

Background Checks and Pennsylvania Act 153 of 2014 Compliance

Frequently Asked Questions

1. What is Pennsylvania Act 153 of 2014?

Pennsylvania's Act 153 was part of a set of laws passed by the state legislature designed to strengthen protections for children in the Pennsylvania Child Protective Services Law (CPSL). Generally speaking, Act 153 requires that "School Employees" who have "Direct Contact with Children" (as such terms are defined in Act 153) are subject to certain requirements as a matter of state law, including completing three required criminal background checks:

- Pennsylvania State Police Access to Criminal History ("PATCH" or Act 34 Background Check)
- Pennsylvania Department of Human Services Child Abuse History Clearance (Act 151 Child Abuse Background Check)
- Federal Criminal History Record Information (Act 24 Federal / FBI Criminal History Background Check)

In connection with the enactment of Act 153, Lehigh University adopted [a Protection of Minors Policy \(as amended or modified from time to time, the "Policy"\)](#). The Policy, among other things, establishes the University's rules and regulations regarding required criminal background checks regarding contact with minors.

2. What is the background check process?

Information on the background check process is available on the [Human Resources website](https://hr.lehigh.edu/required-criminal-background-checks) at <https://hr.lehigh.edu/required-criminal-background-checks>.

The University has contracted with a vendor, CBY Systems, to administer the background check process and University will pay for employee's background checks. Employees intending to comply with the law as it relates to their University employment should not complete the background check process on their own (i.e., with a different vendor or without involvement from appropriate University office. Rather, University employees should work with CBY Systems as well as the appropriate University office: HR (for staff), the Provost's Office (for faculty members hired on or after January 1, 2015) or the Office of the General Counsel (for faculty members hired before January 1, 2015)).

3. For whom must background checks be completed?

Faculty and Staff: The Policy, which was adopted by the Board of Trustees at its May 2016 meeting, required that all then-current and new faculty and staff members complete the background check process by May 17, 2017. In response to concerns and questions raised by faculty and staff concerning mandatory criminal background checks of all University employees, the Board of Trustees amended the Policy such that faculty and staff hired before January 1, 2015 may choose to complete only the Pennsylvania Access to Criminal History background check (PATCH) and the

Act 151 Child Abuse Background Check and do not need to complete the FBI fingerprint check IF ALL of the following three prerequisites are met:

- A. The faculty or staff member does not have “direct contact with minors” as defined in the Policy; AND
- B. The faculty or staff member has been a Pennsylvania state resident for the entirety of the past 10-year period, or, if they have not been a Pennsylvania state resident for the entirety of the past 10-year period, they have completed a full background check certification (i.e., all three checks listed above, including the FBI fingerprint check) at any time since establishing Pennsylvania residency and can provide such certification to the University; AND
- C. The faculty or staff member swears or affirms in writing that they have not engaged in any of the conduct that disqualifies a person from activities having “direct contact with children” pursuant to Act 153, including being arrested for or convicted of certain criminal offenses or being named in a statewide database as the perpetrator of a founded child abuse report committed in the past five years.

Student Employees: To the extent that University students who are appointed or hired into University employment positions (including Gryphons, Research Assistants, Graduate Assistants, and Teaching Assistants) have Direct Contact with Minors, those students must complete the background check process.

Contractors: The University also requires by contract that its vendors and independent contractors that provide services to and interact with minors on campus complete the background check process.

4. I do not work with minors. Must I still complete the background check process?

Yes, if you are a Lehigh faculty or staff member, you must complete the background check process. However, if you are a faculty or staff member hired before January 1, 2015, you may not need to complete the FBI fingerprint check. See #3 above for details.

5. Who will have access to my background checks?

University policy and state and federal laws recognize an individual’s right to privacy and prohibit University employees from accessing, using, or disclosing an individual’s personal information except within the scope of their assigned duties or as otherwise required by law.

As was the case prior to the passage of Act 153, background checks completed for staff members will be received and reviewed on a confidential basis, and retained in a confidential manner, separate from the staff member’s personnel file, by Human Resources.

Background checks for faculty members who were hired before January 1, 2015 will be received and reviewed on a confidential basis, and retained in a confidential manner, separate from the faculty member’s personnel file, by the Office of the General Counsel. Background checks for faculty members hired on or after January 1, 2015 will be received and reviewed on a confidential basis, and

retained in a confidential manner, separate from the faculty member's personnel file, by the Provost's Office.

In the event that a background check of a prospective faculty or staff member indicates an arrest or conviction that necessitates action (i.e., action affecting a hiring decision), then the Office of Human Resources (for staff hires) or the Office of the Provost (for faculty hires) shall refer such record to and consult on a confidential basis with the General Counsel.

In the event that a background check of a current Lehigh faculty or staff member indicates an arrest or conviction that necessitates action (i.e., affecting a current employee's status such as requiring discipline, suspension, or other action including but not limited to termination), then the General Counsel shall consult on a confidential basis with the Provost (in the case of current faculty) or the Associate Vice President of Human Resources (in the case of current staff).

You may also be interested in reviewing Identogo's Privacy Policy, which is available on their website at <https://www.identogo.com/legal/privacy-policy>. Identogo is the company that administers the fingerprint process in Pennsylvania and a number of other states which is required as part of the Federal Criminal History Record Information clearance.

6. What if a background check reveals a report of child abuse or other criminal record?

In some instances, Pennsylvania law requires that being named in a statewide database as the perpetrator of a founded child abuse report or a conviction for certain offenses prohibits the hiring of an applicant for employment in a position that has Direct Contact with Minors, and requires immediate dismissal of an employee from a position that has Direct Contact with Minors. As of the date this FAQ was published, the Pennsylvania Child Protective Services Law provides that hiring into such a position is prohibited, and immediate dismissal from such a position is required, for convictions for the following offenses (or equivalent offenses under federal law or the law of another state):

- An offense under one or more of the following provisions of Title 18 of the Pennsylvania Consolidated Statutes:
 - Chapter 25 (relating to criminal homicide)
 - Section 2702 (relating to aggravated assault)
 - Section 2709.1 (relating to stalking)
 - Section 2901 (relating to kidnapping)
 - Section 2902 (relating to unlawful restraint)
 - Section 3121 (relating to rape)
 - Section 3122.1 (relating to statutory sexual assault)
 - Section 3123 (relating to involuntary deviate sexual intercourse)
 - Section 3124.1 (relating to sexual assault)
 - Section 3125 (relating to aggravated indecent assault)
 - Section 3126 (relating to indecent assault)
 - Section 3127 (relating to indecent exposure)
 - Section 4302 (relating to incest)
 - Section 4303 (relating to concealing death of child)
 - Section 4304 (relating to endangering welfare of children)

- Section 4305 (relating to dealing in infant children)
 - A felony offense under Section 5902(b) (relating to prostitution and related offenses)
 - Section 5903 (c) or (d) (relating to obscene and other sexual materials and performances)
 - Section 6301 (relating to corruption of minors)
 - Section 6312 (relating to sexual abuse of children)
 - The attempt, solicitation or conspiracy to commit any of the offenses set forth above.
- A felony offense under the Act of April 14, 1972 (P.L. 233, No. 64), known as “The Controlled Substance, Drug, Device and Cosmetic Act” (35 P.S. 780-101 *et seq.*), as amended, committed within the prior five (5) years.

In addition, the University reserves the right to make hiring, employment, discipline, or termination decisions based upon arrests or convictions of other criminal offenses in accordance with procedures and criteria set forth in the Policy.

7. How often must I complete the background checks?

Background checks must be completed upon hiring and every five years thereafter. The University will advise faculty and staff members when they must renew their background checks.

8. May I refuse to complete the background check process?

No. Completion of the background check process is mandatory. Successful completion of the background check process is a condition of being hired by and of continued employment with the University, subject to any applicable waiver (see #3 above for details).

9. Who pays for the checks?

For new and current employees (other than student employees), the University will cover the cost of checks required by law or University policy. For programs involving students and volunteers, program directors may be asked to cover the costs of background checks for those students and volunteers.

10. Must student employees complete the background check process?

To the extent that University students who are appointed or hired into University employment positions (including Gryphons, Research Assistants, Graduate Assistants, and Teaching Assistants) have Direct Contact with Minors, those students must complete the background check process.

11. How does this law and policy affect new hires from outside of Pennsylvania and outside of the United States?

With the exception of some J-1 visa holders, out-of-state and international hires are treated the same as Pennsylvania residents and must complete the background checks. If completion of the entire background check process by international or out-of-state hires is impossible or impractical

(e.g., due to lack of a U.S. address or the unavailability of COGENT fingerprint sites nearby) before the individual arrives on campus, the new faculty or staff hire should begin the online process as directed and may be permitted to complete the portions of the background check process after arriving in the U.S. or on campus for employment at Lehigh.

12. If I have already completed the required background checks, can I submit copies of the required clearances?

Yes, if you have previously completed the required background checks, you may submit copies of the results of those checks, provided that the results are no more than five years old and you certify that the results remain accurate. Note, however, that you cannot submit “unofficial” results of the fingerprint clearance. Also note that Pennsylvania does not permit employers to accept Pennsylvania child abuse history certifications and PATCH checks obtained for volunteer purposes; such checks can only be used for other volunteer activities.

13. Must I complete the process if I only teach graduate students? If I only teach online courses?

Yes, you must complete the background check process. However, if you are a faculty or staff member hired before January 1, 2015, you only teach graduate students and you do not otherwise have Direct Contact with Minors, you may not need to complete the FBI fingerprint check. See #3 above for details.

Pennsylvania law and the Policy do not distinguish among instruction delivery methods. As such, even if a faculty or staff member’s Direct Contact with Minors is only via online course instruction, that faculty or staff member must complete the background check process, including the FBI fingerprint check.

14. Whom should I contact if I am having trouble completing the background check process or if I have any other questions?

If you need any assistance while completing the background check process, please direct any questions to the University’s background agency, CBY Systems, Inc. at [717-843-8685](tel:717-843-8685) or by e-mail at mvo@cby.com. If you have any other questions or concerns, staff members may contact Human Resources at 610-758-3900 or by e-mail at inhro@lehigh.edu, and faculty members may contact the Office of the Provost at 610-758-3605 or by e-mail at inact153@lehigh.edu. Faculty members hired before January 1, 2015 may contact the Office of the General Counsel at 610-758-3572 or by e-mail inogc@lehigh.edu.