

Background Checks and Pennsylvania Act 153 of 2014 Compliance

Frequently Asked Questions

1. What is Pennsylvania Act 153 of 2014?

Pennsylvania's Act 153, which took effect on December 31, 2014, 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). Act 153, which has since been amended by PA House Bill 1276 – see Section 3 below - requires that all “School Employees” who have “Direct Contact with Children” are subject to certain requirements as a matter of state law. Before stating those requirements, it is essential to understand the following Act 153 definitions:

- Act 153's definition of “Child” is any individual under age 18 (with no exclusion for matriculated college and university students). This definition has been amended (see below) to exempt matriculated college and university students.
- “School” includes private colleges and universities.
- “School Employee” is any individual employed by a school or providing a program, activity, or service sponsored by a School. This term excludes only individuals who have no “Direct Contact with Children.”
- “Direct Contact with Children” means the “care, supervision, guidance or control of children and routine interaction with Children.”

Pursuant to Act 153, all School Employees:

- Are “Mandated Reporters” who must report incidents of suspected child abuse to the Commonwealth and the University; and
- Must complete three (3) 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)

2. What is Pennsylvania House Bill 1276?

House Bill 1276 (HB 1276) is an amendment to Act 153 that took effect on July 1, 2015. HB 1276 clarified the law such that, among other things, a number of University faculty and staff no longer are subject to Act 153's background check requirements. Significantly, HB 1276 modified Act 153's definition of “child” such that matriculated Lehigh students and those prospective students visiting our campus are exempted from this definition.

3. What is the background check process?

Information on the background check process is available on the Human Resources website 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 an 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 HR, the Provost's Office or the Office of the General Counsel).

4. For whom must background checks be completed?

Faculty and Staff: The University's revised Protection of Minors Policy (the "Policy"), adopted by the Board of Trustees at its May 2016 meeting required that all 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 PATCH and 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 Protection of Minors 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 been convicted of any of the 22 criminal offenses that disqualify a person from activities having "direct contact with children" pursuant to Pennsylvania Act 153, nor have they been convicted of any offense similar in nature to the Act 153 disqualifying crimes under laws of any other state or past laws of Pennsylvania.

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 will also be requiring by contract that its vendors and independent contractors that provide services to and interact with minors on campus complete the background check process.

5. In light of HB 1276, will the Protection of Minors Policy be revised?

The Protection of Minors Policy is currently being revised to reflect the amendments adopted by the Board of Trustees at its May 2016 meeting as described in #4 above.

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

Yes, 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 #4 above for details.

7. Who will have access to my background checks?

It is important to note that University policy and state and federal laws recognize an individual's right to privacy and prohibit University employees from accessing, using, or disclosing personal information except within the scope of their assigned duties.

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 current faculty members (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 after January 1, 2015 and in the future 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 faculty or staff member hired after January 1, 2015 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 and consult on a confidential basis with the General Counsel.

In the event that a background check of a current Lehigh employee 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 3M Cogent's Privacy Policy, which is available on the HR website (<https://hr.lehigh.edu/required-criminal-background-checks>). 3M is the company that administers the fingerprint process in Pennsylvania and a number of other states that is required as part of the Federal Criminal History Record Information clearance.

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

In some instances, Pennsylvania state law requires that a conviction of 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. The Pennsylvania Child Protective Services Law provides that hiring into such a position is prohibited, and immediate dismissal from such a position required, for convictions of 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 15, 1972 (P.L. 233, No. 64), known as “The Controlled Substance, Drug, Device and Cosmetic Act” (35 P.S. 780-101 *et seq.*) 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. Such decisions will be made by conducting an individualized assessment, using criteria relevant to other applicable legal requirements and the identification of potential risks to minors, to make a determination of approval or disapproval of the hiring, or, in the case of a current employee, whether action is required, including but not limited to termination of employment in accordance with applicable University policies and procedures, including, with respect to faculty, the Rules & Procedures of the Faculty. Criteria to be utilized in making such determinations shall include, but not be limited to: the duties and responsibilities of the position for which a person has applied or which the employee occupies, whether the position has Direct Contact with Minors, the nature and grading (e.g., misdemeanor or felony) of any prior criminal arrest or conviction, repeat offenses or recidivism by the person, a person’s age or status as a juvenile when an offense was committed, the completion of any sentence resulting from a conviction, and the passage of time since the arrest or offense. Except as required by law, a prior arrest or conviction of a crime shall not automatically disqualify a person from being hired, continuing University employment, or participating in a University program. Any decision not to hire an applicant or to take employment action with respect to a current employee because of a past arrest or conviction for a criminal offense shall be made in a non-discriminatory manner in

compliance with: (a) the University's Policy on Harassment and Non-Discrimination, (b) applicable legal requirements prohibiting discrimination, and (c) applicable legal requirements relating to notice of adverse employment action and offering an opportunity to correct erroneous information.

9. How often must I complete the background checks?

Act 153 was revised in July 2015 to require that background checks be completed every five years. (Formerly, checks were required every three years.) The University will advise faculty and staff members when they must renew their background checks.

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

Completion of the background check process is not optional. Failure to complete the background check process is a condition of continued employment with the University.

11. 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.

12. Must student employees complete the background check process?

Currently, 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.

13. 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 similarly to 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.

14. 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 (5) 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.

15. 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 #4 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.

16. 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 or the Office of the General Counsel at 610-758-3572 or by e-mail inogc@lehigh.edu.