


STATE OF VERMONT AGENCY OF HUMAN SERVICES DEPARTMENT OF CORRECTIONS	Title: Employee Selection and Promotion		Page 1 of 11
Chapter: Personnel	# 122.01	Supersedes: # 122.01 (dated 10/2/2006)	
Attachments, Forms & Companion Documents: 1. All forms and companion documents are available on the Department's website.			
Local Procedure(s) Required: No. Applicability: All staff. Security Level: "B" -- Anyone may have access to this document.			
Approved: <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div data-bbox="133 856 743 1003">  <hr/> Andrew A. Pallito, Commissioner </div> <div data-bbox="743 856 1112 1003">  <hr/> Date Signed </div> <div data-bbox="1112 856 1487 1003">  <hr/> Date Effective </div> </div>			

PURPOSE

The purpose of this administrative directive is to ensure that the Vermont Department of Corrections' (DOC) staff members, who are involved in the hiring of new employees, and the promotion and disciplinary sanctions for current employees, follow the policies of the State of Vermont and existing laws related to fair employment practices. The primary purpose in preparing for and finally conducting employment interviews is to match the right people with the right job. Locating and acquiring the best qualified people greatly reduces organizational turnover, minimizes human-relations problems and maintains a consistent, high degree of productivity.

POLICY

The State of Vermont Department of Corrections is an equal opportunity employer and is committed to offering equal employment opportunities in accordance with Title VII of the Civil Rights Act of 1964 and its amendments. The State's personnel policies and practices prohibit discrimination on the basis of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, age, or physical or mental condition (a person with a qualifying disability) in all employment practices including, but not limited to: recruitment, hiring, promotion, demotion or transfer; layoff or termination; rates of pay and other forms of compensation; selection for training; agency sponsored social and recreational events; and all other terms, privileges, and conditions of employment.¹

¹ State of Vermont Personnel Policy 3.0

It is the policy of the State of Vermont Department of Corrections to actively recruit and select the most qualified persons to fill positions in the classified service, while at the same time providing an equal employment opportunity for all. The hiring of applicants for classified positions shall be carried out with consideration of the balance of skills needed to maintain DOC's ability to meet the demand for services, including the need to plan for future leadership. DOC's programs and practices shall foster internal advancement opportunities for current employees, as DOC recognizes the value of tenure and experience. Concurrently, programs and practices should allow for inclusion of applicants from outside the organization who may offer a new source of talent, alternative perspectives, or the latest academic knowledge. This will be accomplished through targeted recruitment efforts that bear a logical and systematic relationship to staffing needs to be met, and afford equal opportunity for all applicants within the limits of these goals. Through a planned integration of experience, perspective, and vitality, DOC will best meet its mission of service to the public.²

The information contained within this document pertains to all employment opportunities with the Vermont Department of Corrections to include new employment, re-employment, promotions, and current employees. Provisions pertaining to a specific type of employment are noted.

AUTHORITY

42 U.S.C. § 147, 3 V.S.A., Chapter 13, § 327.

REFERENCE

28 C.F.R. § 115, Vermont Department of Human Resources Policy & Procedures Manual, Section 3 "Affirmative Action and Equal Employment," Section 4 "Pre-employment" and Section 5 "Employment", "A Guide to Interviewing and Reference Checking," Department of Human Resources Publication, 2000 edition.

DEFINITIONS

Appointing Authority: The person authorized by statute, or lawfully-delegated authority, to appoint and dismiss employees (e.g. Facility Superintendent, District Manager).

Adult Abuse Registry Check: An investigation into whether or not the individual has ever been reported on the Adult Abuse Registry.

Child Abuse Registry Check: An investigation into whether or not the individual has ever been reported on the Child Abuse Registry.

Classified Employee/Position: Any person who is paid a salary or wage for work performed in a permanent position in the State classification plan. Except as otherwise indicated, all employees referred to herein are deemed to be "classified employees."

Criminal Background Check: An investigation into an individual's criminal history.

External Applicants: Applicants for employment who are not currently employed by the State of Vermont.

INS Form 1-9: A required form which determines an individual's eligibility for employment based on whether or not they have a legal right to work.

² State of Vermont Personnel Policy 4.0

Institutional Experience: Experience gained from within the institutional setting.

Internal Applicants: Applicants who apply to a position who are already employed by the State of Vermont.

Job Requisition: the details specific to a vacant position that a department wishes to fill which was posted on the Vermont Department of Human Resources (DHR) website. The job requisition is listed on the DHR website where applicants must apply to individual job requisitions to be considered for the position.

Minimum Qualifications: The minimum qualifications an applicant must possess in order to be considered a candidate for a particular position.

Posting Period: The period of time which a job is posted for on the DHR website.

Qualified Ranked Candidate List: A ranked list of applicants for a given position.

Reference Check: The review of a final candidate's references to ensure suitability for employment.

Sexual Abuse³: Unwanted sexual activity, involving force, threats, debt, coercion and taking advantage of victims not able to give consent including but not limited to;

1. Abusive Sexual Contact: Any attempt, threat, request, or intentional contact between the mouth and any body part, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or buttocks, where there is the intent to abuse, arouse, or gratify sexual desire.
2. Nonconsensual Sexual Acts: Any attempt, threat, request, or intentional contact between the penis and the vulva or the penis and the anus, including penetration, however slight; contact between the mouth and the penis, vulva, or anus; or penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument.
3. Indecent Exposure: The display of uncovered genitalia, buttocks, or breast in the presence of another person.
4. Voyeurism⁴: An invasion of privacy such as peering at a person who is using a toilet in their cell; requiring a person to expose their buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of a person performing bodily functions.

Sexual Harassment⁵: Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by a person directed towards another. It also includes, repeated verbal comments or gestures of a sexual nature to a person

³ The Vermont Department of Corrections also recognizes and incorporates the definition of Sexual Abuse found in the Prison Rape Elimination Act, Prison and Jail Standards, 28 C.F.R. §115.5 (2012), in addition to the definitions and standards identified in this directive.

⁴ The Vermont Department of Corrections also incorporates by reference the crime of voyeurism (13 V.S.A. § 2605) for personnel matters concerning sexual abuse, specifically criminal investigations of voyeurism.

⁵ The Vermont Department of Corrections incorporates by reference the State of Vermont's definition of sexual harassment found in the Vermont Personnel Policies 3.1.

by another, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.⁶

Substantiated Allegations: Allegations proven by a preponderance of the evidence.

Tax Compliance Check: An investigation into an individual's compliance in meeting their tax liabilities.

Temporary Employee/Position: employees at will who have no right to continued employment or a proprietary right to a job. Temporary employment may be terminated at any time and for any reason, except as prohibited by law. Typically a temporary employee is assigned a specific project or time-period for employment.

PROCEDURAL GUIDELINES

1. Advertising

- a. The decision to advertise is at the discretion of the agency or department where the vacancy occurs. Costs of advertising are borne by the agency or department that places the ad.

2. Recruitment and Posting

- a. Each classified position to be filled must be posted online on the Vermont Department of Human Resources (DHR) website and include reference to the position number being filled. This includes all positions for which DOC wishes to recruit internally for promotional or transfer opportunities.
- b. It is up to the agency or department to determine whether the position is to be recruited internal to the agency, internal to State government, or whether external applicants will be considered concurrently with the internal applicants. If a department wants to consider hiring a current temporary employee for a classified vacancy, the job requisition must be posted externally.
- c. The recruitment and selection process shall be consistently applied and non-discriminatory.
- d. All classified position vacancies that a department intends to fill must be posted on the DHR website as a job requisition with for a minimum of ten (10) work days. The DHR Recruiter may extend the closing date beyond the ten days if it is a difficult to fill position. State holidays and weekends do not count as work days for the job requisition posting period.
- e. Closing dates may be extended provided that the DHR Recruitment Division is notified prior to the scheduled closing date. A lack of qualified applicants may justify extending the posting period.

⁶ 28 C.F.R. §115.5 (2012).

- f. Occasionally a job requisition for a position will need to be reposted after the closing date. This happens when a change is made to the minimum qualifications of the job class. It also occurs when there are insufficient qualified candidates for the appointing authority or designee to consider.

3. Application

- a. All applicants who wish to apply for a classified position vacancy with the State of Vermont must complete and submit the online job application. All pages of the online application must be completed for the application to be considered. In addition, all screening questions must be answered for the application to be considered complete. Applicants who submit only a resume and/or cover letter will not be considered to have submitted a completed application and will be screened out.
- b. For classified positions, appointing authorities or designees may not consider applicants who submit resumes or cover letters directly to them in lieu of completing the online application.
- c. Applicants must apply for individual job requisitions prior to the closing date and be found eligible or they may not be considered for that position.
- d. If an applicant makes a false statement of material fact, including responses to screening questions, which misrepresent the applicant's qualifications, s/he may be disqualified from each posting for which they have applied.
- e. Applications for employment at DOC will include the following written questions which the applicant must answer in order to be considered for employment:
 - i. Have you ever engaged in sexual abuse in a prison, lock-up, community confinement facility, juvenile facility, or other institution?⁷
 - ii. Have you been convicted of engaging in or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse?⁸
 - iii. Have you ever been civilly or administratively adjudicated to have engaged in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse?⁹

⁷ 28 C.F.R. §115.17(f) (2012).

⁸ 28 C.F.R. §115.17(f).

⁹ 28 C.F.R. §115.17(f).

- iv. Have you ever been the perpetrator in an incident of sexual harassment?¹⁰
- f. For any applicant seeking employment with the Vermont DOC who has been convicted of a criminal offense, the applicant must first be granted a Commissioner's Waiver before an application can be considered.

4. Screening/Eligibility

- a. Once the posting period closes, the recruiter screens the applicants. Those applicants who meet the minimum qualifications for the job requisition will have their applications, cover letters and resumes (if applicable) routed to the department for consideration.
- b. Applicants whom the Recruiter finds do not meet the minimum qualifications for the job requisition will not have their applications routed to the department, and may not be considered for the position. Any questions regarding an applicant's eligibility must be directed to the DHR Recruiter assigned to the job requisition.
- c. It is the responsibility of the appointing authority or designee or Human Resources (HR) Administrator to verify that the candidate of their choice actually possesses the required minimum education and experience qualifications as outlined in the job specification, as well as the accuracy of data contained in the application prior to making an offer of employment.
- d. The hiring agency/department must consider all applicants on a qualified ranked candidate list, but may choose to interview only those applicants who appear to most closely match the job's requirements. An exception is that any applicants with disabilities who have requested the mandatory interview option and appear on a qualified ranked candidate list must be interviewed.
- e. The appointing authority or designee may choose to interview all interested candidates or limit it to a selected subset. If it is limited to a subset, the appointing authority or designee must be able to document why only certain applicants were chosen for an interview. Screening factors on creating a subset list must be related to the job and must be applied equally across all candidates.

5. The Interview

- a. The appointing authority or designee will use a structured interview. A structured interview is one in which: (1) there is a review/analysis of the job and its requirements; (2) a set of job-related interview questions is developed prior to the interview and is used for all candidates; and (3) there is a systematic means of evaluating candidates' responses.

¹⁰ 28 C.F.R. §115.17(f).

- b. The appointing authority or designee will utilize a hiring panel that utilizes these principles:
 - i. At least two staff persons will make the panel but preferably three to five persons will be used.
 - ii. Interviewers should be of the same pay grade or above the position they are hiring for.
 - iii. All job candidates will be asked the same questions. Follow up questions based on a candidates answer may differ, but initial questions will be the same for all applicants.
 - iv. The panel will retain all notes, answers, and scoring sheets following the interviews.

- c. The appointing authority or designee will develop interview questions specific to the job, the job qualifications, and the worksite however the following questions must be asked on every interview:¹¹
 - i. State the physical requirements of the job, hours of work, travel requirements, and other job responsibilities and ask candidates if they will be able to meet these requirements.
 - ii. Has the candidate engaged in sexual abuse in a prison, lock-up, community confinement facility, juvenile facility, or other institution? If the candidate answers yes, the candidate will automatically be barred from employment with DOC.¹²
 - iii. Has the candidate been convicted of engaging in or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse? If the candidate answers yes, the candidate will automatically be barred from employment with DOC.¹³
 - iv. Has the candidate ever been civilly or administratively adjudicated to have engaged in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse? If the candidate answers yes, the candidate will automatically be barred from employment with DOC.¹⁴

¹¹ These interview questions will also be asked during interviews for promotions, or any interviews or written self-evaluation of current employees pursuant to 287 C.F.R. §115(f). These questions and policies will apply to any current or new contractor who seeking to, or currently provides services to the DOC.

¹² 28 C.F.R. §115.17(a)(1) (2012).

¹³ 28 C.F.R. §115.17(a)(2) (2012).

¹⁴ 28 C.F.R. §115.17(a)(3) (2012).

- v. Has the candidate ever been the perpetrator in an incident of sexual harassment? If the candidate answers yes, DOC shall consider the incident in determining whether to hire the candidate, or whether to enlist the services of any contractor, who might have contact with inmates.¹⁵
- d. The following questions/inquiries cannot be asked:
 - i. Do not ask the applicant about any visible physical characteristics.
 - ii. Do not ask if the applicant is in good health.
 - iii. Do not ask if an applicant has ever had an emotional illness or has consulted a psychologist or psychiatrist.
 - iv. Do not ask if an applicant has ever had a drug or drinking problem.
 - v. Do not ask an applicant if anyone in his/her family or any acquaintance has an illness or injury or history of illness.
 - vi. Do not ask if an applicant has ever filed for or collected workers' compensation insurance.
- e. All interview material, for all candidates, to include but not limited to: questions, answers, notes, scoring sheets, reference checks and hiring lists will be retained by the hiring site for a period of at least 3 years.

6. Reference Checking

- a. Before any offer of employment is extended, the appointing authority or designee should conduct a reference check on the final candidate(s). Candidates should be notified that a reference check will be done and that the information will be used in making the final hiring decision.
- b. DOC will make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse, and any other job specific relevant information.
- c. In addition to any questions related to employment history or job duties the person conducting reference checks must ask for the following information:
 - i. Information concerning substantiated allegations of sexual abuse or any resignation during a pending investigation of sexual abuse.

¹⁵ 28 C.F.R. §115.17(b) (2012).

- ii. Information concerning substantiated allegations of sexual harassment or any resignation during a pending investigation of sexual harassment.

7. Selection

- a. The appointing authority or designee must notify every applicant whose name is listed on a qualified ranked candidate list of the resolution of the hiring process. Applicants not interviewed must be notified that they were considered but not interviewed. Offer of employment to an applicant must be put in writing.
- b. The Vermont Department of Corrections shall not hire or promote anyone who may have contact with inmates if that person:
 - i. Has engaged in sexual abuse in a prison, lock-up, community confinement facility, juvenile facility, or other institution.
 - ii. Has been convicted of engaging in or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse.
 - iii. Has been civilly or administratively adjudicated to have engaged in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse.
 - iv. Omissions regarding any information in subsection 7(b), or providing false information concerning these same provisions shall be grounds for termination. However, any disciplinary sanction up to and including termination shall be based on the application of the factors set forth in Grievance of Colleran and Britt, 6 VLRB 235 (1983).¹⁶
- c. Any incidents of sexual harassment shall be considered in all hiring and promotions prior to selection.
- d. Offers of employment are contingent upon the passing of all required background and reference checks.
- e. Those individuals accepting an offer of employment must accept the offer on-line at the State of Vermont application site.
- f. Omitting or falsifying information relevant to hiring or promotions constitutes grounds for discipline up to and including termination. However, any disciplinary

¹⁶ If an employee is serving their probationary period, or are a temporary employee, then the factors of Colleran and Britt need not be applied.

sanction up to and including termination shall be based on the application of the factors set forth in Grievance of Colleran and Britt, 6 VLRB 235 (1983).¹⁷

8. Required Checks

a. New Hires:

- i. All applicants for appointment to state service shall be authorized to work in the United States. Appointing authorities or designees must review documents establishing the potential employee's identity using the list of acceptable identification and complete INS form I-9. Residence in the State of Vermont shall not be a prerequisite for application or appointment.
- ii. In addition all candidates being considered for initial hire must agree to and be subjected to a fingerprint supported background check.
- iii. Documentation and checks required to be completed and filed¹⁸:
 - A. Verification of identity using the list of acceptable documents listed on INS form I-9
 - B. Employment Eligibility Verification: INS Form I-9
 - C. Fingerprint supported criminal background check in Vermont and any other state that the candidate worked or lived in.
 - D. Vermont DMV record check
 - E. Criminal background check, including but not limited to, a fingerprint card and fingerprint check through Vermont Criminal Information Center (VCIC)¹⁹
 - F. Tax Compliance check
 - G. Adult abuse registry check
 - H. Child abuse registry check

b. Current Employees:

¹⁷ If an employee is serving their probationary period, or are a temporary employee, then the factors of Colleran and Britt need not be applied.

¹⁸ Any offer of employment given prior to these checks being done will be contingent upon clearing each of these areas, the candidate will be notified of this in writing at the time of the written offer.

¹⁹ Criminal background record checks will also be required of new contractors before DOC will enlist the services of any contractor who might have contact with inmates pursuant to 28 C.F.R. §115.17(d).

- i. All current employees must undergo a non-fingerprint supported criminal background check at minimum every five years. This criminal background check includes but is not limited to, a background check through VCIC.²⁰ Current employees will not have to supply their fingerprints in order to conduct a criminal background check.
- ii. DOC will consider any incidents of sexual harassment in determining whether to promote any current employee.²¹

²⁰ Criminal background checks will also be required for current contractors at minimum every five years pursuant to 28 C.F.R. §115(e).

²¹ 28 C.F.R. §115.17(b). New and current contractor's incidents of sexual harassment will also be considered before a determination is made to enlist their services.