



# EMPLOYEES HAVING CONTACT WITH CHILDREN

## F R E Q U E N T L Y   A S K E D   Q U E S T I O N S

### Who needs clearances?

- An employee of child care services.
- A self-employed provider of child care services in a family child care home.
- An individual 14 years of age or older who is applying for or holding a paid position as an employee with a program, activity or service as a person responsible for the child's welfare or having direct contact with children.
- If the program, activity or service is an internship, externship, work-study, co-op or similar program, only **an adult applying for or holding a paid position** with an employer that participates in the internship, externship, work-study, co-op or similar program with a school **and whom the employer and the school identify as the child's supervisor and the person responsible for the child's welfare while the child participates in the program** with the employer must obtain the clearances.
- Any individual seeking to provide child-care services under contract with a child care facility or program.
- An individual 18 years of age or older who resides for at least 30 days in a calendar year in the following homes which are subject to SUPERVISION OR licensure by the department under Articles IX and X of the act of June 13, 1967 (P.L.31, No.21), known as the Public

### Welfare Code:

- A family living home.
- A community home for individuals with an intellectual disability.
- A host home for children.
- This does not include an individual with an intellectual disability or chronic psychiatric disability receiving services in a home.
- An individual who applies to the department for a certificate of compliance or a registration certificate to provide child day care in a residence shall include criminal history record and child abuse record information required under section 6344(b) for every individual 18 years of age or older who resides in the home for at least 30 days in a calendar year.

In order to determine who in your agency is required to obtain clearances as a condition of hire you should carefully consider who within your agency, organization or institution has direct contact with children. To make this determination, think about the employee's role within your agency and the contact they have with children. This determination has two avenues to consider.

These avenues for consideration are

whether the employee has direct contact with children because they provide care, supervision, guidance or control of children or have routine interaction with children. The terms care, supervision, guidance or control are not defined in the statute and as such, we suggest that the common meaning of these terms be used, with child safety serving as the paramount consideration. If you determine that they do provide care, supervision, guidance or control of children, they need clearances. If, however, you determine that they do not provide care, supervision, guidance or control of children, you then move on to the second consideration; whether they have routine interaction with children.

Routine interaction is defined as regular and repeated contact that is integral to a person's employment responsibilities. Consideration should be given to what the employee's role is within the agency and based on that role determine if their contact with children is regular and repeated contact that is integral to their employment responsibilities.

If you determine that they do have direct contact with children, they need clearances. If a determination is made that the employee does not have direct



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contact with children, clearances are not required.

Please be sure to consult your legal counsel when making these determinations. You should also consult with your insurer regarding possible insurance coverage implications.

### **What is the definition of child?**

For purposes of clearances, a child is an individual under 18 years of age.

### **How is a person responsible for a child's welfare defined?**

A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision or control.

### **How is direct contact with children defined?**

Direct contact with children is defined in § 6303 (relating to definitions) as the care, supervision, guidance or control of children or routine interaction with children.

### **How is routine interaction defined?**

Routine interaction is defined as regular and repeated contact that is integral to a person's employment or volunteer responsibilities.

### **Which clearances are needed?**

Employees having contact with children must obtain the following three clearances:

- Report of criminal history from the Pennsylvania State Police (PSP);
- Child Abuse History Clearance from the Department of Human Services (Child Abuse); and

- Fingerprint based federal criminal history submitted through the Pennsylvania State Police or its authorized agent (FBI).

### **Are there any exceptions to the clearance requirements for minors?**

A minor, between 14 and 17 years of age, applying for or holding a paid position in which they would be responsible for the child's welfare or have direct contact with children through a program, activity or service is only required to submit their child abuse and PSP clearances if the following apply:

- (1) They have been a resident of this commonwealth during the entirety of the previous 10-year period or, if not a resident of PA during the entirety of the previous 10-year period, has received an FBI clearance at any time since establishing residency in PA and provides a copy of the clearance to the employer.
- (2) The employee and their parent or legal guardian swears or affirms in writing that they are not disqualified from service under the grounds for denying employment or have not been convicted of an offense similar in nature to those crimes under the laws or former laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, or under a former law of this commonwealth.

**I have a nonimmigrant visa (J-1 Visa) to work in the United States. Am I still required to obtain the child abuse, PSP and FBI clearances in order to work with**

### **children?**

An individual with a J-1 Visa shall not be required to submit the child abuse, PSP and FBI clearances if all of the following apply:

- (1) They are applying for or hold a paid position with a program, activity or service for a period not to exceed a total of 90 days in a calendar year.
- (2) They have not been employed previously in PA or another state, the District of Columbia or the Commonwealth of Puerto Rico.
- (3) They swear or affirm in writing that they are not disqualified from service under the grounds for denying employment or have not been convicted of an offense similar in nature to the crimes listed under the grounds for denying employment under the laws or former laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, or under a former law of this commonwealth.

### **I am currently employed and have been since prior to Dec. 31, 2014. When do I have to get my clearances by?**

You are required to obtain updated clearances as follows:

- By Dec. 31, 2015, if the clearance is older than 60 months; or
- By Dec. 31, 2015, if you have not received clearance (because you were employed in the same position and were not required to obtain clearances under prior law).



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If you received clearances prior to 2008 and were not required to obtain the FBI clearance, the three required clearances would be obtained consistent with the timeframes above.

### **How much do the clearances cost?**

- The PSP criminal history clearance costs \$8
- The Child Abuse clearance costs \$8
- The FBI federal criminal history clearance costs \$23.00 through the Department of Human Services (DHS)

### **How often do I need to renew my clearances?**

Beginning July 1, 2015, clearances must be obtained every 60 months.

Any employee with current clearance issued prior to July 1, 2015, must renew their clearances within 60 months from the date of their oldest clearance or if their current clearance is older than 60 months, by December 31, 2015.

If an individual or agency, however, elects to renew all clearances at the same time, the date of the oldest clearance, rather than the most recent, is the date to be used for the renewal date.

### **Will there be a new process to obtain a clearance?**

No. The process to obtain child abuse and criminal history clearances will remain the same. The Child Abuse and PSP clearances will continue to be applied for and paid for electronically. When indicating the purpose of the clearance, the applicant will continue to indicate

employment and then the applicable type of employment.

All necessary instructions and links to apply for these clearances can be found at <http://www.dhs.pa.gov/publications/findaform/childabusehistoryclearanceforms/index.htm>.

### **Can I use a child abuse history clearance or PSP criminal history clearance I obtained for my volunteer activities for employment purposes?**

No. Child abuse history clearances and PSP criminal history clearances obtained for volunteer purposes can only be used for other volunteer activities. Child abuse history clearances obtained for volunteer purposes will indicate that the clearance is to be used for volunteer purposes only.

### **Can I use a child abuse history clearance or PSP criminal history I obtained for employment purposes for volunteer purposes?**

Yes, if you obtained a clearance for employment purposes within the previous 60 months you may use the clearance to serve in a volunteer capacity for any program, activity or service.

### **Is the use of a third-party vendor to process clearances acceptable?**

Third-party vendors may be used to process Child Abuse, PSP and FBI clearances using the steps established above. They are **not** permitted to conduct background checks or clearances through other databases in lieu of the steps

outlined above. In addition, employers remain responsible for the employment decision based on the information obtained.

### **Who pays for clearances?**

The applicant or employee is responsible for paying the cost of the required clearances. However, some employers choose to pay for these clearances and are able to establish business accounts to pay for clearances. The only time an employer is required to bear the cost of the clearances is when there is reasonable belief that the employee was arrested or convicted of an offense that would deny employment or named as a perpetrator in an indicated or founded report. In these situations, the employer must immediately require the employee to obtain their clearances.

### **Can an agency or organization pay for clearances?**

*Child Abuse clearances:*

Yes, agencies and organizations can pay for Child Abuse clearances by registering for a Business Partner User account using the "Organization Account Access" link on the Child Welfare Portal: [www.compass.state.pa.us/cwis](http://www.compass.state.pa.us/cwis). The business account will allow organizations to purchase Child Abuse clearance payment codes to be distributed to applicants or employees. Individual applicants or employees will then go onto the Child Welfare Portal to apply for the clearance using the code. The pre-purchased codes can only be used once and allows the organization to have access to the applicant's Child Abuse clearance results



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once those results are processed.

### *FBI clearances:*

An agency pay agreement/business account can also be created between an organization and the FBI, or its authorized agent, for payment of FBI clearances. Information on creating an agency pay agreement for FBI clearances through the Department of Human Services can be found at <https://pacogentid.3m.com/index.htm>.

### *PSP clearances:*

An agency business account can be requested from the Pennsylvania State Police to pay for clearances in bulk by calling 1-888-783-7972 and selecting option 3. Organizations are, also able to pay for applicant's PSP clearances on an individual basis by using a credit card if applying online or submitting a paper check if applying by mail.

### **Are there any other requirements?**

If an employee is arrested for or convicted of an offense that would constitute grounds for denying employment or participation in a program, activity or service, or is named as a perpetrator in a founded or indicated report, the employee must provide the administrator or their designee with written notice not later than 72 hours after the arrest, conviction or notification that the person has been listed as a perpetrator in the statewide database.

An employee who willfully fails to disclose information as required above commits a misdemeanor of the third degree

and shall be subject to discipline up to and including termination or denial of employment.

### **What is the provisional hiring period for employees?**

Individuals may be employed for a single period, not to exceed 90 days if all of the following conditions are met:

- The applicant has applied for the three required clearances and they provide a copy of the completed forms to their employer.
- The employer has no knowledge of information pertaining to the applicant which would disqualify him from employment.
- The applicant swears or affirms in writing that he is not disqualified from employment pursuant to the grounds for denying employment in § 6344 (c) or has not been convicted of an offense of a similar nature to those crimes under the laws or former laws of the United States, or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, or under a former law of this commonwealth.
- The applicant is not permitted to work alone with children and must work in the immediate vicinity of a permanent employee.

### **Is my employer required to keep a copy of my clearances?**

Yes, pursuant to § 6344 (b.1), the employer, administrator, supervisor or other person responsible for employment decisions or acceptance

of the individual to serve in any capacity requiring clearances, shall maintain copies of the required information and require the individual to produce the required documents prior to employment or acceptance to serve in any such capacity, except provisional employees for limited periods as described in § 6344 (m) and outlined above. An employer, administrator, supervisor or other person responsible for employment decisions that intentionally fails to require an applicant to submit the required clearances before the applicant's hiring commits a misdemeanor of the third degree.

Agencies are reminded that the Child Abuse clearance information is confidential and may not be released to other individuals.

### **Can an employer or organization institute additional standards?**

Yes, nothing prohibits the employer or person responsible for a program, activity or service from making employment, discipline or termination decisions or establishing additional standards as part of the hiring or selection process for employees or volunteers.

### **Can my clearances be transferred?**

Yes. If the employee's clearances are current, the employee may use their clearances to:

- to apply for employment;
- to serve as an employee;
- to apply as a volunteer; and
- to serve as a volunteer.

However, when transferring clearances



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prior to beginning new employment or service, an employee must swear or affirm in writing that they have not been disqualified from employment or service under section 6344(c) or have not been convicted of an offense similar in nature to a crime listed in section 6344(c) under the laws or former laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, or under a former law of this commonwealth.