be prepared by Department HR.

b. Intra-agency

Recruitment is limited to current regular, probationary, restricted, and temporary employees of the LDSS where the vacancy exists. Intra-agency recruitment may be used only if underutilization of minorities and females does not exist in the EEO-4 category of the position to be filled. Intra-agency recruitment announcements must be prepared by the LDSS.

c. Inter-agency

Recruitment is limited to current regular, probationary, restricted, and temporary employees of any State and local welfare/social services department of the Commonwealth of Virginia. Inter-agency recruitment may be used only if underutilization of minorities and females does not exist in the EEO-4 category of the position to be filled. Inter-agency Recruitment Announcements must be prepared by Department HR.

d. Intra-Jurisdictional

Recruitment is limited to employees of the city, town, or county government of which the LDSS is a governmental unit. Jurisdictional recruitment may be used only if underutilization of minorities and females does not exist in the EEO-4 category of the position to be filled. Jurisdictional recruitment announcements must be prepared by the LDSS.

e. Limited

Recruitment is limited to regular or probationary employees of either a specific unit or classification of the LDSS to prevent lay-off of an employee due to the abolishment/establishment of a position. Limited recruitment announcements must be prepared by the LDSS.

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C. Job Announcement Requirements

1. Request to Advertise Position Form

   a) A Request to Advertise Position form is prepared by the LDSS and must be received by Department HR no later than 2:00 PM on the Wednesday of the week proceeding the recruitment period. When recruitment is for more than one position with the same classification and position type (regular, temporary, or restricted; full-time or part-time), one form may be completed on which all position numbers are entered and then copies made. The LDSS shall indicate on the form the type of applicant screening (preliminary or complete) that is desired.

2. Submission of the Request to Advertise Position Form

   a) When the LDSS elects to prepare and post the Recruitment Announcement, the completed Request to Advertise Position form shall be submitted to Department HR at the close of the deadline of the Recruitment Announcement posting period along with all applications, in alphabetical order, received for the position.

D. Posting Periods, Closing Date and Time, Extensions, and Adding Positions to Existing Certificates

1. Posting Periods

   a. Open Recruitment

      The Recruitment Announcement must be posted for a minimum of five workdays.

   b. Intra-agency Recruitment

      An intra-agency announcement must be posted a minimum of five workdays.

   c. Inter-agency Recruitment

      An inter-agency announcement must be posted a minimum of five workdays.

   d. Jurisdictional

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A jurisdictional announcement must be posted a minimum of five workdays.

e. Limited

A limited announcement must be posted a minimum of five workdays.

2. Closing Day and Time

a. Recruitments undertaken by the LDSS may close on a day and at a time selected by the LDSS.

b. Recruitments undertaken on behalf of the LDSS by Department HR will generally close on a Friday at noon. Holiday and inclement weather closings may necessitate changes in the closing day and time.

3. Extensions

An announcement posting period may be extended a minimum of five additional workdays at the discretion of the LDSS. Notification to Department HR must be received no later than 2:00 PM on the Wednesday preceding the original closing date.

4. Adding Positions to Existing Certificates

Similar vacancies (duties/work title, organizational unit, and geographic area) that become vacant, or funded, within 90 calendar days from the position closing date of the similar vacancy may be added to an existing certificate if requested by the hiring authority. The request must be made in writing and submitted to Department HR with a completed Request to Advertise Position form for the newly vacated/funded position. The LDSS may only consider applications in the applicant pool for the previously recruited position.

E. Recruitment Announcement and Newspaper Advertisement

All job announcements must include an Equal Employment Opportunity statement and should state the scope of the position and KSA qualification requirements. All information in the job announcement must be job related. Announcements must not specify a certain number of years of experience or a specific educational requirement unless sanctioned by law.

1. The following elements must be included:

a. a summary of job duties
b. any educational qualifications required by law;
c. any bona fide occupational requirements (BFOQs);
d. any occupational certification or licensing required by law;
e. notification that a fingerprint-based criminal history check will be required of the finalist candidate for the position if it has been designated as sensitive under *Code of Virginia* § 2.2-1201.1;

2. Required Contents of the Recruitment Announcement and the Newspaper Advertisement

   a. Each Recruitment Announcement must contain the classification title; position number; salary range, entry salary, or hourly rate of pay; if part-time, hours per week; position location; statement about the type of recruitment for any position for which open recruitment is not being used; deadline date and time for receipt of applications; summary of duties and responsibilities; special requirements, if any; knowledge, skills, and abilities (KSAs) needed for entry into the position; any educational qualifications required by law; any BFOQs; notification that a fingerprint-based criminal history check will be required of the finalist candidate for the position; application instructions; complete mailing address for the LDSS; and a statement that the LDSS is an equal opportunity employer.

   b. The newspaper advertisement, which is prepared by the LDSS, must contain the classification title; position number; salary range, entry salary, or hourly rate of pay; if part-time, hours per week; position location; statement about the type of recruitment for any position for which open recruitment is not being used; deadline date and time for receipt of applications; duties and responsibilities paragraph; application instructions; complete mailing address for the LDSS; and a statement that the LDSS is an equal opportunity employer.

   c. The announcement, the newspaper advertisement, and all other recruitment materials should state that the LDSS is an EEO employer.

3. Restrictions on the Use of Required Qualifications

   The Recruitment Announcement and newspaper advertisement may include preferred qualifications, but unless a job analysis supports a specific requirement, the qualifications should not be set forth in terms so absolute as to discourage otherwise qualified applicants from applying or automatically preclude applicants from consideration.

a. Specific Years of Experience Prohibited

Except where required by law or State Board policy, the Recruitment Announcement and newspaper advertisement may not state a qualification of specific years of experience, but may state a qualification of related or applicable experience. It is the KSAs that an individual has no matter where or how obtained that are important.

b. Educational Qualifications

Except where required by law or State Board policy, the Recruitment Announcement and newspaper advertisement should not state absolute educational qualifications or use educational qualifications to preclude from consideration applicants who have equivalent or sufficient applicable experience or training.

c. Proficiency Levels

The Recruitment Announcement and newspaper advertisement may set forth proficiency levels that are reasonable and consistent with normal expectations of acceptable proficiency within the work force. An example of an acceptable proficiency level is a typing speed requirement for a secretarial position for which typing is a significant component.

d. Occupational Certification or License

The Recruitment Announcement and newspaper advertisement should state occupational certification or licensing that is required by law.

4. Approval for Bona Fide Occupational Qualifications (BFOQs)

A Recruitment Announcement or newspaper advertisement may not include a bonafide occupational qualification (BFOQ) as a qualification requirement without the approval of Department HR.

F. Application for Employment

An LDSS may require that a completed Application for Employment be submitted electronically, via the Recruitment Management System, mailed, faxed, or hand-delivered, for each Recruitment Announcement for which application for employment is being made. If the Recruitment Announcement is for more than one position, one application may be acceptable provided that

each position is listed. If the LDSS accepts applications via mail, fax or hand-delivery, a facsimile or photocopied application is acceptable; however, the photocopied application must be signed by the applicant at the time of interview. The position number(s) and location must be entered on the application. Attachments, including a resume, to the application form may not be considered during the screening process.

Applications received after the closing date cannot be considered.

G. The Selection Process (non-Recruitment Management System agencies)

Agencies may either interview all applicants for a position or reduce the applicant pool by screening applications. If the LDSS chooses to screen applications, it must choose one of two types of Department HR screening. The option selected is indicated on the Request to Advertise Position form.

1. Preliminary Screening

   a. A Department HR consultant, using the Recruitment Announcement duties and responsibilities paragraph, entry level knowledge, skill, and ability statements shall screen all applications received.

   b. A referral list of the names of all applicants who meet or exceed the minimum required qualifications for the position and their applications is sent to the LDSS for further evaluation.

   c. Using the same criteria that the Department HR consultant used, the LDSS determines which applicants will be offered an interview. Whenever possible, no fewer than five or more than twenty applicants should be interviewed.

      As a safeguard, Department HR reserves the right to monitor the LDSS' evaluation of applications. If it is determined that a LDSS' actions are not in compliance with acceptable evaluation practices, Department HR may withdraw the preliminary screening option.

   d. An interview panel and/or the LDSS Director shall conduct the interviews.

   e. After concluding the interviews and selecting an individual for the position, the LDSS shall send written notification of

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application status to all applicants whose names were on the Referral List.

f. The LDSS shall indicate the disposition status by each applicant's name on the Referral List and shall return the list and all applications to Department HR.

2. Department HR Completed Screening

a. A Department HR consultant, using the duties and responsibilities paragraph of the Recruitment Announcement, entry-level knowledge, skill, and ability statements and special and preferred qualification(s) information, will evaluate all applications received.

b. An Interview List of the names of applicants who most closely possess the required and~~/or~~ desired qualifications for the position and their applications is sent to the LDSS.

c. The LDSS must offer all applicants on the Interview List an opportunity to interview for the position.

If fewer than five applicants accept an interview appointment, the LDSS may immediately request a Supplementary Interview Authorization List. A list will be provided if there were additional applicants who met the minimum selection criteria. If there are no additional applicants, the position may be reposted.

d. An interview panel and/or the LDSS Director shall conduct the interviews.

e. After concluding the interviews and selecting an individual for the position, the LDSS shall send written notification to all applicants whose names were on the Interview List.

f. The LDSS shall indicate the disposition status by each applicant's name on the Interview Referral List, and shall return the list and all applications to Department HR.

3. Application Re-evaluation

a. Re-evaluation by Department HR

(1) Any applicant whose name is not placed by Department HR on a Referral List, Interview List, or Supplemental Interview List for a particular position may request a re-evaluation of his application. The request must be submitted in writing to Department HR. It may be e-mailed, mailed or faxed.

(2) A re-evaluation shall be performed by a Department HR consultant only if initial interviews, when a panel is being used, or final interviews, when only one interview is being held, have not been concluded.

(3) The Department HR consultant will send written notification of the re-evaluation results to the applicant.

(4) If the re-evaluation results in a change and if the LDSS initially selected the preliminary screening option, then another Referral List will be issued. The LDSS then shall determine if the applicant will be offered an interview. If the complete screening option was initially selected, then an Addendum List will be sent to the LDSS, which shall ensure that the applicant is offered an interview.

b. Re-Evaluation by the LDSS

(1) Any applicant whose name was placed by Department HR on a Referral List for a particular position but who was not selected for an interview may request a re-evaluation of his or her application. The request must be submitted in writing to the LDSS. It may be mailed or faxed.

(2) A re-evaluation shall be performed by the LDSS only if initial interviews, when a panel is being used, or final interviews, when only one interview is being held, have not been concluded.

(3) The LDSS shall send written notification of the re-evaluation results to the applicant.

(4) If the re-evaluation results in a change, the LDSS must offer an interview to the applicant.

4. Veterans Preference

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a. Consistent with the requirements of the *Code of Virginia* §§ 2.2-2903 and 15.2-1509, a veteran's military service shall be taken into consideration by the Commonwealth during the selection process, provided that such veteran meets all of the knowledge, skill, and ability requirements for the available position. Additional consideration shall also be given to veterans who have a service-connected disability rating fixed by the United States Veterans Administration.

b. Additionally, if the position is filled using a scored test or examination, the grade or rating of an honorably discharged veteran must be increased by 5% or by 10% if the veteran has a service-connected disability rating fixed by the United States Veterans Administration.

5. Interviewing

a. The LDSS shall be responsible for ensuring that the interview process is fair and consistent.

b. The LDSS shall have the discretion of using selection panels to interview applicants in order to determine which applicants will be interviewed by the hiring authority.

Panel members shall become familiar with the basic responsibilities of the position for which they will interview applicants.

Panel members shall be in the same or higher grade than the position for which they will be conducting interviews.

c. An effort shall be made to contact by telephone (or in writing, if unable to reach by telephone) all applicants who have been determined eligible for an interview. However, the LDSS is not required to reschedule interviews with applicants who are unable to make the scheduled interview.

d. The LDSS and/or panel members shall develop a set of uniform interview questions to ask each applicant. The questions should allow the interviewer(s) an opportunity to seek information related directly to the knowledge, skills, and/or abilities necessary to perform the job.

Questions that are not job-related or that violate EEOC standards are not permissible.

The interviewer(s) may ask or answer questions in response to any statements or questions from the applicant or to clarify information provided by the applicant on the application.

e. Interviewers must refrain from making any inquiry about an applicant's age, race, creed, color, national origin, sex, marital status, religion, or disability before, during or after employment unless there is a need to do so based on a bona fide occupational qualification.

Interviewers must be careful that their questioning, as well as their expressions and actions, cannot be construed to be discriminatory.

When an applicant volunteers information that might lead to an impermissible line of follow-up questions, the interviewer should refrain from being led into a discussion on impermissible topics. The interviewer should accept the information provided, advise the applicant that the information can not be used in making an employment decision and proceed to the “scripted” questions.

f. Interviewers should be well trained with regard to acceptable and unacceptable types of questions. Further, interviewers should understand that their representations made to applicants may later bind the employer. It is particularly important to avoid "overselling" job security or making other sorts of guarantees.

g. Interviewers must document applicants’ responses to questions to assist with their evaluation of each candidate’s qualifications. This information should be retained with other documentation of the selection process.

h. The evaluation forms or notes used during interviews should not be retained in the employee's personnel file. They are to be retained by the LDSS in a separate file. Numerical scoring of an applicant’s performance is discouraged in that it may be hard to quantify objectively and consistently.

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i. Guidelines Based Upon ADA Provisions

Guidelines issued by the Equal Employment Opportunity Commission (EEOC) should be followed during the hiring process. These regulations recommend making reasonable accommodations in the application and during the interview process.
For example, interviews should be held at fully accessible locations. If tests are required, it is recommended that an employer give advance notice so that an applicant may request accommodation if necessary.

Tests that are job related and consistent with business necessity are the only tests that should be conducted. Such tests should be available in alternative forms.

Finally, applicants who are blind should be allowed to submit application information orally and applicants who are deaf should be provided with sign interpreters.

6. Reference Checks

a. The LDSS should check employment history with the current and former employer(s) of applicants who are final candidates for the position. Listed references should also be contacted.

b. The reference and employment checks should attempt to obtain information such as the following:

1) name and title of person giving reference;
2) verification of employment dates;
3) verification of position title;
4) verification of position duties;
5) verification of beginning and ending salaries;
6) training completed;
7) performance (work experience, KSA's, competencies);
8) whether the employer would rehire the applicant; and
9) verification of any license, certification or degree the applicant claims to possess.

It is extremely important to remember that an employer may not ask questions of third parties that could not be asked directly of the applicant. Accordingly, in speaking with former employers or references, impermissible inquiries should not be made.

7. Selection

The LDSS shall take into consideration all information on the application, performance during the interview process, and employment reference checks when determining the suitability of an applicant for employment. Race, color, religion, national origin, political affiliation, sex, age, or other non-KSA information, such as salary history or marital status, must not play a part in the selection decision.

The appointment of any applicant to any position, excluding emergency positions, shall not be effective until both of the following conditions are met:

a. The applicant must have been referred by Department HR on a Referral List, Interview List, Supplemental Interview List, or Addendum Interview List; and

b. All employment interviews have been concluded.

H. The Selection Process for Recruitment Management System agencies

A local agency that accepts online applications via the RECRUITMENT MANAGEMENT SYSTEM should adhere to the timeframes indicated below. The timeframes below should be considered maximums.

Steps	Maximum Time Frames	Steps in the Process	Status in the System
1		Position becomes vacant.	
2		Review Work Profile accuracy or develop new one. (Using VDSS format)	
3		Create a Requisition using Recruitment Management System with screening criteria.	
4		Submit requisition to Department HR for approval.	
5		Department HR approves ad and posts. Status changes automatically in System.	Under Review by Department HR

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6		LDSS may advertise in their advertising mediums using the same approved ad. *	
7			
8		The LDSS will determine the interviewing panel and set interviewing dates for first interview and the second, if applicable.	
9		The consultant will input the position on a time clock. This will be managed by Department HR.	
10		Recruitment Management System collects applications.	
11	***Day 1***	**Position Closes.**	
12	***Day 14***	**LDSS completes all screening for the position. A complete screening is used in all cases.**	
13	***Day 15***	**LDSS emails or faxes a copy of the completed Screening to their Department HR consultant <u>and</u> sends an email informing their consultant of the minimum score needed to interview from the System.**	
14		LDSS solidifies interviewing panel and times.	
15	***Day 20***	**The Department HR consultant ratifies the interview list and sends notification via email. LDSS sets up 1st interviews. LDSS updates statuses in Recruitment Management System.**	Offered Interview/Invited for Interview
16		LDSS creates interviewing questions that are legal, representative of the Work Profile and that will be used with each candidate.	
17	***Day 30***	**LDSS conducts interviews.**	
18	***Day 32***	**Set up second interviews.**	
19	***Day 42***	**LDSS conducts second interviews, if applicable. LDSS changes statuses in System.**	Interviewed or Declined Interview

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20	***Day 44***	**Criminal histories and State Central Registry Checks of final candidates are conducted.**	
21	***Day 49***	**Offer is made. LDSS changes applicant statuses in System.**	Offered Job/Offered Employment or Declined Offer
22	***Day 50***	**Offer is accepted or declined. Send Department HR Consultant email notifying that the offer has been accepted so that the time clock can be stopped.**	Hired and date
23		Offer Letter is sent by the LDSS.	
24		Department HR will print a copy of the EEO report and keep that with the batch. LDSS should maintain their files as they have always done for recruitments.	

* Local agencies that use print ADS (newspaper) should consider shorter ADS that refer applicants to the State or local government website for detailed job information.

I. Background and Records Checks

1. Negligent Hiring and Retention

As previously stated, there is a duty imposed on employers to avoid negligence in the hire and retention of employees. A claim of negligence arises when an employee injures a co-worker or third party and a claim is made that the employer should not have hired or retained the employee because the employer knew or should have known that the employee posed a threat of harm to others.

There are two frequently encountered situations that give rise to such a complaint. The first is the employer's failure to conduct a thorough background check. The other is when behaviors are observed that would cause a cautious employer to intervene and the employer does not; for example, when a Local Department of Social Services hires a felon convicted of child molestation and unaware of the conviction due to failure to conduct a criminal background check or when the Local

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Department of Social Services receives complaints that the employee's conduct with children is suspicious and no investigation is undertaken. If an employee abuses a child in the Local Department of Social Services' care, the local department may be held liable for damages. The liability would be on the basis that the department knew or should have known that the employee was a danger to children and it negligently hired or retained the employee.

Therefore each LDSS should conduct a thorough and careful background check on applicants and be conscientious in its supervision of employees. A driving record check (for each state in which the applicant resided in the past ten years) is also suggested for positions requiring operation of a vehicle.

2. Types of Background and Record Checks

Three types of background record checks should be conducted before hiring an employee (or using a volunteer). Often a LDSS will hire an employee while awaiting the results of these checks. In this instance, the offer of employment should clearly state that the offer is contingent upon satisfactory results of the criminal, driving, and Central Registry background checks. It is preferable to have these record checks done before employment commences because a record check may reveal that the employee is a potential danger to the safety or welfare of others with whom they are brought into contact while at work.

a. Criminal History Background Searches

If a prospective or current employee, volunteer or intern has been convicted of a "barrier crime" or is the subject of any pending criminal charges, the individual may not be considered for certain positions that may be related to the crime. The Criminal Records Decision Tree should be used to make the appropriate determination.

Consequently, the LDSS should, pursuant to the authority granted under *Code of Virginia* §§ 63.2-1719 and 63.2-1726, conduct a state and national criminal history background check on applicants, employees or volunteers.

The Virginia State Police (VSP) is responsible for conducting criminal history background searches. Once the search is initiated by the LDSS, the VSP will check the state and national criminal history data banks to determine if an individual has been convicted of a crime within or outside the Commonwealth.

b. LDSS Registration with the VSP

Before a LDSS may begin to request criminal background searches, it must first register with the VSP and, through the VSP, with the Federal Bureau of Investigation (FBI).

(1) Designation of Local Coordinator:

The LDSS must designate a coordinator who will be responsible for all communications with the VSP regarding background searches (the "Coordinator"). The Coordinator will be required to review all requests for background searches for accuracy before submitting them to the VSP and will receive completed searches from the FBI.

(2) Establishment of Account:

Once a local Coordinator is chosen, a letter must be forwarded to the VSP requesting that the FBI assign an "ORI" number (which is an identification number that the FBI assigns) and that the VSP establish an account for the LDSS. A form letter that both the VSP and the FBI have approved is provided in the Appendix. The LDSS should fill in the blank sections and print the letter on the LDSS' letterhead.

Generally within two weeks after the letter is received, the FBI will determine if the LDSS is eligible to conduct background checks on its employees. If so, the FBI will assign the LDSS an ORI number and will mail special fingerprint cards to the Coordinator. When the LDSS' eligibility to request national criminal history background searches is approved by the FBI, the VSP will assign an account number to the LDSS. Currently, the VSP charges a $37.00 fee for each search involving a current or prospective employee and a fee of $26.00 for a current or prospective volunteer.

c. Search Initiation

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Once the LDSS is registered with the VSP and the FBI, it may begin to request criminal background searches. In order to initiate a state and national criminal history background search, a VSP form number SP-24 must be completed, along with two sets of fingerprint cards.

(1) Form SP-24

(a) The individual must complete and sign section I of the VSP form number SP-24.

(b) The local Coordinator must fill out the remainder of the form.

(2) Notice

The individual must be given the form entitled "Notice to Applicant/Volunteer".

(3) Fingerprint Cards

(a) The individual must be fingerprinted at a local law enforcement agency office.

(b) The individual's fingerprints must appear on two sets of fingerprint cards provided to the LDSS by the VSP.

d. Submission of Data to VSP

Once form SP-24 and the fingerprint cards are complete, the Coordinator submits both documents to the VSP at the address provided on form SP-24 for processing by the VSP and the FBI.

e. Barrier Crimes

Once the completed criminal history background check is returned, the Coordinator should look for the presence of any "barrier crimes."

Following is the list of "barrier crimes" provided in § 63.2-1719 and 63.2-1726 of the *Code of Virginia*.

"Barrier Crime" is defined in § 63.2-1719 and § 63.2-1726 of the *Code of Virginia* as:

(1) a conviction of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
(2) malicious wounding by mob as set out in § 18.2-41;
(3) abduction as set out in subsection A of § 18.2-47;
(4) abduction for immoral purposes as set out in § 18.2-48;
(5) assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;
(6) robbery as set out in § 18.2-58;
(7) carjacking as set out in § 18.2-58.1;
(8) extortion by threat as set out in § 18.2-59;
(9) threats of death or bodily injury as set out in § 18.2-60;
(10) felony stalking as set out in § 18.2-60.3;
(11) sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;
(12) arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;
(13) burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2;
(14) possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;
(15) drive by shooting as set out in § 18.2-286.1;
(16) use of a machine gun in a crime of violence as set out in § 18.2-289;
(17) aggressive use of a machine gun as set out in § 18.2-290;
(18) use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300;
(19) pandering as set out in § 18.2-355;
(20) crimes against nature involving children as set out in § 18.2-361;
(21) incest as set out in § 18.2-366;
(22) taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1;
(23) abuse and neglect of children as set out in § 18.2-371.1;
(24) failure to secure medical attention for an injured child as set out in § 18.2-314;
(25) obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1;
(26) electronic facilitation of pornography as set out in § 18.2-374.3,
(27) abuse and neglect of incapacitated adults as set out in § 18.2-369;

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(28) employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379;
(29) delivery of drugs to prisoners as set out in § 18.2-474.1;
(30) escape from jail as set out in § 18.2-477;
(31) felonies by prisoners as set out in § 53.1-203;
(32) convictions of burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; and
(33) any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state.
(34) a founded complaint of child abuse or neglect within or outside the Commonwealth; and
(35) a conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction.
(36) Convictions of equivalent offenses in other states are also barrier crimes.

If the individual has been convicted of one misdemeanor barrier crime not involving abuse or neglect or moral turpitude, the LDSS may, but is not required to, hire or allow the individual to continue to work in such a position, provided five years have elapsed following the conviction. If such individual is hired, careful supervision should be followed to avoid a claim of negligent retention.

3. Virginia Department of Social Services Central Records Exchange

The LDSS must also check for any listings in the Virginia Department of Social Services Central Registry for founded dispositions of child abuse or neglect.

a. Initiation of the Search
The individual must fill in the appropriate information on the LDSS form entitled “Virginia Department of Social Services/Child Protective Services Request for Search of the Central Registry and Release of Information Form.” The individual must sign the acknowledgement section of the form, which must be witnessed by a notary.

b. Submission of the Form

The form must be submitted to the Virginia Department of Social Services at the address provided on the form. Although the LDSS has access to the Central Registry for other purposes, as an employer it must have this form completed.

4. Department of Motor Vehicles History Search

The LDSS should also obtain a recent copy of each individual's driver record if their position requires a valid driver's license, the transportation of clients, or the use of a motor vehicle as part of the position responsibilities.

a. Initiation of the Search

A search of the Virginia Department of Motor Vehicles is initiated by having the individual send a letter to the Department of Motor Vehicles requesting a seven-year driver history record for employment purposes at the following address: Attention: Vehicle (Driver) Records Work Center

Virginia Department of Motor Vehicles
Attention: Vehicle (Driver) Records Work Center
P. O. Box 27412
Richmond, VA 23269

The request may also be submitted on-line at *www.dmv.state.va.us* or by visiting a Department of Motor Vehicles customer service center. If the individual lived outside of Virginia or registered a vehicle outside of Virginia at any time during the past seven years, the individual must provide a driver history record from that state in addition to the Virginia report.

b. Receiving the Information
The driver history information will be provided to the individual by the Department of Motor Vehicles; the individual must then provide the original report(s) to the LDSS.

5. Actions to be Taken When Negative Information is Disclosed

a. Information from a government agency:

When background history information is obtained directly from a government agency (e.g., the VSP, FBI, DSS, or DMV), the LDSS should take appropriate employment action.

b. Information from Private Reporting Agencies:

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When background history information is provided from a third party hired to perform such a records check (e.g., an employment agency or company specializing in providing background checks to employers), the Fair Credit Reporting Act imposes several procedural steps.

(1) The individual must consent to the records check and receive a Summary of Your Rights under the Fair Credit Reporting Act.

(2) Notice of Pre-Adverse Action:

(a) If, based on the information received, the LDSS disqualifies the individual from the position sought; the LDSS must send the applicant the Pre-Adverse Action Notice, along with the following:

(i) the information obtained from the search;

(ii) the notice entitled A Summary of Your Rights Under the Fair Credit Reporting Act;

(iii) the notice entitled Notice to Prospective or Current Employee or Volunteer.

(b) If the LDSS determines that the individual is disqualified for the position sought due to the information obtained, the LDSS must provide the following:

(i) the Notice of Adverse Action; and

(ii) a copy of the Notice to Prospective or Current Employee, Volunteer or Intern.

6. Confidentiality and Maintenance of Records

   All records and information concerning personnel actions shall remain confidential and should be disclosed only with the employee's permission unless there is a need to know. All information should be maintained consistent with Chapter 8, Personnel Records.

J. Completing the Hiring Process

1. Making an Employment Offer

   It is recommended that an offer of employment be communicated in writing so there is no misunderstanding regarding the essential terms and conditions of the offer. The wording of the offer should be carefully reviewed to avoid creating unintended rights to job security that may undermine "at-will" employment and impact the LDSS' ability to terminate the employee at any time. Therefore, employment offer letters should:

   a. avoid implying a contract or guarantee of employment for a particular period of time;
   b. describe any conditions of employment, such as criminal records check, medical examination, or drug test;
   c. state the probationary period, if appropriate; and
   d. explain any required certification or training period that might apply.

   A Sample Offer Letter is included in the forms. The offer letter should include the forms that are listed under the First Day of Employment Forms in the Appendix.

2. Provide employment information to the employee

   Once a candidate has accepted an employment offer and a start date has been set, the LDSS should provide information such as:

   a. where, when and to whom to report;
   b. parking and building access data;
   c. materials or information needed on the first day, such as a list of acceptable documents needed to complete the I-9 form; and
   d. benefits information and information concerning decisions that will need to be made shortly after beginning employment.

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3. Employee Orientation

Agencies are encouraged to provide an orientation program for all new and re-hired employees within a reasonable time of their employment dates. This orientation should include:

a. a complete explanation of employee benefits, including leave types, payroll options, and insurance choices;
b. information about the agency and its mission;
c. policies and requirements governing employee rights and behaviors; and
d. other features of employment with the LDSS.

4. Verification of Employee Identification and Eligibility to Work/I-9

As required by the Immigration Reform and Control Act of 1986, agencies must verify the identification and employment eligibility status of all persons hired. Form I-9 must be completed for each newly hired employee, including agency transfers, within three (3) days of hire. A sample Form I-9 is included in the forms section of the Appendix.

5. LDSS Notification of Selection to Department HR

Upon completion of the selection process, the LDSS shall submit to Department HR:

a. The Preliminary Referral List, Interview List, a Supplemental Interview List, and/or an Addendum Interview List on which the appropriate disposition codes have been noted;

b. A copy of the original Request to Advertise Position form on which Selection Data, has been completed;

c. A copy of the application of the individual selected for the position (the LDSS shall retain the original for placement in the LDSS' personnel files); and

d. Original applications of all applicants who were not selected.

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K. Independent Contractors

When a LDSS engages the services of another individual, the relationship may be contractual. There is a belief, mistakenly held, that all contractual personal service relationships are those of an independent contractor. Contractual services may be performed either as an employee or as an independent contractor. Determining whether a worker is an independent contractor or an employee is a fact-specific determination. The greater the degree of control and direction an alleged "employer" retains, the more likely workers will be considered employees. However, where a worker retains autonomy and self-regulation, the worker will be found to be an independent contractor.

Factors Considered by the IRS for Determining Independent Contractor Status:

1. Instructions

   A worker who is required to comply with the employer's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the employer has the right to require compliance with instructions.

2. Training

   Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the employer wants the services performed in a particular method or manner.

3. Integration

   Integration of the worker's services into the organization's operations generally shows that the worker is subject to direction and control. When the success or continuation of an organization depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the employer.

4. Services Rendered Personally

   If the services must be rendered personally, presumably the employer is interested in the methods used to accomplish the work as well as in the results.

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5. Hiring, Supervising, and Paying Assistants

   If the employer hires, supervises, and pays assistants, this factor generally shows control over the workers on the job. However, if one worker hires, supervises, and pays the assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, this factor indicates independent contractor status.

6. Continuing Relationship

   A continuing relationship between the worker and the employer indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.

7. Set Hours of Work

   The establishment of set hours of work by the employer is a factor indicating control.

8. Full Time Required

   If the worker must devote substantially full time to the business of the employer, that employer has control over the amount of time the worker spends working and impliedly restricts the worker from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses.

9. Doing Work on Employer's Premises

   If the work is performed on the premises of the employer, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the employer, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the employer has the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

10. Order or Sequence Set

    If a worker must perform services in the order or sequence set by the employer, that factor shows that the worker is not free to follow the worker's own pattern of work but must follow the established routines and schedules of the employer. Often, because of the nature of an occupation, the employer does not set the order of the services or sets the order infrequently. It is sufficient to show control, however, if the employer retains the right to do so.

11. Oral or Written Reports

    A requirement that the worker submit regular or written reports to the employer indicates a degree of control.

12. Payment by the Hour, Week, or Month

    Payment by the hour, week or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying the lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor.

13. Payment of Business and/or Traveling Expenses

    If the employer ordinarily pays the worker's business and/or traveling expenses, the worker is ordinarily an employee. To be able to control expenses, an employer generally retains the right to regulate and direct the worker's business activities.

14. Furnishing of Tools and Materials

    The fact that the employer furnishes significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

15. Significant Investment

    If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair value from an unrelated party), that factor tends to indicate that the worker is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the

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employer for such facilities and, accordingly, the existence of an employer-employee relationship. Special scrutiny is required with respect to certain types of facilities, such as home offices.

16. Realization of Profit or Loss

    A worker who can realize a profit or suffer a loss as a result of the worker's services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the worker who cannot is an employee. For example, if the worker is subject to a real risk of economic loss because of significant investments or a bona fide liability for expenses, such a salary payments to unrelated employees, that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a significant economic risk to support treatment as an independent contractor.

17. Working for More than One Firm at a Time

    If a worker performs more than *de minimis* services for a multiple of unrelated persons or organizations at the same time, that factor generally indicates that the worker is an independent contractor. However, a worker who performs services for more than one person may be an employee of each of those persons, especially where such persons are part of the same service arrangement.

18. Making Services Available to General Public

    The fact that a worker makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship.

19. Right to Discharge

    The right to discharge a worker is a factor indicating that the worker is an employee. An employee is often controlled through the threat of dismissal, and therefore obeys the employer's instructions. An independent contractor, on the other hand, cannot be "fired" as long as he or she produces a result that meets the contract specifications.

20. Right to Terminate

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If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

L. Selection Records

1. Retaining Records

a. The following records must be maintained confidentially for a period of at least three (3) years from the date the position is filled (Recruitment Management System automatically maintains some of these records):

(1) Position description;

(2) Records related to recruitment efforts;

(3) Copies of advertisements;

(4) Employment applications;

(5) Race and gender data on all applicants; (NOTE: if information is not provided by the applicant, record race and sex data as "unknown.")

(6) Screening and selection criteria applied;

(7) Interview questions and notes on applicant responses (scoring sheets);

(8) References; and,

(9) Any documentation supporting selection or addressing non-selection

2. Destroying Records

Records must be retained and/or destroyed in accordance with the guidelines established by the Library of Virginia. Agencies that are uncertain about the procedures or guidelines should contact the Library of Virginia.

M. Forms

1. Background and Records Check Forms

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a. Criminal Background Check

(1) Letter to Virginia State Police Establishing Account
(2) Criminal Background Check Form SP-24
(3) Notice to Applicant / Volunteer: Rights Regarding Criminal Background Checks
(4) Virginia Department of Social Services/Child Protection Services Request for Search of the Central Registry and Release of Information Form
(5) Criminal Records Decision Tree

b. Fair Credit Reporting Act Forms

(1) Notice and Consent to Background Check
(2) A Summary of Your Rights Under the Fair Credit Reporting Act
(3) Pre-Adverse Action Notice
(4) Notice of Adverse Action
(5) Notice to Users of Consumer Reports

2. Recruitment Forms (non-Recruitment Management System)– Department HR

a. Request to Advertise Position
b. Sample Recruitment Announcement
c. Sample Newspaper Advertisement
d. Application for Employment
e. Employment Application Evaluation Guidelines
f. Sample Notification of Status Letters (5)
g. Employment Interview Disposition Status Codes

3. Pre-Hire Forms

a. Pre-Employment Inquiry Guidelines
b. Former Employer Release of Information
c. Consent to Pre-Employment Medical Testing
d. Sample Offer Letter
e. Summary of Required Forms to Be Completed on First Day

4. First Day of Employment Forms

a. Acknowledgment of Receipt of Human Resources Manual
b. Types of INS Work Authorizations (VISAs)

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c. Frequently Asked Questions About Employment Eligibility
d. Direct Deposit Authorization Form
e. Deduction from Final Paycheck
f. Wage Withholding Authorization
g. Agreement on the Use of Compensatory Time in Lieu of Overtime Pay
h. Virginia New Hire Form (VEC)
i. State Child Support Form (VEC)