

State of California--Health and Welfare Agency  
Department of Developmental Services

P O L I C Y     M E M O R A N D U M  
Residential Services Division

Series: 400 - Personnel

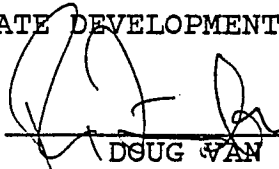
Number: 423

Action: REVISES PM #423 DATED APRIL 22, 1994

Subject: EMPLOYMENT PRACTICES WITHIN STATE DEVELOPMENTAL CENTERS

Date: JULY 25, 1994

APPROVED:

  
DOUG VAN METER  
Deputy Director

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ISSUE:

It is the Department's intent not to have any person working at a developmental center who demonstrates a propensity to harm the safety and well-being of clients residing or receiving services there.

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POLICY:

Since all employees working at developmental centers may have direct contact with clients, applicants for employment shall not be hired to work in any position if they have ever been convicted of any felony offense listed in Instruction Number 6 or any misdemeanor or offense involving moral turpitude as provided by Instruction Number 8.

Applicants for employment who were convicted of a felony other than those listed in Instruction Number 6 may be considered for employment at the developmental centers only after each center completes an evaluation of the factors listed in Instruction Number 7.

Independent contractors, subcontractors, and their employees will be subject to a background check and the provisions of this policy as set forth in Instruction Number 4.

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INSTRUCTIONS:

- 1.0 This policy applies to all applicants for employment, all of whom are collectively referred to as "applicant."
- 2.0 For the purpose of this policy, the term "felony conviction" includes a plea, verdict, or finding of guilt.
- 3.0 Developmental centers shall seek and be in possession of a background check conducted by the California Department of Justice prior to offering a position to any applicant.
- 4.0 Executive Directors shall assess the following information to determine which independent contractors, subcontractors, and their employees, all of whom are collectively referred to as "contractor," will be subject to a background check conducted by the California Department of Justice:

- 4.1 Nature of the service provided;
- 4.2 Frequency and level of client contact; and
- 4.3 Length of the contract.

If the Executive Director deems it necessary to conduct a background check of a contractor, the contractor shall be subject to the same policy as an applicant for employment.

5.0 As part of the pre-employment review process, developmental centers shall review each applicant for compliance with this policy (Reference: Hiring Practices Procedures, July of 1992).

6.0 Developmental centers shall not employ an applicant for a position if he or she has ever been convicted of any of the following felony offenses:

- 6.1 Any crime specified in Penal Code Section 290 which generally includes offenses of a sexual nature such as rape, sodomy, child molestation and indecent exposure, and attempts to commit such crimes;
- 6.2 Murder;
- 6.3 Battery;
- 6.4 Sexual battery;
- 6.5 Elder or dependent adult abuse;
- 6.6 Mayhem;
- 6.7 Kidnapping;
- 6.8 Assault with a deadly weapon or with force by means to produce great bodily injury;
- 6.9 Child abuse;
- 6.10 Poisoning or adulterating food, drink, medicine, pharmaceutical products, or water supplies;
- 6.11 Spousal rape;
- 6.12 Intercourse based on fraudulent representation to create fear; or
- 6.13 Robbery.

7.0 If an applicant has been convicted of a felony offense other than those specified above in Instruction Number 6, the developmental centers shall take the following action:

7.1 The Senior Special Investigator shall conduct a review of the circumstances related to the conviction(s) and forward the results to the center's Executive Director for action and final disposition.

7.2 The Executive Director of the developmental center shall consider the following factors in evaluating the effect of an applicant's felony conviction in their employment decision:

7.2.1 Nature of the position;

7.2.2 Nature and seriousness of the offense;

7.2.3 Recency of the offense;

7.2.4 Whether the offense is isolated or has occurred repeatedly;

7.2.5 The person's age at the time of the offense;

7.2.6 Prior offenses; and

7.2.7 Information or recommendations from past employers regarding the applicant's personal conduct.

7.3 The Executive Director shall consider the factors set forth in Instruction Number 7.2 with respect to the felony conviction sustained by an applicant and make a determination as to the applicant's suitability for employment at the developmental center.

7.4 If the Executive Director concludes that the applicant's felony conviction should not preclude employment at the developmental center, the Executive Director shall forward his or her recommendation to the Deputy Director, Residential Services Division, or his designee for final approval.

8.0 If an applicant has been convicted of a misdemeanor, the developmental centers shall take the following action:

8.1 The Senior Special Investigator shall conduct a review of the circumstances related to the conviction(s) and forward the results to the center's Executive Director.

- 8.2 The Executive Director shall determine whether the misdemeanor involves moral turpitude by the manner of its commission. Moral turpitude is the readiness to do evil.
- 8.3 If the Executive Director determines that the misdemeanor does not involve moral turpitude, the conviction shall not preclude consideration of the applicant for employment at the developmental center.
- 8.4 If the Executive Director determines that the misdemeanor involves moral turpitude, he/she shall consider the following factors and make a determination as to the applicant's suitability for employment at the developmental center:
  - 8.4.1 Nature of the position;
  - 8.4.2 Recency of the offense;
  - 8.4.3 Whether the offense is isolated or has occurred repeatedly;
  - 8.4.4 The person's age at the time of the offense;
  - 8.4.5 Prior offenses; and
  - 8.4.6 Information or recommendations from past employers regarding the applicant's personal conduct.
- 8.5 If the Executive Director determines that the applicant should not be offered employment due to a conviction involving moral turpitude, each center shall document the Executive Director's determination. This documentation must be placed in the applicant's file.
- 9.0 Pursuant to Labor Code Section 432.7, developmental centers shall seek additional information from an applicant in the following situations:
  - 9.1 Arrest for which the applicant is out on bail or on his or her own recognizance pending trial;
  - 9.2 Arrest for any offense specified in Penal Code Section 290, when the position has regular access to clients; and
  - 9.3 Arrest for any offense specified in Health and Safety Code Section 11590 when the position has access to drugs and medications.

10.0 Developmental centers shall not consider the following when making a hiring decision:

10.1 Referral to and participation in any pre-trial or post-trial general diversion program;

10.2 Convictions relating to possession of marijuana, as specified in Labor Code Section 432.8;

10.3 Any conviction for which the record has been judicially ordered sealed, expunged or statutorily eradicated; or

10.4 Any misdemeanor conviction for which probation has been successfully completed or otherwise discharged, and the case has been judicially dismissed pursuant to Penal Code Section 1203.4.