

HUMAN RESOURCE UPDATE – Act 153/Act 15

In July, Governor Wolf signed into law a bill that provided relief to colleges and universities subject to Act 153 (The Child Protective Services Law), which would have required background checks for many university employees.

The new law removes the requirement for most employees (attached is document from the Commonwealth).

In particular, from the FAQ:

Are there any exceptions to the certification requirements for employees of an institution of higher education?

Yes. Certifications are not required for employees of an institution of higher education whose direct contact with children, in the course of employment, is limited to either:

- Prospective students visiting a campus operated by the institution of higher education; or
- Matriculated students who are enrolled with the institution.

Please let me know if there are any questions.

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School Employees Not Governed by the Public School Code Frequently Asked Questions

Who needs certifications?

School employees not governed by Section 111 of the provisions of the act of March 10, 1949 (P.L. 30, No. 14), known as the Public School Code of 1949, but covered by Act 153 (such as pertaining to school employees in higher education).

The Act defines school employee as an individual who is employed by a school or who provides a program, activity or service sponsored by a school. This term does not apply to administrative or other support personnel unless the administrative or other support personnel has direct contact with children.

The definition of school is as follows:

"School." A facility providing elementary, secondary or postsecondary educational services. The term includes the following:

- (1) Any school of a school district.
- (2) An area vocational-technical school.
- (3) A joint school.
- (4) An intermediate unit.
- (5) A charter school or regional charter school.
- (6) A cyber charter school.
- (7) A private school licensed under the act of January 28, 1988 (P.L.24, No.11), known as the Private Academic Schools Act.
- (8) A private school accredited by an accrediting association approved by the State Board of Education.
- (9) A nonpublic school.
- (10) An institution of higher education
A private school licensed under the act of December 15, 1986 (P.L.1585, No.174), known as the Private Licensed Schools Act.
- (11) The Hiram G. Andrews Center.
- (12) A private residential rehabilitative institution as defined in section 914.1-A(c) of the Public School Code of 1949.

In order to determine who in your agency is required to obtain clearances as a condition of hire you should carefully consider who within your agency, organization or institution has direct contact with children. To make this determination, think about the employee's role within your agency and the contact they have with children. This determination has two avenues to consider.

These avenues for consideration are whether the employee has direct contact with children because they provide care, supervision, guidance or control of children or have routine interaction with children. The terms care, supervision, guidance or control are not defined in the statute and as such, we suggest

that the common meaning of these terms be used, with child safety serving as the paramount consideration. If you determine that they do provide care, supervision, guidance or control of children, they need clearances. If, however, you determine that they do not provide care, supervision, guidance or control of children, you then move on to the second consideration; whether they have routine interaction with children.

Routine interaction is defined as regular and repeated contact that is integral to a person's employment responsibilities. Consideration should be given to what the employee's role is within the agency and based on that role determine if their contact with children is regular and repeated contact that is integral to their employment responsibilities.

If you determine that they do have direct contact with children, they need clearances. If a determination is made that the employee does not have direct contact with children, certifications are not required.

Please be sure to consult your legal counsel when making these determinations. You should also consult with your insurer regarding possible insurance coverage implications.

How is institution of higher education defined?

An institution of higher education is defined as any of the following:

- (1) A community college which is an institution now or hereafter created pursuant to Article XIX-A of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, or the act of August 24, 1963 (P.L.1132, No.484), known as the Community College Act of 1963.
- (2) An independent institution of higher education which is an institution of higher education located in and incorporated or chartered by the Commonwealth, entitled to confer degrees as set forth in 24 Pa.C.S. § 6505 (relating to power to confer degrees) and entitled to apply to itself the designation, "college" "university" or "seminary" as provided for by standards and qualifications prescribed by the State Board of Education under 24 Pa.C.S. Ch. 65.
- (3) A State-owned institution.
- (4) A State-related institution.
- (5) An education enterprise.

How is education enterprise defined?

Education enterprise is defined as an educational activity in this commonwealth:

- (1) For which college credits or continuing education units are awarded, continuing professional education is offered or tuition or fees are charged or collected; and
- (2) That is sponsored by a corporation, entity or institution that is incorporated or authorized by other means in a state other than this commonwealth and is approved and authorized to operate in this commonwealth under 15 PA.C.S. PT. II Subpt. B (relating to business corporations) or C (relating to nonprofit corporations) and 24 PA.C.S. Ch. 65 (relating to private colleges, universities and seminaries).

What is the definition of child?

For purposes of certifications, a child is an individual under 18 years of age.

How is direct contact with children defined?

Direct contact with children is defined in § 6303 (relating to definitions) as the care, supervision, guidance or control of children or routine interaction with children.

How is routine interaction defined?

Routine interaction is defined as regular and repeated contact that is integral to a person's employment or volunteer responsibilities.

Which certifications are needed?

Employees having contact with children must obtain the following three certifications:

- Report of criminal history from the Pennsylvania State Police (PSP);
- Child Abuse History Certification from the Department of Human Services (Child Abuse); and
- Fingerprint based federal criminal history submitted through the Pennsylvania State Police or its authorized agent (FBI).

Are there any exceptions to the certification requirements for employees of an institution of higher education?

Yes. Certifications are not required for employees of an institution of higher education whose direct contact with children, in the course of employment, is limited to either:

- Prospective students visiting a campus operated by the institution of higher education; or
- Matriculated students who are enrolled with the institution.

THE EXEMPTION UNDER (B) SHALL NOT APPLY TO STUDENTS WHO ARE ENROLLED IN A SECONDARY SCHOOL.

How is matriculated student defined?

Matriculated student is defined as a student who is enrolled in an institution of higher education and pursuing a program of study that results in a postsecondary credential, such as a certificate, diploma or degree.

I am applying for a job. Can I wait until July 25, 2015, to request a child abuse history certification for my employment?

Certifications must be submitted prior to the commencement of employment or service unless the employee is hired provisionally as outlined in §6344 (m).

If you are required to obtain an updated child abuse history certification and submit your request prior to July 25, 2015, you will be required to pay the \$10 fee.

The commonwealth's primary goal is to ensure the safety and well-being of Pennsylvania's children. We are working to implement the fee reductions announced by the Governor as quickly as possible while maintaining the integrity of the clearance process and assuring that vital background certifications can continue to be performed.

I am currently employed and have been since prior to Dec. 31, 2014. When do I have to get my certifications by?

You are required to obtain updated certifications as follows:

- By Dec. 31, 2015, if the certification is older than 60 months; or
- By Dec. 31, 2015, if you have not received certifications (because you were employed in the same position and were not required to obtain certifications under prior law).

If you received certifications prior to 2008 and were not required to obtain the FBI certification, the three required certifications would be obtained consistent with the timeframes above.

How much do the certifications cost?

From now until July 24, 2015:

- The Pennsylvania State Police (PSP) criminal history certification costs \$10
- The Child Abuse certification costs \$10
- The Federal Bureau of Investigation (FBI) federal criminal history certification costs \$25.75 through the Department of Human Services (DHS)

Beginning July 25, 2015:

- The PSP criminal history certification costs \$8
- The Child Abuse certification costs \$8
- The FBI federal criminal history certification costs \$25.75 through DHS

Is the Department of Human Services reducing the fee for the FBI certification?

No. The FBI sets the majority of the cost for this fee. The remainder of the fee covers the costs incurred by DHS, PSP, the vendor which processes the certification, and the fingerprint location costs.

I requested a child abuse history certification prior to July 25, 2015. Am I able to get a \$2 refund for the reduction in cost of the certification?

No. Unfortunately, DHS is unable to issue refunds for the \$2 difference in payment of child abuse history certifications that were processed before July 25, 2015.

How often do I need to renew my certifications?

Beginning July 1, 2015, certifications must be obtained every 60 months.

Any employee with current certification issued prior to July 1, 2015, must renew their certifications within 60 months from the date of their **oldest** certification or if their current certification is older than 60 months, by December 31, 2015.

If an individual or agency, however, elects to renew all certifications at the same time, the date of the oldest certification, rather than the most recent, is the date to be used for the renewal date.

Will there be a new process to obtain a certification?

No. The process to obtain child abuse and criminal history certifications will remain the same. The Child Abuse and PSP certifications will continue to be applied for and paid for electronically. When indicating the purpose of the certifications, the applicant will continue to indicate employment and then the applicable type of employment.

All necessary instructions and links to apply for these certifications can be found at <http://www.dhs.state.pa.us/findaform/childabusehistoryclearanceforms/index.htm>.

The PSP website will be altered to reflect the reduction of the fee. In addition, new forms will be available to download from the website.

Can I use a child abuse history certification or PSP criminal history certification I obtained for my volunteer activities for employment purposes?

No. Child abuse history certifications and PSP criminal history certifications obtained for volunteer purposes can only be used for other volunteer activities. Child abuse history certifications obtained for volunteer purposes will indicate that the clearance is to be used for volunteer purposes only.

Can I use a child abuse history certification or PSP criminal history certification I obtained for employment purposes for volunteer purposes?

Yes, if you obtained a certification for employment purposes within the previous 60 months you may use the certification to serve in a volunteer capacity for any program, activity or service.

Is the use of a third-party vendor to process certifications acceptable?

Third-party vendors may be used to process Child Abuse, PSP and FBI certifications using the steps established above. They are **not** permitted to conduct background checks or certification through other databases in lieu of the steps outlined above. In addition, institutions remain responsible for the employment decision based on the information obtained.

Can an institution pay for certifications?

Child Abuse certifications:

Yes, institutions can pay for Child Abuse certifications by registering for a Business Partner User account using the "Organization Account Access" link on the Child Welfare Portal: www.compass.state.pa.us/cwis. The business account will allow institutions to purchase Child Abuse certification payment codes to be distributed to applicants or employees. Individual applicants or employees will then go onto the Child Welfare Portal to apply for the certification using the code. The pre-purchased codes can only be used once and allows the organization to have access to the applicant's Child Abuse certification results once those results are processed.

FBI certifications:

An agency pay agreement/business account can also be created between an institution and the FBI, or its authorized agent, for payment of FBI certifications. Information on creating an agency pay agreement for FBI certifications through the Department of Human Services can be found at www.pa.cogentid.com/index_dpwNew.htm.

PSP certifications:

A business account can be requested from the Pennsylvania State Police to pay for certifications in bulk by calling 1-888-783-7972 and selecting option 6. Institutions are also able to pay for an applicant's PSP certification on an individual basis by using a credit card if applying online or submitting a paper check if applying by mail.

Are there any other requirements?

If an employee is arrested for or convicted of an offense that would constitute grounds for denying employment or participation in a program, activity or service, or is named as a perpetrator in a founded or indicated report, the employee must provide the administrator or their designee with written notice not later than 72 hours after the arrest, conviction or notification that the person has been listed as a perpetrator in the statewide database.

An employee who willfully fails to disclose information as required above commits a misdemeanor of the third degree and shall be subject to discipline up to and including termination or denial of employment.

What is the provisional hiring period for employees?

Individuals may be employed for a single period, not to exceed 90 days if all of the following conditions are met:

- The applicant has applied for the three required certifications and they provide a copy of the completed forms to their employer.
- The employer has no knowledge of information pertaining to the applicant which would disqualify him from employment.
- The applicant swears or affirms in writing that he is not disqualified from employment pursuant to the grounds for denying employment in § 6344 (c) or has not been convicted of an offense of a similar nature to those crimes under the laws or former laws of the United States, or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, or under a former law of this Commonwealth.
- The applicant is not permitted to work alone with children and must work in the immediate vicinity of a permanent employee.

Is my employer required to keep a copy of my certifications?

Yes, pursuant to § 6344 (b.1), the employer, administrator, supervisor or other person responsible for employment decisions or acceptance of the individual to serve in any capacity requiring certifications, shall maintain copies of the required information and require the individual to produce the required documents prior to employment or acceptance to serve in any such capacity, except provisional

employees for limited periods as described in § 6344 (m) and outlined above. An employer, administrator, supervisor or other person responsible for employment decisions that intentionally fails to require an applicant to submit the required certification before the applicant's hiring commits a misdemeanor of the third degree.

Institutions are reminded that the child abuse history certification information is confidential and may not be released to other individuals.

Can an employer or organization institute additional standards?

Yes, nothing prohibits the employer or a person responsible for a program, activity or service from making employment, discipline or termination decisions or establishing additional standards.

Can my clearances be transferred?

Yes. If the employee's certifications are current, the employee may use their certifications to:

- to apply for employment;
- to serve as an employee;
- to apply as a volunteer; and
- to serve as a volunteer.

However, prior to beginning new employment or service, an employee must swear or affirm in writing that they have not been disqualified from employment or service under section 6344(c) or has not been convicted of an offense similar in nature to a crime listed in section 6344(c) under the laws or former laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, or under a former law of this commonwealth.