



Background and Criminal History Check Requirements #1710.257

INITIAL EFFECTIVE DATE: March 31, 2009	LAST REVISION DATE: October 20, 2021	RESPONSIBLE UNIVERSITY DIVISION Talent Acquisition and Management Division of Human Resources
--	--	--

POLICY STATEMENT

Florida International University (FIU or the University) strives to maintain safe learning and working environments for all students, faculty, staff, volunteers, and visitors. FIU is a unique environment due to its public nature which generally provides open access for people to learn and work, housing for students, various types of research, and maintains its own police force. Backgrounds checks address concerns about providing a safe environment through minimizing negligent hiring risks (e.g., avoid hiring individuals with a proven tendency to defraud or steal from their employers, who engage in workplace violence or criminal violence, or who otherwise appear to be untrustworthy and unreliable) and/or reducing time wasted in recruiting and training the wrong candidate.

Background investigations will be conducted based on the job-related requirements and consistent with business necessity and Florida Statute Section 110.1127. The successful passing of all applicable background checks, including mandatory pre-employment I-9 and E-Verify, is a condition of employment and/or continuing employment. Florida Statute Section 435.05(2) requires all employees to attest or swear, subject to the penalty of perjury, that they meet the requirements for qualifying for employment pursuant to Chapter 435 of the Florida Statutes and must agree to inform the University immediately if arrested for any disqualifying offense(s) under Chapter 435.

SCOPE

This policy applies to the following groups:

- *new hire* final candidate;
- rehire of former employee after a *break in service*;
- current employee
 - promoted or transferred into a new position and/or has new duties assigned associated with required checks;
 - with assigned duties requiring periodic rechecks;
 - arrested by law enforcement on or after July 1, 2019.



Based upon *position-related duties*, this policy shall apply to Student Assistants, Federal Work Study, Graduate Assistants, Volunteers, and some contractors. Students admitted to/enrolled in University courses at FIU are not considered *minors* for the sake of this policy.

Background checks will not be conducted unless the person is the *finalist* for a position, has accepted a conditional offer issued through FIU HRIS Recruitment System, and timely submits required information to FIU and the background check vendor authorized by the Division of Human Resources.

No work or volunteer services may begin until notification of clearance is received from the Department of Talent Acquisition and Management in the Division of Human Resources.

REASON FOR POLICY

The policy is to ensure that the University conducts appropriate background investigation of prospective and current regular full-time, part-time or temporary employees and to ensure all current employees meet the requirements for employment set forth in Chapter 435 of the Florida Statutes. Each Business Unit has responsibility to ensure that position descriptions, job postings, requests for posting waivers, promotions, and reclassified positions accurately reflect the duties necessary to complete all appropriate background checks.

DEFINITIONS

TERM	DEFINITIONS
Adverse Action (Includes Pre-Adverse Action)	A decision by the University not to proceed with the hiring process when a finalist does not successfully pass any of the required background checks that are governed by the FCRA. (The candidate will be notified if there is information contained in their background check that may negatively affect a decision about their employment.)
Arrest	A person has been arrested charged with criminal activity and the case is still pending adjudication (trial, plea bargain, etc.). Or a current employee has been arrested since July 1, 2019, requiring notification to ELR.
Break in Service	A separation of employment from the University. For purposes of this policy only, for a non-faculty position, Student assistants, Federal Work Study, and volunteers, a break-in-service is a separation of one (1) year or longer based from the date that the last applicable background check was conducted; for a faculty position, a break-in-service is a separation of three (3) consecutive semesters; and for all K-12, summer camp employees, and/or volunteers, a break-in-service is a separation of ninety (90) days.
Business Necessity	Those factors which are necessary for safe and efficient job performance.



DCF Clearinghouse	The Clearinghouse provides a single data source administered by the Agency of Health Care Administration (AHCA) for background results of person screened for employment or licensure that provide services to children, the elderly and disabled individuals.
Dual Enrollment	Gives students in public, private, charters schools and home education the opportunity to take FIU courses.
Drug Test	A chemical test of an individual's urine for evidence of the prohibited drug use.
Elderly	A person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.
E-Verify	E-Verify is a mandatory web-based system check required to confirm eligibility to work in the United States. No work may begin until notification by the Division of Human Resources that E-Verify and all background check requirement are successfully completed.
Expanded Position-Based Checks	Expanded Position-Based Checks are inclusive of all Standard Background checks, plus additional checks determined by job duties and/or sensitive location in accordance with Florida Statute 110.1127 and Chapter 435.
Fair Credit Reporting Act (FCRA)	A United States federal law (codified at 15 U.S.C. § 168 et seq.) that regulates the collection, dissemination, and use of consumer information, including consumer credit information.
Federal Work Study student	An individual who is a full-time or part-time student enrolled at FIU that has been awarded Federal Work Study funds as part of their Financial Aid Award package. The student must be enrolled for a minimum of six (6) credit hours in a course of study leading to a degree or a Financial Aid eligible certificate.
Finalist	An individual who is being recommended for hire and who must successfully pass the required background checks as a condition of employment.
Form I-9	All U.S. employers must properly complete Form I-9 for each individual they hire for employment in the United States. This includes citizens and noncitizens. Both employees and employers (or authorized representatives of the employer) must complete the form.
Global Watch	Comprehensive search required to comply with USA Patriot Act, Bank Secrecy Act, Politically Exposed Persons (PEP) Screening, Special Designated Nationals (SDNs), terrorists, organized criminals, money launderers, Office of Foreign Assets Control



	(OFAC), and includes many other terrorist and fraud searches from U.S. and Global official sanction and embargo lists. Lists are monitored and updated continuously, and notifications are provided of any new activity identified on any searched person.
Great Grand Master Key	This is a key that provides total access to all buildings within a particular campus except for student housing (which has its own building access system) master key for the entire campus.
Individualized Assessment	The steps taken when a finalist has a discrepancy on any background check which include notice to the individual about the findings, an opportunity for the individual to demonstrate that an exclusion should not be applied to him or her, and consideration by FIU as to whether any additional information provided by the individual warrants an exception to be made.
Internal Reference Checks	This involves reviewing the most current Performance Excellence Process (PEP) form for the finalists, and requesting relevant information from the most recent supervisor
Minor	A minor is any person under the age of 18 years old. Students admitted to/enrolled in University courses at FIU are not considered <i>minors</i> for the sake of this policy.
National Social Security Trace	A search involving a known Social Security number to identify records that include name variations (such as aliases, maiden, or previous names) and research all countries lived, worked, and went to school.
New Hire	An individual who has never had an employee-employer relationship with the University.
Position-Required Background Check	Background checks that are required because of the specific job duties of the position
Reference Checks	Three reference checks from previous employers are required, with at least two from former or current supervisors, externally and internally for current employees.
Safety-Sensitive Position for Certain Marine Employees	Any position (billet) aboard a vessel that requires the person filling that position to perform one or more safety-sensitive duties or operation of a vessel on either a routine or emergency only basis. Any person filling a safety-sensitive position is subject to U.S. Coast Guard drug and alcohol testing. All crew members that are responsible for the safe handling of passengers are considered to be filling safety-sensitive positions as well.
Special trust, responsibility, and sensitive location	Positions designated by the University as positions of special trust, responsibility, and/or sensitive location are subjected to background checks in accordance with Florida Statute 110.1127 and Chapter 435.
Special Risk Position	Any position which is certified under Chapter 943 of the Florida Statutes (i.e., certified law enforcement officers).



Standard Background and Criminal Checks	Standard checks for all positions in the scope of this policy include searches for criminal history at the national, federal, state and county levels and a check of the National Sex Offender database in accordance to Florida Statute 110.1127 and Chapter 435.
Student Assistant	An individual who is a full-time or part-time student enrolled at FIU and registered for a minimum six (6) credit hours as an undergraduate or three (3) credit hours as a graduate.
Volunteer	Uncompensated individuals who perform services directly related to the business of the University. If the service is required for coursework at FIU, the person is considered a student and not a volunteer. Volunteers are classified as either a “regular-service volunteer” or an “occasional-service volunteer.” Solely for purposes of this policy, guest speakers, members of alumni or advisory boards for colleges and schools, and University Board of Trustees are not included in the definition of volunteer.
Vulnerable Person	A person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

RELATED INFORMATION

Confidentiality of the Information

Although most information at FIU may be considered a public record, the University recognizes the sensitive nature of such information and will maintain all background investigation records as confidential within the Division of Human Resources (DHR) and/or the Human Resources Department of the Herbert Wertheim College of Medicine (HWCOM) to the extent permitted by law. Investigation results and any additional information will be viewed only by DHR, the HWCOM HR (as applicable), the Office of the General Counsel (as necessary), and any individual responsible for the final hiring decision (such as the Assistant Vice President of Human Resources). DHR will maintain responsibility for the facilitation, processing, review, and recordkeeping for all background investigations set forth in this policy.

Compliance with Applicable Laws

This policy complies with the provisions of the *Fair Credit Reporting Act (FCRA)*, the various anti-discrimination laws, and any other applicable law governing the use of background screens.



RELATED RESOURCES

1705.010 Recruitment and Selection Policy
1705/010a Recruitment and Selection Procedures
1705.017 External Volunteer Policy
540.005 Acquisition, Assignment and Use of University Vehicles Policy
1710.257(a) University Vehicles-Record Keeping/Review and Operating Requirements Policy
1710.349 Drug and Alcohol Policy and Procedures for Certain University Marine Employees
1710.155 I-9 Requirements Policy

CONTACTS

Talent Acquisition and Management
Division of Human Resources
Florida International University
11200 S.W. Eighth Street, PC 234
Miami, Florida 33199
Telephone (305) 348-2500

HISTORY

Effective Date: July 2005; Revision Date: March 31, 2009; August 17, 2016; Revised February 15, 2017 (formerly titled 1710.257 Pre-Employment Requirements); September 17, 2021; October 20, 2021.



Background and Criminal History Check Requirements #1710.257b

INITIAL EFFECTIVE DATE:	LAST REVISION DATE:	RESPONSIBLE UNIVERSITY DIVISION
March 31, 2009	October 20, 2021	Talent Acquisition and Management Division of Human Resources

PROCEDURES

The Department of Talent Acquisition and Management has oversight of all background checks for the University, including standard pre-employment background checks, expanded background checks, and recurring checks.

Standard Background Check

The standard background and criminal history check meet Level I criminal screening standards as defined in Chapter 435.03, Florida Statute 110.1127 and includes investigations of key factors used to confirm a finalist’s identity, education, work experience, and reference checks.

1. Social Security Trace;
2. County Criminal History search;
3. Florida Department of Law Enforcement (FDLE) statewide search;
4. National Criminal Database search;
5. Federal Criminal search;
6. National Sex Offender search;
7. *Global Watch* screening
8. Education verification;
9. Employment verification;
10. Reference and nepotism checks;
11. I-9 Form;
12. E-Verify;
13. Any other background check required by law.

Expanded Background Checks

The University also conducts Expanded Background Checks, which are performed in addition to the

Standard Background Checks. Security background investigations designated to meet Level II criminal standards are required for positions of *special trust*, as determined by position responsibility and duties and/or sensitive locations (Chapter 435.04).

1. Expanded nationwide criminal record investigation in accordance with state laws;
2. Notification of warrants or domestic violence injunctions;
3. Expanded federal criminal search using PACER database of court records;
4. An International Criminal History Background Check must be conducted if the finalist has resided in another country for 6 months or more within the past 7 years.

Positions of Special Trust:

1. Has unrestricted access to a *Great Grand Master key*;
2. Handles/manages cash, cash transactions, gift cards, debit/credit cards, and/or cash equivalent. See Payment Card Processing Policy No. 1110.025;
3. Works in Information Technology positions;
4. Works in the Athletics Department and travels with students to events;
5. Works directly with and/or resides with minors and/or *vulnerable persons*, including Housing and Residential Life employees;
6. Works in one of FIU's museums;
7. The Chief Financial Officer, Assistant Vice President/FIU Foundation, Treasurer, Controller, Director of Tax Compliance;
8. Any position managing major investments and/or donor portfolios;
9. Works in administration of Title IV Funds;
10. Works with any K-12 schools as required by state law.

Additional Position-Related Background Checks

Faculty (Including Adjunct and Visiting Instructors and Lecturers)

1. Credentialing by academic departments for evaluation and approval by Academic Affairs and/or University Graduate School is required for all faculty including adjunct and visiting instructors and lecturers;
2. Oral English language proficiency for all faculty members (except those who teach courses that are conducted primarily in a foreign language) as required by Florida Statute Section 1012.93;
3. License and/or certifications verification for those positions in which a license and/or certification is required or as noted in the job description.

Employees of the Herbert Wertheim College of Medicine (HWCAM), FIU Health (HCNET), the Center for Children and Families (CCF), Dietetics and Nutrition and/or the School of Social Work:

1. Monthly check of List of Excluded Individuals and Entities maintained by the Office of Inspector General (OIG).

2. Employees participating in the HWCOM Graduate Medical Resident program will be subject to the background screening process set forth in the GMR Manual

Employees of the FIU Police Department

1. Employees of the FIU Police Department are subject to the background screening process in conjunction with the Division of Human Resources as set forth in FIUPD SOP 6-29 Selection Process;
2. Credit Reports are required for University Law Enforcement Officers

Driving Duties/Assignments (Rechecked every 2 year):

1. A valid Driver's License may be posted as a minimum qualification for a position or may be required for an FIU employee who is assigned to drive a University vehicle (including a University golf cart) as a key part of their job assignment.
2. Motor Vehicle Records (MVR) checks are required at least every 2 years, or
3. When there is a report or observation indicating that a University employee is not operating a University vehicle safely.
4. Employees should notify the Division of Human Resources of any changes to their driver's license status.

FIU University Credit Card Holders (Rechecked every year):

1. A check of *Sanctions Screen is* required annually for any current employee who is applying for, or has been issued, an FIU University credit card;
2. International and national databases are searched, including Office of Foreign Assets Control (OFAC).

Mandatory-Testing Positions or Special Risk:

1. Drug Testing program(s) are required for positions that are considered mandatory-testing positions or special risk;

Chief Financial Officer, Assistant Vice President/FIU Foundation, Treasurer, Controller, and Director of Tax Compliance

1. Credit Reports are required for the designated financial responsibility positions.

Summer Camps

1. Background checks are completed through the Department of Children & Families (DCF) in the Clearinghouse system pursuant to [Section 409.175, Florida Statutes](#).

Other Determined Background Checks

1. Any other background check required by the position or as determined by the Director of Talent Acquisition and Management, Human Resources Division or designee based on job-related factors and consistent with business necessity; and/or
2. Any other background check required by law.

Fingerprinting

In addition to the expanded Level II criminal checks, certain positions require fingerprinting in accordance with Chapters 110.1127, 435, 408.89, and 943.0542. Fingerprinting is provided in locations throughout Florida for the following checks.

VECHS (Volunteer and Employee Criminal History Search)

1. VECHS-eligible programs require fingerprinting by the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI) to collect state and national criminal history record information on applicants, employees, and volunteers in Florida who are in positions performing specific duties for one or more vulnerable populations.
2. VECHS is *not* used for positions providing services to the general population or services such as summer camps or programs interacting with minors such as museum educational programs.
3. A position must be confirmed as eligible for VECHS prior to utilization of the search process by the Director of Talent Acquisition and Management and the FDLE in compliance with FBI authorization.
 - a. Center for Children and Families (CCF)
 - b. Children's Creative Learning Center (CCLC)
 - c. FIU Embrace

DCF (Department of Children and Families Clearinghouse)

1. Programs regulated by a Florida State agency participating in the DCF Clearinghouse require fingerprinting by FDLE, and submission of a photograph taken at the time of fingerprinting for Level 2 screening.
2. DCF Clearinghouse is used for the following:
 - a. Positions providing services to *minors*, the elderly, and disabled individuals in childcare centers;
 - b. Summer camps;
 - c. Health care clinics as required by Florida Statute Chapter 408.89;
 - d. Each DCF regulated program is issued a DCF account (OCA Number);

- e. Each summer camp has its own OCA number and is responsible for meeting all requirements of the DCF;
- f. A copy of the Clearance Certificate for each individual cleared through the DCF Clearinghouse must be provided to the FIU Background Check Coordinator in Talent Acquisition and Management before any work may begin.

Summary of Background Checks Requiring Periodic Re-screening

1. Expanded Background Checks will be repeated every five (5) years if the employee is designated for fingerprinting for VECHS or DCF Clearinghouse.
2. *Sanctions Screen* will be conducted annually for any employee who is required to have a University credit card issued to them and/or has responsibility for a merchant account, as required contractually by the bank.
3. List of Excluded Individuals and Entities maintained by the Office of Inspector General screen will be repeated monthly if the employee works for HWCOM, HCNET, CCF, Dietetics and Nutrition and/or the School of Social Work;
4. Motor vehicle record will be conducted at least once every two (2) years, or when there is a report or observation indicating that a University employee is not operating a University vehicle safely. Employees should notify the Department of Employee and Labor Relations of any changes to their driver's license status.
5. The Business Unit is responsible for any licensure checks for any position that requires that a license under the State of Florida be renewed on a periodic basis (e.g., practicing attorneys have yearly requirements).

Pre-Adverse Action and Individualized Assessment

The University complies with the federal *Fair Credit Reporting Act (FCRA)* and any applicable state and/or local laws when conducting background checks. FIU will disclose to all finalists its plans to obtain background checks and that the information will be used solely for employment purposes. FIU will obtain written authorization from the finalist. For any discovered discrepancy in an applicant or employee's background, the Division of Human Resources will conduct an individualized assessment which provides the individual with an opportunity to demonstrate that the discrepancy does not properly apply to him or her and/or to present relevant additional information regarding the discrepancy. The assessment will be based on job-related factors and business necessity.

Adverse Action

If the University determines it will be taking an adverse action based on the individualized assessment, the University will comply with the *FCRA*.

The University's Authority Regarding Employment Offers

The University reserves the right to make and/or rescind any offer of employment in its sole discretion. There is no appeal process if the University exercises its discretion.

Criminal Background Screening Responsibilities Under Florida Chapter 435

1. Responsibility of Recruiting Under Florida Chapter 435
 - a. For Levels I and Level II criminal background screening, Recruiting must submit the information necessary for screening to the Florida Department of Law Enforcement (FDLE) within five (5) working days upon receipt. Florida Statute Section 435.05(1)(a),(b). The University utilizes third-party background check vendor(s) to initiate all checks.
 - b. Recruiting will notify the person undergoing a background check about any missing information or other necessary information verbally and/or via email.
 - c. If Recruiting receives information that the screening has revealed disqualifying information, Recruiting will notify the person pursuant to this procedure.
 - d. Recruiting will submit to the agency annually or at least at the time of the license renewal, under penalty of perjury, a signed attestation attesting to compliance with Chapter 435. Florida Statute Section 435.05(3).

2. Responsibility of Person Who is Undergoing Background Screening Under Chapter 435
 - a. Any person being screened for Levels 1 or 2 must not have an arrest awaiting final disposition, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record has not been sealed or expunged, for, any offense prohibited by Florida Statute Section 435.04(2) (Disqualifying Offenses) or similar law of another jurisdiction. Florida Statute Sections 435.03(2), 435.04(2). This prohibition also applies to any offense that constitutes domestic violence as defined by Florida Statute Section 741.28, whether the act was committed in Florida or another jurisdiction. Florida Statute Sections 435.03(3).
 - b. A person undergoing the Chapter 435 background screening process must supply any missing criminal or other necessary information upon request to Recruiting within thirty (30) calendar days after being requested. Florida Statutes Section 435.05(1)(d).
 - c. Anyone refusing to cooperate in the screening or refuses to timely submit the information necessary to complete the screening, including fingerprints if requested, must be disqualified for employment in such position. Florida Statute Section 435.06(3).

3. New Hires hired on or after July 1, 2019

FIU has designated all hires as requiring either Standard or Expanded Background checks, which include criminal checks designed as Level I or Level II, depending on their job duties.

As a result, every employee must attest, subject to penalty of perjury, to meeting the requirements for qualifying for employment pursuant to Florida Chapter 435 and agreeing to inform FIU immediately (i.e., two business days) if arrested for any of the Chapter 435 disqualifying offenses while employed by FIU. Florida Statute Section 435.05(2).

a. All existing employees hired *before* the effective date of the statutory change (i.e., July 1, 2019) will be grandfathered in and will not be required to make this attestation.

b. Existing Employees Hired on or after July 1, 2019

All existing employees hired on or after July 1, 2019, will be required to complete the statutory attestation as part of the New Employee Certifications completed in PantherSoft. (See New Employee Certification Statement.)

4. Requirements Regarding Working with Vulnerable Persons

a. Hiring Process. An applicant for a position working with any vulnerable person (i.e., *minor* or vulnerable adult) may not be hired, selected, or otherwise be allowed to have contact with the vulnerable person until the screening process is complete and has demonstrated the absence of grounds for denial of employment. If there is a basis for denial of employment, the applicant may not be hired, selected, or have contact with any vulnerable person unless the employee is granted an exemption. Florida Statute Section 435.06(2)(a).

b. While Employed. If FIU becomes aware that an employee has been arrested for a disqualifying offense and is working with vulnerable persons, FIU will remove the employee from the position until the arrest is resolved in a way that FIU determines that the employee is still eligible for employment. Florida Statute Section 435.06(2)(b).

i. All current employees (including Temporary, Student Assistant, Federal Work Study, and Volunteers) must inform the Office of Employee and Labor Relations (ELR) within two (2) business days if arrested for felonies or first-degree misdemeanors in Florida, or the equivalent in another state.

ii. The employee must also notify ELR of the final disposition (e.g., case dropped, nolle prosequi, conviction) of their case within two (2) business days.

iii. For each circumstance, ELR will determine whether employment action is warranted such as placing the employee on administrative leave and/or taking disciplinary action, including the possibility of termination.

- iv. If the employee does not comply with the minimum standards of Chapter 435, FIU will either terminate employment unless an exemption from disqualification is granted. Florida Statute Section 435.06(2)(c).

5. Disqualification of Employment

If Recruiting has reasonable cause to believe that grounds exist for denying or terminating employment as a result of a background screen, Florida Chapter 435 requires that we do so in writing, stating the specific record that indicates noncompliance with the standards of Chapter 435. Florida Statutes Section 435.06(1). This requirement is in addition to anything required by the Fair Credit Employment Act (FCRA) or addressed by the Equal Employment Opportunity Commission (EEOC) in its guidance on background check screening. ELR will manage terminations of current employees.

- a. Contesting Disqualification An affected person may contest disqualification or request an exemption from disqualification.
- b. The only basis for contesting a Chapter 435 disqualification is mistaken identity. Florida Statute Section 435.07(1). This is a process that will be handled by third party vendor.

6. Requesting an Exemption from Disqualification

For purposes of this procedure, “felonies” mean both felonies prohibited under any Chapter 435 offense or under similar statutes of other jurisdictions. Florida Statute Section 435.07(1)(a), (b).

- a. Exemptions from Disqualification can be requested for:
 - i. Felonies for which at least three (3) years have elapsed since the application for exemption was completed or has been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
 - ii. Persons employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of crimes under s. [796.07\(2\)\(e\)](#), s. [810.02\(4\)](#), s. [812.014\(2\)\(c\)](#), s. [817.563](#), s. [831.01](#), s. [831.02](#), s. [893.13](#), or s. [893.147](#), or any related criminal attempt, solicitation, or conspiracy under s. [777.04](#), may be exempted from disqualification from employment pursuant to this chapter without application of the waiting period in subparagraph (1)(a)1.
 - iii. Misdemeanors prohibited under Chapter 435 or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been

- lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
- iv. Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has been completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
 - v. Findings of delinquency. For offenses that would be felonies if committed by an adult and the record has not been sealed or expunged, the exemption may not be granted until at least three (3) years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying offense.
 - vi. Exemptions granted by one agency shall be considered by FIU, but are not binding on by FIU.
- b. Exemptions from Disqualification can be requested for:
- i. Anyone applying for an exemption who was ordered to pay any fee, fine, fund, lien, civil judgment, application, costs of prosecution, trust, or restitution as part of the judgment and sentence for any disqualifying felony or misdemeanor must pay the court-ordered amount in full before he/she is eligible for an exemption.
 - ii. The applicant for exemption has the burden of proof and must provide clear and convincing evidence rehabilitation, including but not limited to, the circumstances surrounding the criminal incident for which the exemption is sought, the time period that has elapsed since the incident, the nature of the harm caused to the victim, and your history since the incident, or any other evidence or circumstances indicating that you will not present a danger if employed or allowed to continue employment. Florida Statute Section 435.07(3)(a). Evidence can include but is not limited to the documentation referenced on the Application for Exemption Form.
- c. Other Factors Which May Be Considered. FIU may consider any arrests or convictions subsequent to the conviction of the disqualifying offense for which the exemption is being sought even if that crime is not a disqualifying offense. Florida Statute Section 435.07(b).
- d. Deliberative Process.

- i. Process used for individualized assessment will be followed.

- e. Contesting FIU's Denial of the Exemption. An applicant for exemption may contest the denial of the exemption by using the hearing procedures set forth in Chapter 120, Florida Statutes. The standard of review by the administrative judge is whether FIU's intended action is an abuse of discretion. Florida Statutes Section 435.07(3)(c).

f. Disqualification Cannot Be Removed Under the Following Circumstances:

Anyone found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to, any felony covered by [Chapter 435](#) solely by reason of any pardon, executive clemency, or restoration of civil rights;

- i. Sexual predator as designated pursuant to s. 775.21;
- ii. Career offender pursuant to s. 775.261; or
- iii. Sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 943.04354.
- iv. Any current or prospective child care personnel, as defined in s. 402.302(3), and such a person is disqualified from employment as child care personnel, regardless of any previous exemptions from disqualification, if the person has been registered as a sex offender as described in 42 U.S.C. s. 9858f(c)(1)(C) or has been arrested for and is awaiting final disposition of, has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, or has been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or a similar law of another jurisdiction:

A felony offense prohibited under any of the following statutes:

- a) Chapter 741, relating to domestic violence.
- b) Section 782.04, relating to murder.
- c) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.
- d) Section 784.021, relating to aggravated assault.
- e) Section 784.045, relating to aggravated battery.
- f) Section 787.01, relating to kidnapping.
- g) Section 787.025, relating to luring or enticing a child.

- h) Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.
- i) Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.
- j) Section 794.011, relating to sexual battery.
- k) Former s. 794.041, relating to sexual activity with or solicitation of a child by a person in familial or custodial authority.
- l) Section 794.05, relating to unlawful sexual activity with certain minors.
- m) Section 794.08, relating to female genital mutilation.
- n) Section 806.01, relating to arson.
- o) Section 826.04, relating to incest.
- p) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- q) Section 827.04, relating to contributing to the delinquency or dependency of a child.
- r) Section 827.071, relating to sexual performance by a child.
- s) Chapter 847, relating to child pornography.
- t) Chapter 893, relating to a drug abuse prevention and control offense, if that offense was committed in the preceding 5 years.
- u) Section 985.701, relating to sexual misconduct in juvenile justice programs.

A misdemeanor offense prohibited under any of the following statutes:

- a) Section 784.03, relating to battery, if the victim of the offense was a minor.
 - b) Section 787.025, relating to luring or enticing a child.
 - c) Chapter 847, relating to child pornography.
- g. A criminal act committed in another state or under federal law which, if committed in this state, constitutes an offense prohibited under any statute listed in subparagraph 1. or subparagraph 2. Florida Statute Section 435.07(4).