

103 KAR 1:120. Employee Access to Federal Tax Information (FTI).

RELATES TO: KRS 18A.095, 131.032, 131.081, 131.130, 131.190, 131.990

STATUTORY AUTHORITY: KRS 42.014, 131.032(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.014 requires the Office of the Secretary to establish internal organization, functions and duties as necessary to fulfill the duties of the cabinet. KRS 131.032(2) requires the Department of Revenue to promulgate administrative regulations to establish requirements concerning criminal background investigations for employees, including contract staff, with access to or use of federal tax information (FTI). This administrative regulation establishes the guidelines to implement the requirements set forth in KRS 131.032 and Internal Revenue Service (IRS) Publication 1075.

Section 1. Definitions. (1) "Applicant" means an individual who applies for employment with the Finance and Administration Cabinet, Department of Revenue, or a contractor working on behalf of those agencies who have, or will likely have, access to federal tax information in their regular course of business.

(2) "Classified employee" is defined by KRS 18A.005(7).

(3) "Contract Staff" means an individual employed with the Finance and Administration Cabinet, Department of Revenue, or a contractor working on behalf of those agencies that does not meet the definition of a classified employee with KRS Chapter 18A status.

(4) "Criminal background investigation" means a local, state, or national fingerprint-supported criminal history background investigation performed in accordance with KRS 131.032.

(5) "Department" is defined by KRS 131.010(2).

(6) "Disqualifying offense" means a conviction, plea of guilty, Alford plea, or plea of nolo contendere to any felony, misdemeanor, or offense the nature of which indicates that the employee constitutes an unreasonable and immediate risk to the security of FTI or confidential taxpayer information, unless the department determines there are mitigating circumstances that sufficiently remediate the existing risks.

(7) "Federally funded time-limited employee" is defined by KRS 18A.005(15).

(8) "Federal tax information" or "FTI" means a return or return information received directly from the IRS or obtained through an authorized secondary source, such as the Social Security Administration (SSA) or any entity acting on behalf of the IRS pursuant to an Internal Revenue Code (IRC) Section 6103 (p)(2)(B) Agreement.

(9) "Responsible agency" means an office within the Cabinet, Department, or an entity under contract with the cabinet or department, that employs or offers employment to an individual in a position for which the job duties include access to FTI.

(10) "Unclassified employee" means an employee that meets the criteria established in KRS 18A.115.

Section 2. Requirement for Criminal Background Investigations. (1) The cabinet, department, or responsible agency shall require prospective or current employees, including contract staff, whose job duties include access to FTI, to submit to a fingerprint-based local, state, or national criminal background investigation as a condition of initial or continued employment:

(a) After the individual is offered a job but before they begin working; and

(b) At least one (1) time every ten (10) years thereafter.

(2) The cabinet, department, or responsible agency that requests a fingerprint-based local, state, or national criminal background investigation on behalf of a prospective or current employee shall incur all fees associated with the cost of each background investigation requested.

(3) The cabinet, department, or responsible agency shall not employ any person in a position for which job duties include access to FTI or confidential taxpayer information if the individual refuses to consent to a fingerprint-based state or national criminal background investigation.

(4) The cabinet, department, or responsible agency shall notify each prospective or current employee determined to have a disqualifying offense.

Section 3. Disqualification. The cabinet, department, or responsible agency shall not employ or offer employment to an individual with a disqualifying offense listed in Section 1 of this administrative regulation or whose background investigation reveals any factor that bears upon the fitness of the individual to work in a position with access to FTI or confidential taxpayer information. The department shall have the sole discretion to determine if a prospective or current employee of the department is suitable to work in a position with access to FTI or confidential taxpayer information to ensure its protection and security in accordance with KRS 131.190, IRS Publication 1075, and Finance and Administration Cabinet Standard Procedure 6.1.2 entitled "Confidentiality of State and Federal Information".

Section 4. Individuals Ineligible to be Hired. The cabinet, department, or responsible agency may refuse to employ, contract with, or permit to work as an employee, any applicant that submits to a background investigation if one (1) or more of the following conditions apply:

- (1) The applicant refuses to provide photo identification;
- (2) The applicant fails to submit their fingerprints at an authorized collection site as directed, within five (5) business days of being offered employment;
- (3) Upon completion of the criminal background investigation, the cabinet or department receives notice that the applicant is found to have a disqualifying offense; or
- (4) Final and acceptable disposition of a criminal charge or offense related to a disqualifying offense is not provided to the department within sixty (60) days of fingerprint submission.

Section 5. Notice of a Disqualifying Offense and Appeals - Applicants. (1) The cabinet, department, or responsible agency shall notify applicants determined to have a disqualifying offense.

(2) If an applicant wishes to obtain information concerning the disqualifying offense or challenge the accuracy of a criminal background investigation, the department shall refer the individual to the appropriate state or federal law enforcement agency.

Section 6. Notice of a Disqualifying Offense and Appeals – Current Employees. (1) A current employee with classified status found to have a disqualifying offense upon completion of the criminal background investigation may be:

- (a) Immediately removed from duties with access to FTI or confidential taxpayer information;
- (b) Immediately placed on administrative leave pending an internal review of the disqualifying offense; or
- (c) Dismissed from employment if the nature of the disqualifying offense presents an immediate, serious, and irreparable risk to FTI or confidential taxpayer information if the employee's job duties require access to FTI or confidential taxpayer information.

(2) A cabinet or department classified employee whose background investigation reveals a disqualifying offense shall be eligible for reconsideration under an internal department review process and determination in accordance with KRS Chapter 18A.

(3) A cabinet or department classified employee may submit a written request for an internal employment reconsideration review to the Division of Human Resources no later than fourteen

(14) calendar days from the date of notice of a disqualifying offense issued pursuant to Section 2 of this administrative regulation.

(4) A cabinet or department classified employee who requests a reconsideration of dismissal may be retained on staff during the review process subject to the following factors:

(a) The nature and severity of the disqualifying offense;

(b) The disposition of the offense;

(c) The time elapsed since the disqualifying offense;

(d) The employee's personnel history; and

(e) Whether the employee is assigned duties that require access to FTI or confidential taxpayer information.

(5) The request for an internal employment reconsideration review shall include the following information:

(a) A written explanation of each disqualifying offense, including:

1. A description of the events related to the disqualifying offense;

2. The number of years since the occurrence of the disqualifying offense;

3. The age of the offender at the time of the disqualifying offense; and

4. Any other relevant and mitigating circumstances regarding the offense;

(b) Official documentation showing that all fines, including court-imposed fines, costs, or restitution, have been paid, or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.

(6) After review, the department may reverse the dismissal if the department determines that the disqualifying offense, along with any mitigating circumstances, does not bear upon the fitness of the individual to work in a position with access to FTI or confidential taxpayer information.

(7) No later than thirty (30) calendar days from receipt of the written request for the reconsideration review, the cabinet, department, or responsible agency shall notify the employee of the final determination of the reconsideration review by the department.

(8) The employee may appeal the results of a reconsideration review to the Personnel Board in accordance with KRS 18A.095.

Section 7. Challenges to Criminal History Record Information. An individual subject to a criminal background investigation required by KRS 131.032 and this administrative regulation shall have the right to request and inspect his or her criminal history record and to request correction of any inaccurate information.

Section 8. Pardons, Diversions, and Expungements. An applicant, classified employee, unclassified employee, federally funded time-limited employee, or contract employee who has received a pardon for a disqualifying offense, has had a disqualifying offense dismissed after successful completion of a diversion program, or has had a disqualifying offense expunged, shall not be barred from employment in a position with job duties that include access to or use of FTI or confidential taxpayer information, for reasons related to the underlying disqualifying offense(s). (44 Ky.R. 833, 1209; eff. 1-5-2018.)