

ATLANTA REGIONAL WORKFORCE BOARD INSTRUCTION 12-09

DATE: August 25, 2012

SUBJECT: Policies Approved By Atlanta Regional Workforce Board, August 2012

PURPOSE: Distribute Three Approved Policies to Career Resource Center Staff and Youth Providers

- (1) Background Checks and Drug Screening
- (2) Commercial Truck Driver Training Customer Background Check Policy
- (3) Criminal Background Checks of Applicants for WIA-funded Training

REFERENCES: Training and Employment Guidance Letter 31-11 Regarding Exclusions Based on Criminal Records

BACKGROUND: To ensure ARWB Staff, Career Resource Center Staff and Youth Providers conduct activities using safeguards to prevent discrimination and promote employment opportunities for formerly incarcerated individuals and other individuals with criminal records.

POLICIES: New policies, attached, replace old policies

ACTION REQUIRED:

1. All staff implement the new policies approved, August 2012
2. All staff read and initial this SDA Instruction.
3. SDA Instruction 12-08 added to SDA Instruction File at Each Site

EFFECTIVE DATE: August 16, 2012



Mary Margaret Garrett
Chief, Workforce Development

MMG:at

Attachments: Background Checks and Drug Screening Policy
Commercial Truck Driver Training Customer Background Check Policy
Criminal Background Checks of Applicants for WIA-funded Training

cc: All WFD staff
All Career Resource Centers
Youth Providers

ARWB POLICY – Background Checks and Drug Screening – Approved August 2012

A background check and drug screen may be required and will be provided prior to training enrollment for individuals enrolling in WIA training programs such as truck driving, healthcare and education.

Background:

Individual training plans must address other occupational or industry related criteria that may preclude an individual from securing employment. Examples may include: driving record for individuals interested in commercial truck driver training; felony conviction or patterns of arrest or conviction for positions with education, IT, and healthcare; clean criminal background check for positions with the aviation industry etc.

In addition, many employers are asking applicants to submit to a drug screening prior to employment.

Due to several circumstances experienced at the Career Resource Centers, local staff have asked that the Board institute a policy regarding background checks and drug screening. Examples from our Career Center Managers include:

1. Customer indicated on his application that he had a felony conviction. He reported that he had a MBA and had worked for many years in the financial industry and wanted the financial planner program. After he was questioned about the nature of the offense, he told me that he had served time for embezzlement. I informed him that because of his felony conviction, he would not be marketable in the financial industry and we could explore other training programs. He was not interested and refused any other services.
2. Customer provided false information on her application regarding her criminal background. She completed the classroom portion of her training program and when the school placed her on an externship, it was discovered that she had a felony conviction and the school informed her she could not complete her externship. The school had to terminate her from the program and we are attempting to locate her to assist her in finding a job outside of the medical field.
3. Customer completed the Medical Assistant program and relocated to Florida. The school allowed her to complete the externship in Florida. We received a phone call from the school this morning and were informed that she cannot be placed because her background check shows offenses that will prevent her from working in the medical industry
4. Welding student with prior drug abuse history attended first term successfully then stated relapse and entered rehab, current WIA status-hold. Drug screen might have revealed issue prior to enrollment.
5. CNA/PCT student with shoplifting misdemeanor, charge not previously revealed now negatively impacting potential job placement.
6. WIA applicant requested pick-up for Early Childhood enrollment but was terminated from program due to prior simple battery charge revealed from program required background check, is now requesting WIA funding for criminal justice program.

Information on requiring background checks and drug screening

Background checks

- The following information can be obtained:
Verification of social security # and past addresses
Criminal and civil record searches

Driving and vehicle records
Credit history
Verification of education and past employment
Verification of professional licenses
Reference checks
Bankruptcy and workers' comp records
Military service records

- Information sought should be relevant to the purpose and must be kept confidential
- If requesting more than just general info (which is info concerning payment history, overall indebtedness, and addresses of record), must do the following:
 - have a written disclaimer that a background check will be done and get the individual to sign it
 - must adequately disclose to the individual that the background check may include in-depth information about his or her character, personal characteristics, mode of living, criminal, driving and work history, etc. This must be in writing, be mailed or otherwise delivered to the individual no later than 3 days after the report was first requested and include a statement informing the individual of his or her right to request additional disclosures and to receive a written summary of legal rights
- Before taking any adverse action based on a background check, must provide the individual with:
 - Notice of the adverse action
 - A copy of the report
 - A written statement of the individual's rights under the law
 - Name, address and telephone # of the consumer reporting agency that provided the background check
 - A statement that the consumer reporting agency did not make the adverse decision and cannot provide the individual with the specific reasons supporting the action
 - Notice of the individual's right to obtain a free copy of the consumer report
 - Notice of the individual's right to dispute the accuracy or completeness of the information contained in the report
- Background check cannot include medical information unless the individual specifically consents to disclosure; cannot include individual arrest information that predates the report by more than 7 years.

Drug Testing

- Although not required in the public sector, it's best to have a signed consent form
- Should make sure that the lab that will be conducting the testing uses a chain of custody procedure
- Must use testing methods that assure privacy and non-contamination of specimens
- Must confirm positive results with a second test, either the gas chromatography/mass spectrometry (GC/MC) method or an equivalent method
- Results must be kept confidential

**Commercial Truck Driver Training
Customer Background Policy – Approved August 2012**

Background: Commercial Truck Driving programs approved by the ARWB and are eligible providers on the statewide WIA Eligible Provider List offer a variety of training programs that prepare customers for taking and passing the Georgia commercial driving test. This industry has a common set of criteria for taking, passing the exam to obtain the commercial license, as well as general standardized industry criteria for employment within transportation industry as a “commercial driver”.

Minimum Program Requirements for Individuals Interested in Commercial Truck Driver Training funded through WIA and/or other grant specific programs:

1. Customer must be at least 21 years of age.
2. Customer must have a valid driver’s license for twelve (12) consecutive months.
3. The customer must have a DOT physical prior to the beginning of training. The medical facility must be independent of the truck driving school. A copy of the DOT physical form must be included with the request for training enrollment package.
4. A drug test must be conducted for all truck driving candidates before the start of training. A copy of the results must be submitted with the training request package.
5. A Motor Vehicle Record (MVR) report must be completed and included with the request for enrollment. The customer must have a current driving record that does not include any of the follow:
 - a. A DUI/DWI conviction within the last five (5) years. Please note many employers will not hire anyone with DUI/DWI within the last five (5) years.
 - b. A reckless or careless driving conviction within the last three (3) years.
 - c. More than three (3) moving violations within the last three (3) years.
 - d. More than two (2) “at fault” accidents within the last three (3) years.
 - e. More than two (2) moving violations and one (1) “at fault” accident within the last three (3) years.
 - f. A conviction of a felony involving the use of a motor vehicle.
6. The customer may not been convicted of a violent felony within the past ten (10) years and five (5) years non-violent felonies and misdemeanor drug and alcohol convictions. All convictions will be determined on a case by case basis.
7. The customer should have had steady employment for the three years prior to the date of their application for services which can include attending school and searching for employment. If not, they would need to be prepared to provide documentation of their whereabouts during this time.



The Atlanta Regional Workforce Board may conduct criminal background checks of applicants for employment and training activities funded by the Workforce Investment Act. The purpose is to ensure that applicants can be advised regarding employment opportunities which may not be available for certain careers.

A book containing Georgia codes is available in ARWB Career Resource Centers to applicants who may have questions regarding careers where they would have likelihood for employment consideration after successfully completing a skills training course.

The United States Department of Labor Employment and Training Administration issued Training and Employment Guidance Letter No. 31-11, May 25, 2012. "Update on Complying with Nondiscrimination Provisions: Criminal Record Restrictions and Disparate Impact Based on Race and National Origin."

Training and Employment Guidance Letter (TEGL) 31-11 is issued to provide information about exclusions based on criminal records, and how they are relevant to the existing nondiscrimination obligations for the public workforce system and other entities that receive federal financial assistance to operate Job Banks, to provide assistance to job seekers in locating and obtaining employment, and to assist employers by screening and referring qualified applicants. As explained in this TEGL, restrictions based on criminal history records may have a disparate impact on members of a particular race or national origin, in violation of federal antidiscrimination laws.

Title IV of the Civil Rights Act of 1964, as amended applies to employers with 15 or more employees and prohibits employment discrimination (both disparate treatment and disparate impact) based on race, color, religion, sex, or national origin.

Covered Entities Should Conduct Their Activities Using Safeguards to Prevent Discrimination and Promote Employment Opportunities for Formerly-Incarcerated Individuals and Other Individuals With Criminal Records.

ARWB Career Resource Centers will:

1. Follow EEOC Enforcement Guidance – Dated April 25, 2012 – A Summary and Best Practices from EEOC on Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 as amended

2. Provide Notice #1 for Employers Regarding Job Bank Nondiscrimination and Criminal Record Exclusion
3. Provide Notice #2 for Employers Regarding Job Postings Continuing Criminal Record Exclusions
4. Provide Notice #3 for Job Postings with Criminal Record Exclusions.
5. Provide Information Regarding Georgia Codes for Entering and Practicing Specific Careers to Applicants and Participants
6. Provide ARWB Statement Regarding CDL Training for Applicants with Felony Conviction
7. Ensure all customers have access to information in this book regarding the following careers:
 - a. Radiology Technologist
 - b. Certified Nurse Assistant
 - c. Respiratory Care – Other Healthcare
 - d. Registered Nurse
 - e. Licensed Practical Nurse
 - f. Medical Assistant
8. Training and Employment Guidance Letter 31-11

Approved August 2012