

## RELEVANT LINKS:

## VIII. BACKGROUND CHECKS & BONDING

Overview: State law requires that thorough background investigations be completed for some city positions (e.g., peace officers), but the League recommends that cities conduct at least a basic background check on all new hires. Cities that have skipped this step in the hiring process often end up wishing they had invested the time and effort to conduct a thorough background check.

Hiring an employee without conducting a background investigation is a risky endeavor. If things do not work out, the city's reputation will likely suffer and morale issues may arise with current employees. When such a situation takes a turn for the worse, a city might have to deal with accusations of negligent hiring, as well as other serious and costly liability issues. It is also possible that not conducting a background check could result in harm to a city resident, other employees or sometimes even a child.

Finally, it is important that cities conduct background checks in a fair and consistent manner.

### A. Fair Credit Reporting Act

[Federal Trade Commission](#)

A city may use consumer reports when hiring new employees and when evaluating employees for promotion, reassignment, and retention — as long as the city complies with the Fair Credit Reporting Act (FCRA).

[Fair Credit Reporting Act Information](#)

The FCRA is designed primarily to protect the privacy of consumer report information and to guarantee that the information supplied by consumer reporting agencies is as accurate as possible. Questions and concerns about the FCRA are addressed by the Federal Trade Commission.

The Equal Employment Opportunity Commission (EEOC) has concluded that the rejection of an applicant based on credit history alone could be illegal discrimination. This is because the EEOC has found that such practices have a disparate impact on minority groups. A city can overcome this presumption, however, by showing that a minority's rejection was the result of legitimate business concerns.

#### 1. Written notice and authorization

Before the city can get a consumer report for employment purposes, the individual must be notified in writing — in a document consisting solely of this notice — that a report may be used. The city must get the person's written authorization before asking a consumer reporting agency for the report.

#### 2. Adverse action procedures

In some cases, the city may rely on a consumer report for an "adverse action" such as not hiring an applicant, reassigning or terminating an employee, or denying a promotion.

## RELEVANT LINKS:

Before the city can take any such adverse action, it must give the individual a pre-adverse action disclosure that includes a copy of the individual's consumer report and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act". If a city works with a consumer reporting agency (CRA) to obtain an individual's report, the summary of consumer rights will be provided by the CRA.

After the city has taken an adverse action, it must give the individual notice — orally, in writing, or electronically — that such action has been taken.

### 3. Non-compliance

There are legal consequences for employers who fail to get an applicant's permission before requesting a consumer report or who fail to provide pre-adverse action disclosures and adverse action notices to unsuccessful job applicants. The FCRA allows individuals to sue employers for damages in federal court. A person who successfully sues is entitled to recover court costs and reasonable legal fees. The law also allows individuals to seek punitive damages for deliberate violations. In addition, the Federal Trade Commission, other federal agencies, and the state may sue employers for noncompliance and obtain civil penalties.

## B. Minnesota Government Data Practices Act

[Minnesota Statutes 13.01](#)

The Minnesota Government Data Practices Act controls how government data are collected, created, stored (maintained), used and released (disseminated).

[Public Personnel Data – Fact Sheet #9](#)

The information that a city collects and maintains from the hiring process, including information obtained during a background investigation, is “personnel data.” Personnel data are information about an individual collected because the person has or had an employment relationship or applied for a job with the city. Personnel data are typically classified as public, private or confidential. It is important that the city requests, uses and retains personnel data in accordance with the Act.

Any background check that requires the use of private data on a candidate must only be conducted after obtaining the proper release form signed by the candidate. The release should also contain a “Tennessee” advisory that tells the candidate why the private data is being requested, what it will be used for, whether it is legally required, what the consequences are for not supplying the information and what other persons or entities are authorized to receive the information.

## C. Health Insurance Portability and Accountability Act (HIPAA)

[Frequently Asked Questions on HIPAA](#)

The Health Insurance Portability and Accountability Act (HIPAA) was adopted in 1996 as an effort to reform health care. Among other things, HIPAA was designed to protect the privacy of individual medical information. Cities must take care to follow HIPAA guidelines and policies when requesting or receiving any information of a medical nature during the background investigation.

## RELEVANT LINKS:

[Minnesota Statutes 364.03, subd. 1](#)

[Minnesota Statutes 2002, 364.09](#)

[Minnesota Statutes, 364.03, subd. 3](#)

## D. Criminal Offenders Rehabilitation Law

Background check laws must be read together with the law on criminal offenders rehabilitation. This law limits the ability of local government employers and licensing agencies to refuse employment or certain kinds of licensure to persons on the basis of their criminal history. For certain employment and licensing decisions, the city may not rely on expunged convictions or misdemeanor convictions where a jail sentence may not be imposed. The criminal offenders rehabilitation law does not cover police, firefighter and emergency medical services positions.

In addition, in a covered employment or licensing areas, an individual may not be disqualified because of a prior criminal conviction unless the crime relates directly to the employment or type of license sought. Even if the conviction relates directly to the job or license, the individual may show evidence of rehabilitation.

## E. Background checks permitted by law

Every background investigation does not have to be an in-depth look into a new employee's past. The duties of a position are a good indicator of the level of investigation that should take place. For example, it is appropriate, and even advisable, to contact past employers, do a credit check and run a criminal background check on any employee with access to city funds (accountant, finance director, etc.). On the other hand, it is probably sufficient to simply verify education and do a thorough check of employment references on an entry-level support staff position that does not have access to city funds.

Because reference and other types of background checks can be time-consuming, a city may want to consider limiting these efforts to the top two or three finalists for a position.

It is a good practice to have the reference checks on job candidates be conducted by someone who is trained to know what they can and cannot ask and what types of issues raise red flags that should be investigated further. Ideally, the person responsible for human resources activities in the city will conduct the reference checks on candidates.

A city may choose to use a consultant to conduct a background investigation of a new employee, especially if the city does not hire frequently or is filling a position requiring an in-depth investigation.

### 1. Basic information gathering

- **Internet search** – A quick and easy method of doing a search on a candidate is by visiting [www.google.com](http://www.google.com). This web site enables anyone to search the web for public information. By going to the site and entering the candidate's name in quotes, the search engine provides a list of any information it locates about the name entered. Be aware that the search is not perfect. It is possible to obtain information on other individuals with the same name as your candidate. The search is quick, free of charge and results only in information accessible by any member of the public, so no release form is necessary.

[Google Search](#)

## RELEVANT LINKS:

[Sample Reference Release Form](#)

[Sample Reference Check Questions](#)

- **Press search** – A press search is a good method for finding out about a job candidate, especially if the candidate has worked in another area of the state or country. While it may cost the city a few dollars, it is a good idea to contact one or more of the newspapers in the area where the candidate has worked in the past. Because information in the newspaper is public information, the city does not need a release form before doing this kind of search.
- **Reference check** – A telephone reference check with past employers is probably the most common kind of background check conducted. It is important that a city have candidates sign a release form before contacting past employers and other references. Some cities include the release statement in their employment applications; others have finalists sign a separate release form. Either way it is important that the candidate be aware that the city may be contacting his or her references.
- **Confirmation of education (degrees and licenses)** – It is a good idea to contact schools and licensing agencies to confirm that finalists have earned the license or degree that they are claiming (e.g., high school education or GED, commercial drivers license, Class C Water Operator License, Master’s Degree in Public Administration, Attorney or Engineering license).

## 2. More extensive investigations

[Federal Trade Commission](#)

[Fair Credit Reporting Act Information](#)

- **Criminal history** – A criminal record check can be conducted with the written consent of the job candidate. This research is usually conducted by the Bureau of Criminal Apprehension (BCA) or by the city’s police department. In order to do this check at the city level, the BCA requires the city to adopt an ordinance stating that they will conduct background checks, including criminal record checks, on their employees or on certain classes of employees. Information available from a local police department and the BCA is only applicable to Minnesota. If a candidate has worked in another state, it will be necessary to work with the Federal Bureau of Investigation to obtain information on criminal activity that may have occurred outside of Minnesota.
- **Driving record** –For insurance liability purposes cities should do a motor vehicle record check on all job candidates who drive a city vehicle, even occasionally. A driving record can be obtained with the written consent of the job candidate. Many cities obtain this information through their own police departments. If completed through the city’s police department it is important to have a policy that outlines the procedures for doing the motor vehicle record check. The policy should also note the reasons for which a candidate would be denied employment due to information obtained through such check.

[Driver & Vehicle Services](#)

## 3. Juveniles / Minors

The League recommends that background checks be conducted on all employees prior to hire. This can be difficult when the candidate for hire is under age 18. A criminal history check can be completed, but it is very likely that no information will be obtained because of the legal protections afforded minors. If a city is unable to get information through formal channels it is often worthwhile to pursue more informal methods. For example, ask the candidate to provide contact information for anyone he or she has worked for in the past. As employment information may be limited for someone under 18, suggest that they provide you with contact information for high school teachers or guidance counselors, a family for whom they provided child care, mowed the lawn, etc.

## RELEVANT LINKS:

[Consent for Release of Information](#)

Per the Minnesota Department of Administration, Information Policy and Analysis Division: As a general rule, a parent or guardian's signature should be obtained on the release form when the candidate is under the age of 18 or has a legally appointed guardian. However, depending upon the data being requested, the specific requirements for obtaining consent to release data from a minor vary. For this reason, cities should work closely with their city attorney to determine if the information being requested from a juvenile requires the signature of a parent or guardian.

#### 4. Children service workers

[Minnesota Statutes 299C.62](#)

State law permits background checks to be conducted on any individual who is or seeks to be employed or volunteers as a children's service worker. Children services are defined as the provision of care, treatment, education, training, instruction, or recreation to children.

A children's service worker is a person who has, may have, or seeks to have access to a child receiving such services through a volunteer or employment relationship with a business or organization providing the services. Cities often provide children's services through parks and recreation programs.

State law permits but does not require background checks on children's service workers, however, the League strongly recommends that cities conduct such checks to avoid hiring inappropriate candidates to work with children.

#### 5. Firefighters

[Minnesota Statutes 2002, 299F.036: Firefighter Background Checks](#)

The city is authorized by state law to investigate the employment background of applicants for firefighter positions. In addition, the city is required by state law to disclose information (written information on job applicants, performance evaluations, attendance records, disciplinary actions and eligibility for rehire) about any firefighters currently or formerly employed by the city who are the subject of an employment background investigation by another city. The city conducting the investigation must provide a release form signed by the employee and the Fire Chief or administrative head of the fire department conducting the investigation. The city releasing the information is generally immune from liability for release of information under this section in the absence of fraud or malice. If employment information is subject to a confidentiality agreement, the city must disclose the fact that such an agreement exists.

### F. Background checks required by law

#### 1. Peace officers

[Minnesota Statutes 626.87, subd. 1](#)

State law requires law enforcement agencies to conduct a thorough background investigation on an applicant for employment as a licensed peace officer or an applicant for a position leading to employment as a licensed peace officer before the applicant may be employed. The background investigation must determine at a minimum whether the candidate meets the following standards:

[Minnesota Board of Peace Officer Standards and Training](#)

- Standards established by the Minnesota board of peace officer standards and training (POST Board); and
- Established security standards for access to state and national computerized record and communication systems.

**RELEVANT LINKS:**

Testing & Examinations: see [Medical Exams](#)

Testing & Examinations: see [Psychological Exams](#)

[Minnesota Statutes 626.87, subd. 2](#)

These requirements do not prevent a law enforcement agency from establishing higher standards for law enforcement employees if those standards are not contrary to applicable law. POST Board rules also require cities to conduct medical and psychological exams on police officer candidates. For more information, see the section of this manual on Testing & Examinations.

Upon the request of a law enforcement agency, a city must disclose or otherwise make available for inspection employment information of an employee or former employee who is the subject of an investigation under MN Statutes 626.87, subdivision 1.

[Minnesota Statutes 626.87, subd. 4](#)

[Minnesota Statutes 626.87, subd. 6](#)

Cities are often concerned about liability when releasing information in accordance with this requirement. In other words: “Can a candidate come back and sue me or my city if we provide information that prevents an individual from being hired as a peace officer?” State law says that in the absence of fraud or malice, the city is immune from civil liability for employment information released to a law enforcement agency under this section.

If employment information is subject to a confidentiality agreement between the employee or former employee and the city, the city must disclose the fact that such an agreement exists. If the employee or former employee has authorized the release of employment information without regard to any previous agreement to the contrary, the city must also disclose the employment information. If employment information is sealed or otherwise subject to a nondisclosure order by a court of competent jurisdiction, the city must disclose the fact that such an order exists, along with information identifying the court and court's file number.

## **2. Managers of housing facilities**

[Minnesota Statutes 299C.68](#)

Some cities coordinate the hiring activities for their city housing and redevelopment authority or economic development authority. When such an authority owns or manages residential property, a criminal background check of any employee who would have the means, within the scope of the individual's duties, to enter the tenants' dwelling units is required by state law.

## **G. Cost of Background/Credit Checks**

[Minnesota Statutes 2002, 181.645](#)

State law does not allow the employer to shift the cost of a credit check or other background check on to the employee.

## **H. Medical exams**

Under the Americans with Disabilities Act and the Minnesota Human Rights Act, medical examinations are prohibited before an offer of employment is made.

[Testing & Examinations](#)

For information on medical, fitness for duty, drug and alcohol (CDL and non-CDL) strength and agility, psychological and other tests and exams, see the Testing & Examinations section of this chapter.

## **I. Fidelity and faithful performance bonds**

The statutes require certain officials to be covered by a faithful performance bond. These include the statutory clerk and treasurer, the treasurer of an EDA, HRA, or port authority, and the treasurer of a relief association. However, the recommended practice is for the city to have bond coverage on all officers and employees.

[Handbook for Minnesota Cities, Chapter 21](#)

## RELEVANT LINKS:

[LMCIT Risk Management Information Memo: LMCIT Bond Coverage](#)

A fidelity bond covers the risk of employee dishonesty- that is, the risk that the employee will steal money from the city.

A faithful performance bond will cover the same dishonesty risks that a fidelity bond would. In addition, it could come into play in two other kinds of situations.

The first situation occurs when there is a loss to the city that results from the employee's carelessness or incompetence. Examples might include failing to meet a deadline for certifying taxes to the county, or failing to issue proper notices on a special assessment project so the assessments are uncollectible.

The other kind of situation where a faithful performance bond might come into play is when the employee has been guilty of malfeasance, willful neglect of duty, or bad faith. The city's LMCIT liability coverage would not cover damages awarded against an employee because of the employee's intentional wrongdoing. Nor is the city required by statute to defend and indemnify the employee for the employee's own malfeasance, willful neglect of duty, or bad faith. In this situation, a member of the public injured by an employee's intentional wrongdoing might not receive any compensation if the employee didn't have sufficient assets to pay the damages. The bond would pay the injured member of the public if the injured party could not recover from the guilty employee.

The statutes require certain officers to be bonded for the faithful performance of their duties. See the Handbook for Minnesota Cities, Chapter 21, for more information.