



UNIVERSITY PROCEDURES

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Procedures for Background Checks (Approved by President 8/27/08; revised 9/19/08)

The Office of Human Resources is ultimately responsible for appropriate background checks on candidates for employment and works with the hiring department to ensure verifications are performed and only appropriate job related criteria are considered in the hiring process.

1. The hiring department will submit Form A, *Request for Authorization to Fill Vacant Unclassified Position*, or the *Request to Fill a Classified Position*, and Position Description to Human Resources to initiate the hiring process.
2. Human Resources will determine whether a criminal and other extended background checks pursuant to law or University policy are required. The requirements will be identified in the Position Description and advertisement for the position.
3. The search committee will perform the initial screening process and make employment, educational and reference checks. All other University employment processes will be followed, including Equal Employment Opportunity responsibilities.
4. During the interview process, and prior to on campus interviews, the search committee will obtain the signed, written consent to perform a background check from candidates on the form provided by Human Resources. No background check or offer of employment shall be made prior to obtaining the signed consent form. Completed forms will be remitted to the Office of Human Resources.
5. After completion of the initial screening process, reference checks, and interviews the search committee will forward its recommendations to the hiring authority.
6. The hiring authority will select one finalist to make the offer for employment. Criminal and any other required background checks will be performed on the finalist. An offer of employment will be made in coordination with the Office of Human Resources and shall include notice of their contingency on successful completion of background checks.
7. Unless otherwise required by law or University policy, criminal and other extended background checks will not be made on candidates who are not extended an offer of employment.
8. Background checks shall be conducted prior to the first day of employment. Employment may not begin until the University has received the results of the background check and approved the candidate for hire.
9. Background Check Clearance Decisions
 - a. Classified positions: Human Resources shall be responsible for conducting the criminal background, sex offender check, and other checks required to be performed by Human Resources. The Director of Human Resources, or designee, shall provide a determination on the successfulness of the background check. Legal counsel may be consulted to determine the

candidate's appropriateness for employment. The hiring authority will be notified of the decision.

- b. Unclassified positions: Human Resources shall be responsible for conducting the criminal background, sex offender check, and other checks required to be performed by Human Resources. Results of background checks will be discussed among the Director, or designee, of Human Resources and the Vice President of the hiring unit, or President, as appropriate. Legal counsel may be consulted to determine the candidate's appropriateness for employment.
10. Legally required communications related to background checks, such as notice of pre-adverse and adverse decision letters, will be sent to candidates from the Office of Human Resources.

Determining the requirement to perform background checks:

1. Human Resources will make the determination based on a direct relationship to position duties of whether a particular position requires a background check and the nature and scope of such verification in conformity with University policy and legal requirements.
2. All limited term positions of more than six months will be contingent upon a successful criminal history check facilitated by the Office of Human Resources.
 - a. Certain positions, including but not limited to, temporary positions, student hourly positions, and limited term positions of less than six months are not subject to background checks, unless the position duties require background verifications.
 - b. International candidates: For candidates subject to this policy, if the candidate is living in the U.S. at the time of the employment process, or has been in the U.S. for more than 30 days during the last seven years, an U.S. background check will be performed in accordance with University policy. If the candidate has not yet immigrated to the U.S. and has not been in the U.S. in the last seven years, no U.S. background check is required.
3. Extended verifications shall be made as required by law or University policy for specific positions, including but not limited to those required for commercial driver's licenses.
4. Credit history checks will be performed for candidates for senior administrators of the university and for positions with extensive authority for committing financial resources and/or direct access to cash, checks, property disbursements, or receipts, as determined by Human Resources.

Relevance of Information in Hiring Process:

1. Criminal history information may be considered in the decision to hire an employee if it bears on the candidate's trustworthiness, or the safety or well-being of the

University's other employees, students or university community. (K.S.A. 22-4710) ESU policy does not automatically exclude from consideration for employment all individuals with criminal convictions. As part of the review, the following factors should be considered:

- a. Nature and seriousness of convicted offense,
- b. Number of offenses,
- c. Relationship between convictions and the position, and
- d. Accuracy of information.

Final candidates should be allowed to provide information regarding their criminal history such as rehabilitation, character references, length of time that has passed and other mitigating information. Candidates who provide false information forfeit their right to further consideration or employment.

2. Background information will be used only for the purpose of evaluating candidates for employment in designated positions and shall in no way be used to discriminate on the basis of age, race, color, religion, gender, marital status, national origin, handicap or disability, status as a Vietnam Era Veteran, sexual orientation, or any other factors which cannot lawfully be considered, to the extent specified by applicable federal and state laws.
3. Other background information may be considered in the decision to hire if it directly relates to the job duties of the position. Employment, education, and licensure requirements must be set forth in the position description and job announcement to be considered.
4. Background credit check information may be considered for senior administrators of the university and positions with extensive authority for committing financial resources and/or direct access to cash, checks, property disbursements, or receipts, as determined by Human Resources.

Fair Credit Reporting Act

1. Background credit check information may only be obtained and considered in conformity with the Fair Credit Reporting Act.
2. Initial notice of background checks shall be provided to candidates in connection with position advertisements and application.
3. The candidate will be provided with a Notification letter approved by Human Resources, which lets the candidate know a background check will be conducted and any offer of employment is conditioned on successful completion of such check. This letter will be provided at the time the disclosure form is signed and should be accompanied by the "Summary of Consumer Rights." A signed consent and disclosure form, approved by Human Resources, giving permission for procurement of a background check shall be obtained from the candidate prior to requesting a consumer credit report.

4. If the candidate requests in writing clarification of the information to be required under the background check, Human Resources will provide an accurate disclosure of the information received within five date of receipt of the request or procurement of the background check whichever is later.
5. If a hiring decision is made based on any information from a background check, a pre-adverse action letter must be sent to the candidate. The letter must contain a copy of the background report and another copy of the "Summary of Consumer Rights." The notice will include the name, address, and telephone number of the consumer reporting agency that furnished the report, a statement the consumer reporting agency did not make a decision to take adverse action, the consumer's right to a free credit report within 60 days and the right to dispute the accuracy of the report.
6. Notice of any adverse action must not be included in the pre-adverse action letter and must be transmitted in a separate communication.

Background Check Records

1. The Director of Human Resources, or designee, is the custodian of background check records.
2. Criminal history record information will not be made part of the candidate or employee's file or communicated to any unauthorized person.
3. Background check information will be held securely and confidentially, and not be made part of the candidate or employee's file or communicated to any unauthorized person.
4. The hiring authority is authorized to review background check information to the extent required to make a hiring decision for the candidate relative to the position in question.

All background check information will be destroyed by Human Resources in conformity with applicable laws and regulations.

Collection, Use and Protection of Social Security Numbers Policy Procedures (Approved by President 1/8/09)

Compliance

All Emporia State University employees will abide by the provisions of the *Collection, Use and Protection of Social Security Numbers Policy*, these procedures, and will act to ensure the security of SSNs.

Policy Procedures

1. Emporia State University does not use a SSN as the primary identifier of individuals associated with the institution. Emporia State University issues a unique identification number as an alternate to the SSN.
2. Emporia State University collects SSNs as permitted by law for official use within the contexts identified in *Collection, Use and Protection of Social Security Numbers Policy*, or when proper written permission is provided by the individual. Specific legal questions regarding the use or disclosure of SSNs should be presented to the University's legal counsel. As permitted by law, Emporia State University can release SSNs to an external entity when it is acting as Emporia State University's contractor or agent and has proper safeguards in place to prevent unauthorized release or discovery by third parties, to the extent permitted by law.
3. The Registrar and Director of Human Resources are designated the University SSN officers and oversee the security of the electronic and paper usage of SSN data within the Emporia State University computer systems and campus community. The Registrar and Director of Human Resources are charged with making day-to-day decisions to implement SSN usage policies as well as review of SSN usage and associated procedures.
4. Emporia State University controls access to all SSN data. Only approved university employees have access to SSN data. In order to be authorized to view and use electronic SSN data, approval must be obtained through the SSN appropriate SSN officer.
5. Emporia State University only transfers electronic SSN data through encrypted mechanisms, unless otherwise approved by SSN officer.
6. Emporia State University stores, displays and disseminates documents containing SSNs, both paper and electronic in a secure and authorized fashion. Non-essential documents are destroyed in a secure fashion in conformity with applicable record related policies.
7. Emporia State University requires approval from Registrar and/or Director of Human Resources prior to use of all university forms and documents that ask an individual to provide his or her SSN. All forms must use disclaimer language provided in these procedures.

Approved Disclosure Language

All Admission Application Statements:

Social Security Number: (optional)*

(Solicited per K.S.A. 76-725. Used as student identifier for records and accounts.)

*Required for awarding federal financial aid.

You must use your social security number as your identification number if you apply for federal or student aid (using FAFSA) and/or plan to take advantage of educational tax credit/incentives.

_____ I choose not to use my social security number. Assign me a number for identification purposes (statute K.S.A. 76-725)

Approved Admissions Clarification Language:

In the admissions and scholarship selection process, the social security number is used to assist in matching test scores and credentials of the applicants. The social security number is not a permanent student identifier, and it will not be required for student identification purposes. Students are issued a permanent ESU ID number which will serve as a unique identifier on campus. ESU will not disclose the social security number of any applicant to anyone except as allowed by law or with written permission from the individual. (Collection, Use and Protection of Social Security Numbers Policy).

Employee Notification

Social Security Number: (mandatory)

Solicited per K.S.A. 76-725. Used for tax withholding, record keeping, and government reporting.

Approved Employee Notification

Emporia State University is required by federal law to report all compensation of employees, including name and associated social security number to federal and state agencies. The social security number of an employee is not used as the primary identifier of the employee. An employee is issued a permanent ESU ID number which is used as the unique identifier on campus. ESU will not disclose the social security number of any applicant to anyone except as allowed by law or with written permission from the individual. (Collection, Use and Protection of Social Security Numbers Policy).

Affiliates Notification

Social Security Number: (optional)

Solicited per K.S.A. 76-725. Used for record keeping and mandatory reporting.

Approved Affiliate Notification

For individuals who are receiving any compensation Emporia State University is required by federal law to report the compensation, including individual name and associated social security number to federal and state agencies. The social security number of an affiliate is not used as the primary identifier of the affiliate. An affiliate is issued a permanent ESU ID number which is used as the unique identifier on campus. ESU will not disclose the social security number of any applicant to anyone except as allowed by law or with written permission from the individual. (Collection, Use and Protection of Social Security Numbers Policy).

Procedures for the Employment of Foreign Nationals (Approved by President 08/02/2010)

Emporia State University Policy Employment of Foreign Nationals allows for University support of employment based petitions and applications for certain immigration documents in order for lawful employment of foreign nationals by the University. The general procedures to follow under that policy section are set forth herein.

A. General

1. Departments which anticipate foreign national applicants for job openings should contact Human Resources, the Office of the Provost and V.P. for Academic Affairs and Student Life, the Office of General Counsel, and International Education for guidance. Working closely with these departments will help ensure that federal law is followed and the potential employee can lawfully begin work on the date offered.
2. During recruitment interviews, candidates should only be asked lawful questions. The search EEO monitor will provide a list of appropriate questions. Generally, inquiries should not be made about employment eligibility before making an offer of employment.
3. Upon hiring, a foreign national may need employer sponsorship to work for ESU. If the applicant asks for sponsorship of a Visa or Permanent Residence (“Green Card”), then they have opened the door to discuss their status. All job offers are made subject to authorization to work in the U.S. ESU will not knowingly employ or continue in employment, individuals who do not meet the requirements of federal laws pertaining to immigration and naturalization. All faculty and staff must complete a Form I-9 in the presence of designated representative of ESU within 3 days of commencing employment. Failure to do so will result in termination of employment.
4. The hiring unit cannot and must not promise permanent residency or guarantee a Visa.
5. Documentation of support of Permanent Residency and Visas must reside in the Office of the Provost and Vice President for Academic Affairs and Student Life for a period of 5 years from the date of filing a petition.
6. General Counsel will not provide legal advice to the foreign national employee.

B. Temporary Work Authorization

1. The Office of the Provost and V.P. for Academic Affairs and Student Life handles the University’s duties related to H-1B and other temporary employment-related statuses. The Office of International Education handles documents for student workers. The respective office will begin working with appropriate parties upon receiving a copy of the signed offer letter, which sets forth the terms and conditions of employment, and approval from the respective Dean or Director and Vice President.
2. Emporia State University only pays the legally required fees and expenses related to temporary employment based petitions.
3. The foreign national is responsible for enlisting his or her own outside counsel for H-1B or other temporary employment based petitions.
4. Any representations made by privately retained counsel concerning the University must be approved by the Office of General Counsel. No University employee or privately retained attorney may sign documents related to an immigration filing without the approval of the Office of General Counsel. If the University obtains outside counsel to

handle and/or assist the University with H-1B or other temporary petitions, the University will only pay the attorney fees and expenses it incurs. Invoices are subject to review by University General Counsel.

5. Emporia State University will not be responsible for employee's personal or other immigration fees and expenses, including such items as costs associated with personal petitions and dependent petitions.

C. Permanent Residency ("Green Card")

1. The Office of the Provost and V.P. for Academic Affairs and Student Life handles and coordinates employer-related aspects of employment based Permanent Residency for foreign nationals employed by ESU. The process begins upon submission of a signed offer letter, specifying the terms and conditions of employment by the foreign national to their Dean or Director along with a written request for support. The request must be approved by the Dean or Director and the V.P. of the area. The approved request is then submitted to the Office of the Provost and V.P. for Academic Affairs and Student Life.
2. Emporia State University only supports employment based Permanent Residency petitions that meet the eligibility requirements of University policy and state and federal law.
3. Emporia State University will only be responsible for fees and expenses which are legally required to be paid by the employer. All other fees and expenses are the responsibility of the employee.
4. The Office of General Counsel coordinates the hiring of outside legal counsel for the University's responsibilities related to employment based immigration petitions and reviews invoices for related fees and expenses.
5. The employee is responsible for hiring independent legal counsel to represent him or her in the immigration petition.
6. Any representations made by privately retained counsel concerning Emporia State University must be approved by the Office of General Counsel. No Emporia State University employee or privately retained attorney may sign documents related to an immigration filing without the approval of the Office of General Counsel. The Provost and V.P. for Academic Affairs and Student Life is designated as the signatory to sign all outside attorney representation forms which enable the designated legal counsel to represent the University in support of an institutional immigration petition, after review by General Counsel.
7. Personal petitions for immigration may be pursued with outside legal counsel by the employee, but guidance will not be provided by the University.
8. Teaching Positions
 - a. The Dean or Director must approve requests for employment based Permanent Residency petitions prior to submission to the Office of the V.P. for Academic Affairs and Student Life.
 - b. University sponsorship of a foreign national for Permanent Residency normally requires the employing department to determine whether the position is a tenure track position. Timing of immigration issues requires this determination before tenure determination are usually made. The recommendation that the individual is eligible for a tenure track must be made to the Office of the Provost and V.P. for Academic

- Affairs and Student Life. The office will review recommendations of why normal procedures cannot be made on a case by case basis. The foreign faculty member's ability to apply for Permanent Residency shall never be seen as a determination of the faculty member's eligibility or qualification for tenure.
- c. Minimum qualifications for University consideration sponsorship of Permanent Residency petition:
 - i. Position must be full time and permanent under Department of Homeland Security definitions.
 - ii. For "special handling" as a teaching position, the position must include face to face classroom teaching and be a registered course with the employee as instructor of record.
 - iii. The position must have been advertised in a national print journal or publication in conformity with federal law.
 - iv. The original offer letter from the University must have been within the time period required by federal law.
 - v. The head of the employing unit and Dean or Director must sign the request to process and forward it to the Office of the Provost and V.P. for Academic Affairs and Student Life. The request to process and all supporting documents must be received by the Provost and V.P. for Academic Affairs and Student Life Office before a formal review will begin.
 - d. Departments are strongly encouraged to perform preliminary inquiry with the Office of the Provost and V.P. for Academic Affairs and Student Life, Human Resources, General Counsel's Office and any other related offices to discuss details of the process, review basic requirements, and assess employee's eligibility for university support before giving the employee an indication that permanent residency will be pursued.
 - e. Applications for faculty and researchers who meet the criteria for "Outstanding Researcher or Professor" as defined by the Department of Homeland Security will also be handled by the Provost and V.P. for Academic Affairs and Student Life Office. Scholars must document they are recognized internationally as outstanding in a specific area; have 3 years experience in teaching or a permanent research position. Outside counsel must be approved by the Office of General Counsel and the Office of the V.P. for Academic Affairs and Student Life.
9. Staff and Non Teaching Faculty
- a. Staff members must have completed their probationary employment period and become permanent and have been employed at the University for a minimum of twelve (12) consecutive months before Emporia State University will consider a request to support an employment based Permanent Residency petition. If a petition is required before this period has ended, a specific authorization for support must be made by the hiring department, the Dean, Director and/or the V.P. of that area with specific information why the normal process cannot be followed. This information must be forwarded to the Office of the Provost and V.P. for Academic Affairs and Student Life, which will review the requests on a case by case basis.
 - b. After this preliminary review, the Office of General Counsel will review the request to ensure institutional policy and DOL recruitment procedures are followed. This

- may be in conjunction with university retained outside counsel at the discretion of General Counsel and the Provost and V.P. for Academic Affairs and Student Life.
- c. Minimum qualifications for University consideration sponsorship of Permanent Residency petition:
 - i. Position must be full time and permanent under Department of Homeland Security definitions.
 - ii. The foreign national must have been employed by the University in a professional position in the sponsoring department and obtained permanent status. The individual must have been employed full time in the position for no less than twelve (12) consecutive months prior to submitting the request to the Office of the V.P. for Academic Affairs and Student Life.
 - iii. The department must have at least 36 months of expected future funding for the position as verified by the Dean or Director of the unit.
 - iv. The head of the unit must approve the request for support.
 - d. Employer portions of the Permanent Residency process ETA 9089, Application of Alien Employment Certification, and Form I-140, Immigration petition. Employer portions do not include Form I-485 or Form DS-230, Application for Immigrant Visa. Upon approval of Form I-140 by USCIS, the foreign national employee is responsible for Form I-485 or DS-230 with the appropriate government agency within the appropriate time period.
 - e. In the event ESU enlists counsel to assist with ETA 9089 or I-140, the University will be responsible for those related attorney's legal fees and expenses. Except in certain circumstances, the University shall not be responsible for other costs and fees.
 - f. In cases where the foreign national obtains their own counsel, the University will not pay legal fees or expenses beyond those required by law.
 - g. Non teaching positions will be handled by outside counsel unless meeting "Outstanding Professor or Researcher" or other special excepted designation.

Procedures for Patents (approved by President 2/18/2011)

Note: The University Office of General Counsel is involved at all levels of the patent process. To the extent allowed by law, all disclosures remain confidential trade secret information throughout the process until public disclosure is made by the University (in the case of University owned intellectual property) or by the inventor (for inventor owned intellectual property).

Step I: Pursuant to University Policy Section 3E.04, the faculty member notifies the Research and Grants Center of the invention, and the faculty member completes the *Invention Disclosure Form*. This form is transmitted with the notification of invention to the Chair of the Faculty Research and Creativity Committee.

Step II: The Chair of the Faculty Research and Creativity Committee forms an Invention Review Subcommittee consisting of the Chair and two other committee members. In cooperation with University Office of General Counsel, the Invention Review Subcommittee consults Emporia State University and Kansas Board of Regents policy on ownership rights to determine ownership interests. University General Counsel may consult with or engage a patent attorney as needed. The Invention Review Subcommittee, in cooperation with University General Counsel, evaluates the invention quickly for general patent feasibility and marketability.

Step III: The Invention Review Subcommittee makes a recommendation on ownership and patent feasibility and marketability to the Emporia State University President who has the final decision authority.

Step IV: The University President's decision is sent by letter to the inventor, with a copy to the Chair of the Faculty Research and Creativity Committee, who then shares it with the Invention Review Subcommittee.

Step V: Timely and appropriate notifications must be made to any funding agency (if applicable).

Step VI: If the University is pursuing a patent for the invention, the inventor will continue to work with the Invention Review Subcommittee, University General Counsel, and other University approved parties throughout patent, development and commercialization processes. The University President will be the final decision-maker for the University at each stage of the process and will be briefed by the Invention Review Subcommittee Chair and/or University General Counsel. If the University releases ownership to the inventor, the inventor is free to pursue a patent and associated development independent of the University.