COUNTY OF ALBEMARLE
PERSONNEL POLICY

§P-05 EFFECT OF CRIMINAL CONVICTION OR ARREST

It is the County's policy ~~of the Board~~ not to employ or to continue the employment of ~~classified, professional or administrative personnel~~any employee who may be deemed ~~unsuited~~ unsuitable for ~~service~~ employment by reason of arrest and~~/or~~ criminal conviction or information appearing in the registry of founded cases of child abuse and neglect maintained by the Department of Social Services. While an arrest or conviction of a crime, in and of itself, may not be an automatic bar to employment, if an arrest or conviction relates to the individual's suitability ~~of the individual~~ to perform duties in a particular position, such person may be denied employment or, in the case of current employees, may face disciplinary action~~,~~ up to and including termination. The County shall have the sole discretion to determine whether any conviction is related to the duties of the position for which application is made or whether it affects the fitness of the applicant to work for the County.

I. Applicants for Employment

A. Criminal Convictions

Individuals applying for employment with Albemarle County for any position shall be required to disclose prior criminal convictions ~~of law~~ and any criminal charges that have not been dismissed or finalized, other than minor traffic violations or juvenile offenses. Information provided by applicants may be verified by work history, personal reference, or criminal record inquiries to determine the applicant's ~~acceptability~~ suitability for employment. Where a prior conviction is ascertained, the County will consider at a minimum the nature and seriousness of the offense, the date of the offense, and the relationship between the offense and the position for which application is sought. ~~If a~~An applicant's or employee's ~~makes any~~ misrepresentation or willful omission~~s~~ of fact regarding prior criminal history~~, such misrepresentation or omission~~ shall be sufficient cause for disqualification of the applicant or termination of employment.

As a condition of employment, any applicant who is offered or accepts employment with the County shall submit to a background check and provide personal descriptive information. Employment may be delayed until satisfactory results have been received by the Department of Human Resources.

An offer of employment may be rescinded based on the results of a background check. If an applicant is denied employment because of information appearing on the applicant's criminal history record, the County shall provide a copy of the information to the applicant.

B. Founded Cases of Child Abuse and Neglect

Applicants may also be required to disclose being the subject of a founded case of child abuse and neglect. The County requires, as a condition of

employment for certain positions, that any applicant who is offered or accepts employment provide written consent and the necessary personal information for the County to obtain a search of the registry of founded cases of child abuse and neglect. The County shall ensure that all such searches are requested in conformance with the regulations of the Department of Social Services.

If the information obtained in the aforementioned search indicates that the applicant is the subject of a founded case of child abuse and neglect, such applicant shall be denied employment or the offer of employment shall be rescinded and the employment terminated if already commenced.

If an applicant is denied employment because of information appearing on the registry, the County shall provide a copy of the information obtained from the registry to the applicant. The information shall be confidential and shall not be disseminated otherwise by the County.

II. Employee Charges and Convictions

A. Criminal Proceedings

It is the policy of the County not to employ or to terminate the employment of any person who the County deems to be unsuitable for employment by reason of criminal conviction. While evidence that a person has been convicted of a crime may not be, in and of itself, an automatic bar to employment, the County shall retain its sole discretion to determine whether such evidence renders the person unsuitable for employment or whether, in the case of an existing employee, termination of employment is warranted.

In the event that any employee~~, whether full-time or part-time, probationary or non-probationary,~~ is arrested~~ for a criminal violation of any kind, whether misdemeanor or felony~~, he/she ~~is required to~~must report such arrest promptly to ~~the employee's~~his/her supervisor or department head within one (1) business day unless mitigating circumstances exist. Arrested means arrested, charged by a magistrate, served with an arrest warrant, or summonsed by a law enforcement officer for a crime of any kind, whether misdemeanor or felony. This reporting requirement applies ~~regardless of whether such arrest has~~to arrests occurring~~ed~~ on-duty or off-duty. This reporting requirement also applies to employees while on leave or between temporary assignments. Failure to comply with this reporting requirement shall be grounds for disciplinary action, up to and including termination.

Supervisors or department heads shall contact the Director of Human Resources/designee upon receiving notification that an employee has been arrested. ~~In addition, all employees shall have the continuing duty to notify the County of any arrest or criminal conviction that occurs subsequent to being hired by the County.~~

~~Supervisors or department heads shall contact the Human Resources Director or designee upon receiving notification that an employee has been arrested.~~ An employee who is charged by summons, warrant, or indictment which would bar continued employment in the employee's current position if convicted~~,~~ may be placed on administrative leave in accordance with Policy § P-22, Employee

Discipline. The County reserves the right to determine appropriate disciplinary action in such cases, up to and including termination, depending upon the facts and circumstances surrounding the ~~arrest~~situation.

B. Founded Cases of Child Abuse and Neglect

It is the policy of the County not to employ or to terminate the employment of any person who the County deems to be unsuitable for employment by reason of being the subject of a founded case of child abuse and neglect. While evidence that a person is the subject of a founded case of child abuse and neglect may not be, in and of itself, an automatic bar to employment, the County shall retain its sole discretion to determine whether such evidence renders the person unsuitable for employment or whether, in the case of an existing employee, termination of employment is warranted.

An employee in certain relevant positions may be dismissed if the employee is or becomes the subject of a founded cases of child abuse and neglect after all rights of appeal provided by Virginia Code § 63.2-1526 have been exhausted. An employee who is the subject of a Social Services investigation for child abuse and neglect which would bar continued employment in the employee's current position if founded may be placed on administrative leave in accordance with Policy § P-22, Employee Discipline.

III. Court Ordered Probation

For purposes of this policy, a court's placing an individual on pre-conviction probation pursuant to Virginia Code § 18.2-251 or Virginia Code § 18.2-57.3 is treated as a conviction and as a finding of guilt.

~~Applicants for all County positions shall be informed that they will be required, as a condition of employment, to sign a statement authorizing Albemarle County to have both a criminal history background check and a motor vehicle violation investigation performed. As permitted by law, the County is authorized to consider any criminal conviction history or motor vehicle violations in determining whether to make an offer of employment to the applicant, and shall retain sole discretion to determine whether prior criminal history or motor vehicle violations shall disqualify an applicant from further consideration for County employment.~~

~~The information collected shall be privileged, confidential and used only in determining the candidate's qualifications for employment and assignment.~~

~~If an applicant for employment with Albemarle County should refuse to permit a criminal history record search, that applicant will be removed from further employment consideration and informed accordingly. Applicants who omit criminal convictions from their application may be denied employment for falsification of the application, and, if hired, may be subject to disciplinary action, up to and including immediate dismissal for withholding such information on the application. A new application may be filed after three (3) calendar years provided the person at that time lists his convictions. An authorization for Albemarle County to conduct a criminal conviction/motor vehicle violation investigation and its satisfactory outcome are conditions of employment. Once the County has reviewed an applicant's criminal history~~

~~record and has made an administrative determination concerning employment suitability, the record will be retained in a file separate from the official personnel file. If a criminal record is obtained that would prohibit employment under Albemarle County policy, the applicant/employee will be so informed and his application for employment removed from consideration and/or the employee will be subject to termination. If the response indicates a conviction(s), the Director of Human Resources will review the response. The County shall have the sole discretion to determine whether any convictions or violations are related to the duties of the position for which application is made or whether they affect the fitness of the applicant to work for the County. Except as directed by court order or as otherwise required or permitted by law, conviction information received by Albemarle County as part of the employment process will not be disseminated to any third party not directly involved in the hiring process.~~

Amended: August 4, 1993; June 1, 2005; January 16, 2019

Legal Reference: Code of Virginia, 1950, as amended, Chapter 23, Sec. 19.2-389 (7)