UNIVERSITY OF WISCONSIN SYSTEM

HR 13 and TC 1 FAQs

These FAQs are intended for HR administrators to use as a guide when administering the policies contained in UPS Operational Policy HR 13: Personnel Files (HR 13) and UPS Operational Policy TC 1: Recruitment (TC 1). Following the Board of Regent's adoption of Resolution 11038 on June 7, 2018, these two policies were modified to address concerns related to sexual violence and sexual harassment.

Personnel Files

Q: Who will be responsible for requesting the file?

A: The institutional HR office will be responsible unless otherwise noted by institutional policy.

Q: When will personnel files be transferred?

A: A copy of the personnel file will be transferred within 30 days of an institution being informed that another UW System institution or other state agency has hired an ex-employee.

Q: Do I send the original personnel file?

A: No. A copy of the personnel file should be sent for transfer while the original should be maintained by your institution according to the applicable record disposition authority (RDA).

Q: Who do I contact to get the personnel file from a past State or UW System institution?

A: There is a list of institutional contacts for UW System institutions and State agencies. This list will be posted on the UW System website under HR 13 and TC 1.

Q: Can supervisors maintain a confidential, local "working" file containing copies of pertinent personnel-related records that the supervisor utilizes on an operational basis?

A: Yes. As long as all of the correct documentation goes into the personnel file, a supervisor may maintain a working file which may include their personal notes. These notes are not considered to be a personnel record so long as they are prepared by the supervisor for their own use and are not shared with anyone else.

Q: Faculty or instructional reviews are currently stored in the dean's office. What needs to be maintained in the personnel file?

A: Performance reviews (of any type) should be in the personnel file. It is sufficient to keep only the summary of the review in the personnel file. Any supporting materials can continue to be maintained by the dean's office according to the General Records Schedule.

Q: Will unsubstantiated allegations of sexual violence and sexual harassment be included in the personnel file?

A: No. Only substantiated violations will be included in the personnel file. The only exception is the notice of active investigation letter, which is placeholder letter included in the personnel file until the investigation is complete. Once the investigation is completed, the notice is removed.

Q: What happens when an employee leaves during the middle of an active investigation of sexual violence or sexual harassment?

A: When an employee leaves during an active investigation, a temporary notice of the active investigation will be added to their personnel file until the investigation is complete. The notice should signify which policy the employee is alleged to have violated but should not include details of the allegation itself.

The campus will continue its investigation into the allegations and the ex-employee will be given the opportunity to continue to participate in the investigation. Regardless of whether the ex-employee chooses to participate, the campus will complete its investigation.

Once the investigation is completed, the notice of the active investigation will be removed from the personnel file. If the ex-employee is found to have violated the policy, it will be documented in the personnel file. If the ex-employee is not found to have violated the policy, no further documentation will be included in the personnel file.

If an employee intends to leave during an active investigation, the best practice is to remind them of personnel files and reference check polices so they are aware of the campuses' responsibility to share this information when contacted for reference checks.

Q: **Why is documentation of the active investigation removed at the conclusion of the investigation?**

A: The active investigation notice is only meant as a placeholder until the investigation is completed. If the investigation is ongoing, the letter would be present. Once the investigation is completed, the letter is no longer needed. If a violation occurred, the final determination of the investigation must be added to the personnel file.

Q: Are there any changes to what documents do or do not go in the personnel file?

A: Yes. Personnel files will now contain any final personnel decision, any settlements or negotiated resolutions (or where they are stored), and any active investigation notices (see question about leaving during an active investigation for more clarification). Additionally, clarification was added on documents that should be excluded from the personnel file (i.e., medical or FMLA documentation, confidential reference letters, investigation materials).

Q: If a document is removed from the personnel file, does that mean it can be destroyed?

A: No. The applicable record disposition authority (RDA) must be followed.

Q: Are investigatory materials included in personnel file?

A: No. Investigatory materials are stored securely outside of the personnel file. The only items related to the investigation that should be included in the personnel file are the notice of investigation (if applicable) and any final personnel decisions related to the investigation.

Q: Is there a requirement that we retroactively apply the new personnel file content requirements to all personnel files?

A: No. You are not required to retroactively apply the new standard, but it's recommended that you review the personnel file when you get a transfer request particularly for any required documentation about sexual violence or sexual harassment. It may also be helpful to apply the new requirements to any employee with a history of disciplinary problems, though it's not required.

Q: Can the recruitment documentation remain in the Applicant Tracking System (ATS) instead of the personnel file?

A: The official recruitment file must contain all application materials submitted electronically or via mail per the appropriate record schedule. The successful candidate's resume, letter of application, and relevant application materials must also be placed in the official personnel file.

Q: Given new requirements, should reference call notes be included in the personnel file?

A: No. Only materials that are listed in the personnel file policy should be placed in the personnel file. Letters of reference and reference call notes should be included in the recruitment file.

Q: What if HR 13 lists documents that don't exist?

A: If a document does not exist, it does not have to be created just because it is listed in HR 13. Some documents listed as contained in the personnel file list only apply to certain categories of employees. For example, faculty sabbatical leave wouldn't apply to a university staff employee. There is no requirement to create documents that wouldn't normally be created. But if those documents are created, they must be included in the personnel file.

Q: What are interchange agreements?

A: Agreements used by federal agencies that appoint employees in noncompetitive positions on a temporary, conditional basis. See Gen 18 for more details.

Q: Should UW System institutions create personnel files for employees on temporary assignment (via interchange agreements) from governmental agencies?

A: No. Under UPS Operational Policy GEN 18: Temporary Interchange, employees who are detailed to a receiving UW System institution shall not be considered employees of that institution. See Gen 18 for more information.

Q: What are "records relating to a final personnel decision?"

A: "Final Personnel Decisions" is defined in Section 3 (Policy definitions) of HR 13.

Q: **Do investigations need to be completed when an employee leaves mid-investigation? What's the timeline?**

A: Yes. There is currently a Sexual Violence Task Force work group lead by Christopher Paquet creating standardized procedures and timelines related to investigations of sexual violence and sexual harassment.

Q: Will personnel files from other campuses be combined with personnel files at receiving campus? If yes, does this mean that we can request the personnel file from just the most recent System campus or do we need to request copies from each campus?

A: Personnel files from previous employers should be combined with the personnel file created at the receiving institution. If upon review, the personnel file from the most recent campus contains all previous personnel files, you don't need to request copies from those campuses. However, if a previous personnel file is missing, you must contact that campus.

Q: Who maintains the original personnel file if the employee has a split appointment? If there are two personnel files, do we have to forward copies of all documents to the other employing agency?

A: In the case of concurrent employment between UW System institutions, each institution is responsible for maintaining a personnel file for the employee. If the employee changes positions and there is a request for their personnel file. HR staff at each institution should coordinate the merging of the files for purposes of transfer to another agency.

Q: **Why are we only asking about sexual violence and sexual harassment? Why not ask about other misconduct, violations, or issues?**

A: Special emphasis has been placed upon sexual violence and sexual harassment because the UW System contains a large number of vulnerable populations who are particularly affected by this issue. Additionally, nothing prevents hiring administrators from asking questions about other types of misconduct; in fact, it is recommended that they do.

Q: When an employee works at two UW System institutions under an Inter-Institutional Agreement, do both institutions have to maintain personnel files?

A: No. The personnel file should reside with the employee's primary institution, and the Inter-Institutional Agreement should be placed in the personnel file at that institution.

Q: Since no long-term solution for secure p-file exchanges has been established, how should p-files be exchanged?

A: System IT is currently developing a temporary technical solution that should be available effective January 1st. Their proposal is to use a simple SharePoint file drop. More information on this solution will soon be made available.

UPDATE: Each UW System institution must provide two contacts who will be able to upload and retrieve p-files via SharePoint.

Recruitment and Reference Checks

Q: To which employment categories does this policy apply?

A: Faculty, academic staff, limited appointees, and university staff. This policy does not apply to temporary employees, student hourly, or graduate assistants; although it does not prohibit the development of policies applying the new guidelines to temporary employees.

Q: What if a potential employer does not conduct any reference check? Do I need to reach out to them?

A: No. You don't have an affirmative duty to reach out to potential employers. However, when contacted by a potential employer, you must inform the employer that information about sexual violence and sexual harassment violations will be disclosed upon request and direct the employer to the appropriate contact to respond to those requests (see list of institutional reference check contacts).

Q: When and who should be asking reference check questions?

A: Each campus will be responsible for determining when and who will ask reference check questions. At a minimum, it must be asked of the final candidate before hire.

Q: How many employers do I need to contact for reference checks?

A: At a minimum, you must contact the most recent employer as well as any previous State or UW System employers from the past 7 years. Best practice is to ask for three references (at least two of which should be supervisors). For reference checks within the UW or State Agencies see the following list of contacts.

Q: How do I respond when a reference check comes in for an employee and we no longer have records related to that employee?

A: Inform the requestor that you don't have any files for the potential employee. Sample language: "We do not have any records related to XXX. Their personnel file was destroyed according to the applicable record disposition authority (RDA)."

Q: If during the reference check it is discovered that the candidate violated a sexual violence or sexual harassment policy, is that an automatic disqualifier for the position?

A: No. The information gathered from the previous employer and from the candidate must be considered. It's recommended that the hiring authority consult with HR and legal before making a final determination. Some points to consider may include relevance of the violation(s) to the open position, amount of time elapsed since violation(s), severity of violation(s), whether there would be direct contact with vulnerable populations, and any other relevant factors.

Q: What if there is a discrepancy between the candidate's response and the information received from the previous employer?

A: Using a process similar to the process used when a criminal background check reveals that a candidate has committed a crime, institutions should permit the candidate to address any discrepancies or mitigating circumstances. If necessary, legal counsel should be consulted.

Q: Who is required to use the disclaimer language when contacted for a reference?

A: Anyone acting on behalf of a UW System institution (e.g., supervisors, HR dept) must use the disclaimer. A sample disclaimer is at the top of page 12 of TC 1. Colleagues with no supervisory responsibilities are not required to use the disclaimer.

Q: Do supervisors and HR representatives always need to read the disclaimer when contacted for a reference?

A: Yes. Whether to give the disclaimer at the end of the call or the beginning is left up to the campus but either way it must always be performed even if they don't ask about it.

Q: How will the privacy of a victim of sexual harassment be protected when information about the harasser is disclosed by a reference?

A: Only policy violations will be disclosed to the appropriate requesting party. Names or personal identifying information of a victim will not be shared.

Q: Is the hiring committee doing the reference checks?

A: Each institution will determine who is responsible for doing hiring checks.

Q: Should responses to required questions for candidates and reference checks be documented and stored somewhere?

A: Yes. A notation or summary of the reference and any relevant determination documentation should be kept in accordance with institutional policy.

Q: Can notes for reference checking be maintained in Applicant Tracking System (ATS)?

A: Yes. In accordance with any institutional policy, a summary of the reference checks should be maintained as a part of the recruitment file.

Q: Are verification of employment (VOE) requests considered reference checks?

A: No. Many services (mortgage loan, auto finance, credit card, apartment lease, etc.) require confirmation of employment and/or income. VOE requests are for non-hiring purposes and therefore not considered a reference check. Therefore, there would be no requirement to disclose the campus sexual violence and sexual harassment contact.

Q: How will we verify that references are being asked the questions about sexual violence and sexual harassment?

A: Each UW System institution should define in its procedures the accountable party and requirements of conducting these checks.

Q: Do the required questions for the candidate need to be in a specific form (e.g., written, verbal)? Will notes be kept and if so where?

A: No. Each institution should define its policy and practice for obtaining this information, documentation required, and final location of this information.

Q: Are reference checks required when changing positions within an institution (e.g., waivers, inter-unit transfers, or other job changes)?

A: Yes. Reference checks must be conducted when hiring for a new position even if the person being hired is already an employee at that institution. As the institution should already have all the relevant information, this may be as simple as reviewing the employee's personnel file.

Q: Are employment contracts already issued affected by the new recruitment and reference check requirements?

A: No. The new requirements will be in effect January 1, 2019; therefore; employment contracts issued before that date are not affected.

Q: Under TC 1 potential employers should receive an objective evaluation of the candidate's training, experience, skills, and abilities. Does that mean that any potential employer representative who calls is entitled to receive information about the current or former employee?

A: Yes. How detailed the information should be depends on the situation and on institutional policies and practices. Generally, the employee providing the reference has considerable discretion when determining what information should be provided.

Q: In addition to adding it to applicant tracking system job announcements, should the statement to be used when announcing a vacancy (see TC 1 – App. 4) be included in other job announcements?

A: Yes. The statement that informs applicants that they and their references will be asked about sexual harassment should be added to all announcements that inform applicants of criminal background checks.

Q: When a reference has been provided to a potential employer by a supervisor, and the potential employer subsequently contacts the HR reference check contact to ask about sexual violence and sexual harassment, should the HR contact answer more than the two required questions?

A: The reference check contact may limit his or her responses to answering the two required questions.

Q: What samples of institutional reference check policies have been made available?

A: Appendices 2, 3, and 4 of TC 1 include reference check guidelines, sample questions, and sample language recommendations for questions and disclaimers. Institutions may, of course, share their institutional policies and practices.

Q: Will GIS ask the required questions for a final candidate when it sends candidates the background check link?

A: Getting GIS to add the required questions (regarding sexual violence and sexual harassment) will be explored. It is hoped that soon there will be an answer to this question.

Q: How does the reference check process apply to instructional academic staff (IAS) who are employed on terminal contracts (often continuously)?

A: Reference checks would be completed when the employee is initially hired. If continuously employed (on terminal contract) with no other employers during that period, institutions would not need to perform the same reference checks for each subsequent contract but rather could review file to ensure no issues arose since last contract. If they were employed outside the institution after the date of their last contract, the employer(s) would need to be contacted for a reference.

CLARIFICATION: The new requirements will only affect new hires beginning January 1, 2019, meaning if there is a continuous candidate pool, those candidates are not subject to the new recruitment and reference check requirements if admitted prior to January 1, 2019, unless disqualified or removed from the applicant pool and then readmitted. This does not prohibit UW System institutions from creating and implementing new local recruitment and reference check policies and procedures that require more than TC 1's minimal requirements.

Q: Can language be added to applicant tracking systems (e.g., TAM and PageUp) that informs potential applicants that if they become final candidates, they – and some of their references – will be asked questions regarding sexual misconduct?

A: Yes. The UW Service Center, however, is only able to update TAM. If you have a different applicant tracking system, you will be responsible for updating it. In the terms and conditions section within TAM, and in the posting library of each institution that uses TAM, the Service Center has added the following to the information already provided about employment, education, and criminal background checks:

> All final candidates must be asked, prior to hire, whether they have been found to have engaged in, are currently under investigation for, or left employment during an active investigation in which they were accused of sexual violence or sexual harassment. When conducting employment reference checks, these same sexual violence and sexual harassment questions must also be asked.

Q: Can questions regarding prior UW/state service be added to applicant tracking systems?

A: Yes. The Service Center will add fields to TAM to allow each applicant to list prior state service and to identify their current supervisor. Institutions that do not use TAM may choose to do the same by revising their own applicant tracking systems.