

Background Check Laws: Utah

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A Q&A guide to background check and employment reference law for private employers in Utah. This Q&A addresses employers' obligations when conducting criminal and non-criminal background checks and penalties for violating these laws. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across several jurisdictions (see Background Check Laws: State Q&A Tool).

Overview of State Background Check Law

1. Please list each major state statute or regulation governing background checks (for example, state equivalents of the federal Fair Credit Reporting Act and state law governing criminal background checks or driving records). Include law governing both criminal background checks and non-criminal background checks. For each, please:

- Provide a brief description of the statute or regulation.
- Identify which employers are covered.
- Identify which employees are covered (for example, all employees or only those in specific job functions, such as commercial driving).
- Describe whether it provides for a private right of action.
- Identify the state agency or entity that administers the statute.

- The type of information employers can collect.
- The way employers can use collected information.

(Utah Code §§ 34-46-201 and 34-46-202.)

Covered Employers

The law covers all Utah employers employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding year (Utah Code § 34-46-102(3)).

Covered Employees

The law covers all current and prospective employees.

Private Right of Action

The law does not provide for a private right of action. Employees may file a request for action with the [Utah Labor Commission's \(ULC\) Antidiscrimination and Labor Division](#) (Utah Code §§ 34-46-102(2) and 34-46-301).

State Agency

The ULC administers and enforces the law (Utah Code §§ 34-46-102(2) and 34-46-301(4)).

Driving Record: Utah Code §§ 41-1a-116 and 63G-2-202

Description

Utah employers can, with written consent, receive an applicant's or employee's driving records from the [Utah Division of Motor Vehicles](#) (Utah Code §§ 41-1a-116(3) and 63G-2-202(4)(b)(ii)).

Employment Selection Procedures Act: Utah Code §§ 34-46-101 to 34-46-302

Description

The Utah Employment Section Procedures Act limits:

Covered Employers

The laws cover all Utah employers.

Covered Employees

The laws cover all Utah employees.

Private Right of Action

The laws do not provide for a private right of action.

State Agency

The [Utah State Tax Commission](#) administers and enforces the laws (Utah Code §§ 41-1a-102(15) and 41-1a-103).

Criminal Record Background Check: Criminal Investigations and Technical Services Act: Utah Code §§ 53-10-101 to 53-10-502

Description

Qualified Utah employers can request criminal history records for applicants and employees (Utah Code § 53-10-108(2)(c)).

Covered Employers

The law covers Utah businesses, organizations, or government entities employing individuals dealing with:

- National security interests.
- Fiduciary trusts of money.
- The provision of care, treatment, education, training, instruction, supervision, or recreation to:
 - children;
 - the elderly; or
 - individuals with disabilities.

(Utah Code § 53-10-102(21).)

Covered Employees

The law covers all employees of or applicants to a covered employer.

Private Right of Action

Employers using an employee's private information for unauthorized purposes are subject to civil liability (Utah Code § 53-10-108(4)(f)).

State Agency

The [Utah Department of Public Safety](#) administers and enforces the law (Utah Code §§ 53-10-102(11), (12), 53-10-103, and 53-10-104(13), (14)).

Mandatory Background Checks for Charter School Employees: Utah Code § 53G-5-408

Description

Utah charter schools must conduct criminal background checks on:

- All school employees who do not hold current Utah educator licenses issued by the [Utah State Board of Education](#) under the Educator Licensing and Professional Practices Act.
- Volunteers with significant unsupervised access to students, unless that volunteer is an officer or employee of a cooperating employer under an internship safety agreement governed by Utah Code § 53G-7-904.
- Any contract employee.
- Governing board members.

(Utah Code §§ 53G-5-408 and 53G-11-402.)

Covered Employers

The law covers any Utah employer operating a charter school.

Covered Employees

The law covers:

- All employees who do not hold current Utah educator licenses.
- Contract employees.
- Volunteers with significant unsupervised access to students within a Utah charter school.
- Governing board members.

(Utah Code § 53G-5-408.)

Private Right of Action

The law does not provide for a private cause of action.

State Agency

The [Utah State Board of Education](#) administers and enforces the law.

Deception Detection Examiners Licensing Act: Utah Code §§ 58-64-101 to 58-64-701 and Utah Admin. Code r. 156-64-502

Description

The Deception Detection Examiners Licensing Act regulates unprofessional conduct by polygraph examiners (Utah Code §§ 58-64-101 to 58-64-701). While the law is directed at polygraph examiners, it indirectly affects employers who use polygraph exams as part of the hiring process by limiting the scope and method of examination (Utah Admin. Code r. 156-64-502).

For more information, see [State Q&A, Employee Privacy Laws: Utah: Question 13](#).

Covered Employers

The law is directed at polygraph examiners, but it indirectly affects any employer using a polygraph exam as part of the hiring or employment process.

Covered Employees

The law is directed at polygraph examiners, but it indirectly affects any employee or applicant subject to a polygraph exam as part of the hiring or employment process.

Private Right of Action

The law does not provide a private right of action.

State Agency

The [Utah Department of Commerce's Division of Professional Licensing](#) administers and enforces the law (Utah Code § 58-1-103).

Reducing Barriers to Employment for Individuals with Criminal Records: Utah Code §§ 34-52-101 to 34-52-302

Description

Effective May 3, 2023, a private employer may not exclude a mental health professional applicant from an initial interview because of:

- An arrest for an offense that occurred before the applicant was 18 years old.
- A juvenile adjudication.
- An expunged criminal offense.

(Utah Code § 34-52-302(1).)

Covered Employers

The law covers a private employer who is both:

- A person with one or more employees employed in the same business or in the same establishment under any contract of hire, express or implied, oral or written.
- Hiring a mental health professional applicant licensed under Utah's Mental Health Professional Practice Act (MHPPA) (Utah Code §§ 58-60-101 to 58-60-511).

(Utah Code §§ 34-52-102(4), (5) and 34-52-302.)

However, a private employer is exempt from the requirements of the law if:

- The private employer:
 - is a part of the criminal or juvenile justice system;
 - seeks a nonemployee volunteer;
 - works with children or vulnerable adults; or
 - primarily performs financial or fiduciary functions.
- Federal, state, or local law requires the consideration of an applicant's criminal conviction history.

(Utah Code § 34-52-302(4).)

Covered Employees

This law covers all mental health professional applicants (Utah Code § 34-52-302(1)). A mental health professional applicant is an individual who:

- Is licensed under the MHPPA.
- Provides information to a private employer to obtain employment that requires a license under the MHPPA.

(Utah Code § 34-52-102(4).)

Private Right of Action

The law does not provide a private right of action.

State Agency

This law does not specify an administering agency.

Non-Criminal Background Check Law

2. For any law identified in Question 1 addressing non-criminal background checks, list the key terms of art used and the definition of each.

Employment Selection Procedures Act: Utah Code §§ 34-46-101 to 34-46-302

There are no key terms of art relating to non-criminal background checks in Utah.

Driving Record: Utah Code §§ 41-1a-116 and 63G-2-202

There are no key terms of art relating to non-criminal background checks in Utah.

Deception Detection Examiners Licensing Act: Utah Code §§ 58-64-101 to 58-64-701 and Utah Admin. Code r. 156-64-502

A **deception detection examination** is defined as the use of an instrument or software application to determine whether an individual is engaged in deception (Utah Code § 58-64-102(1)).

3. For any law identified in Question 1 addressing non-criminal background checks, please describe potential penalties for violations of the law.

Employment Selection Procedures Act: Utah Code §§ 34-46-101 to 34-46-302

The [Utah Labor Commission's Antidiscrimination and Labor Division](#) may order that an employer violating the Employment Selection Procedures Act do either or both of the following:

- Cease and desist violating action.
- Pay a fine of up to \$500 for each violation.

(Utah Code § 34-46-301(3).)

Driving Record: Utah Code §§ 41-1a-116 and 63G-2-202

The laws do not address potential penalties for violations.

Deception Detection Examiners Licensing Act: Utah Code §§ 58-64-101 to 58-64-701 and Utah Admin. Code r. 156-64-502

The law does not address potential penalties for violations.

4. For any law identified in Question 1 addressing non-criminal background checks, please describe the employers' legal obligations, including obligations to provide notice to applicants or employees.

Employment Selection Procedures Act: Utah Code §§ 34-46-101 to 34-46-302

Utah employers must obtain an applicant's consent before conducting a background check (Utah Code § 34-46-201(2)(c)).

An employer can only collect an applicant's Social Security number, date of birth, or driver's license number if the employer uses the information to:

- Obtain:
 - a criminal background check;
 - a credit history report; or
 - a driving record.
- Determine whether the applicant previously applied to, or was employed by, the employer.
- Provide the information to a government entity to determine eligibility for certain programs or benefits.

(Utah Code § 34-46-201(2)(b).)

Driving Record: Utah Code §§ 41-1a-116 and 63G-2-202

Utah employers must obtain the employee's or applicant's written consent before requesting driving records (Utah Code §§ 41-1a-116(3) and 63G-2-202(4)(b)(ii)).

Deception Detection Examiners Licensing Act: Utah Code §§ 58-64-101 to 58-64-701 and Utah Admin. Code r. 156-64-502

The law does not address an employer's legal obligations.

5. For any law identified in Question 1 that functions as the state equivalent of the federal Fair Credit Reporting Act, please describe any significant differences between the state and federal law.

None of the laws identified in Question 1 function as the Utah state equivalent to the federal Fair Credit Reporting Act.

Criminal Background Check Law

6. For any law identified in Question 1 addressing criminal background checks, please identify the law and describe:

- The key terms of art.
- The potential penalties for violations.

Criminal Record Background Check: Criminal Investigations and Technical Services Act: Utah Code §§ 53-10-101 to 53-10-502

Terms of Art

A **qualifying entity** is any Utah business, organization, or governmental entity employing persons or volunteers dealing with:

- National security interests.
- Fiduciary trusts over money.
- The provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

(Utah Code § 53-10-102(21).)

Penalties

Utah employers who use an employee's private information for unauthorized purposes are subject to civil liability (Utah Code § 53-10-108(4)(f)).

Mandatory Background Checks for Charter School Employees: Utah Code § 53G-5-408

Terms of Art

There are no key terms of art relating to criminal background checks.

Penalties

The law does not address penalties for violations.

Reducing Barriers to Employment for Individuals with Criminal Records: Utah Code §§ 34-52-101 to 34-52-302

Terms of Art

A private employer excludes a mental health professional applicant from an initial interview if they require an applicant to disclose a qualifying offense either:

- On an employment application.
- Before an initial interview.
- If no interview is conducted, before making a conditional offer of employment.

(Utah Code § 34-52-302(2).)

However, a private employer does not exclude an applicant if the employer either:

- Ask the applicant for information about their criminal conviction history during or after an initial interview.
- Consider an applicant's criminal conviction history when making a hiring decision.

(Utah Code § 34-52-302(3).)

Penalties

This law does not address penalties for violations.

7. Please describe:

- The kind of criminal background information into which an employer may inquire, including obligations to provide notice to applicants or employees.
- The kind of criminal background information into which an employer may not inquire (for example, expunged or juvenile records).
- Any other circumstances under which a criminal background inquiry may be limited (for example, where there is no business necessity).
- Any additional requirements under the laws identified in Question 1.

Authorized Inquiry

Qualified employers in Utah can obtain the following criminal history record on applicants and employees:

Background Check Laws: Utah

- Descriptions and notations on any:
 - arrest;
 - detention;
 - indictment;
 - information; or
 - formal criminal charge.
- Information on any criminal disposition.
- Descriptions of:
 - sentencing;
 - correctional supervision; and
 - release.

(Utah Code § 53-10-102(8).)

Employers must obtain a signed waiver from any applicant or employee before requesting their criminal history record. The waiver must include the following information:

- That the employer will conduct a criminal history check.
- Who will see the information.
- How the information will be used.

(Utah Code § 53-10-108(4)(a), (b).)

Only individuals involved in hiring or conducting the background investigation may access the information received. Employers may only use the information:

- To assist in employment or promotion decisions.
- For the purposes described in the signed waiver.

(Utah Code § 53-10-108(4)(e).)

Unauthorized Inquiry

There are no specifically unauthorized inquiries under the law.

For information on state and local legislation limiting access to the criminal history information of job applicants, see [Ban-the-Box State and Local Laws Chart: Overview](#).

Other Limitations

Prior to May 3, 2022, Utah employers could not access criminal history record information if the information was related to charges:

- That were declined for prosecution.
- That were dismissed.
- For which the defendant was acquitted.

(Utah Code § 53-10-108(6) (2021) (amended 2022).) This provision was removed from the statute effective May 4, 2022.

Additional Requirements

There are no additional requirements for the laws identified in Question 1.

8. Please describe how an employer can collect criminal background information and what an employer can do with criminal background information, including:

- Whether and under what circumstances an application for employment in your state can include a question about convictions or arrests.
- Whether and under what circumstances criminal convictions or arrests can be used as a bar to employment generally.
- Whether and under what circumstances criminal convictions or arrests can be used as a bar to employment in specific jobs (such as child care), including under any or all laws identified in Question 1.

Questions in Application

Effective May 3, 2023, unless otherwise excepted, private employers who are hiring a mental health professional applicant are prohibited from excluding an applicant from an initial interview because of either:

- An offense that occurred before the applicant was 18 years old.
- A juvenile adjudication.
- An expunged criminal offense.

(Utah Code § 34-52-302(1).)

Accordingly, unless otherwise excepted, a private employer who is hiring a mental health professional applicant cannot require the applicant to disclose a qualifying offense either:

- On an employment application.
- Before an initial interview.
- If no interview is conducted, before making a conditional offer of employment.

(Utah Code § 34-52-302(2).)

Although outside the scope of this Q&A, subject to several exceptions, Utah law also prohibits a public employer from:

- Requiring an applicant to disclose a criminal conviction either:
 - on an employment application; or
 - before an initial interview.

If no interview is conducted, a public employer cannot require an applicant to disclose a criminal conviction before making a conditional employment offer. (Utah Code § 34-52-201.)

- Inquiring into an applicant's expunged criminal record (Utah Code § 34-52-201(1)(b)).

Bar to Employment

Utah law does not address a general bar to employment.

Bar to Employment in Specific Jobs

Employers licensed to provide child care services cannot allow employees convicted of a felony or misdemeanor to:

- Provide child care.
- Provide volunteer services for a child care program or an exempt provider.
- Reside on the premises where the employer provides child care services.
- Be an owner, director, or member of the governing body of a child care program or an exempt provider.

(Utah Code § 26B-2-404(3).)

9. If your state has a statute or regulation protecting the employment rights of persons with criminal records, please identify the statute or regulation and briefly describe the rights it confers.

See Question 8: Questions in Application.

Employer Liability

10. Have courts in your jurisdiction recognized privacy claims brought by applicants or employees as a result of an employer's conducting a background check? If so, please name any relevant cases and briefly describe their holdings.

No Utah case law recognizes an actionable right to privacy in these circumstances.

11. Have courts in your jurisdiction recognized negligent hiring, negligent supervising, or negligent retention claims brought by employees, customers, or others associated with the employer as a result of allegedly flawed background checks? If so, please name any relevant cases and briefly describe their holdings.

Utah courts have recognized negligent hiring, negligent supervising, and negligent retention claims but not explicitly based on flawed background checks or failure to conduct background checks (see *CT v. Martinez*, 845 P.2d 246, 248-49 (Utah 1992); *CC v. Roadrunner Trucking, Inc.*, 823 F. Supp. 913, 924-25 (D. Utah 1993) (applying Utah law)). However, in *Graves v. North Eastern Services, Inc.*, the Utah Supreme Court implicitly acknowledged that these cases can include claims regarding background checks (345 P.3d 619, 628 (Utah 2015)).

State Law Regarding References

12. If your state has any law governing employment references, please identify that law and:

- Describe any requirements for obtaining references for employees or applicants.
- Describe any requirements for giving references for employees or former employees (including any provision insulating employers from or exposing employers to liability because of references given).

Obtaining References

There are no applicable Utah laws governing obtaining employment references.

Giving References

There is a rebuttable presumption under Utah law that employers are acting in good faith and therefore cannot be held civilly liable for providing information to a prospective employer by request, about a former employee's:

- Job performance.
- Professional conduct.
- Evaluation.

(Utah Code § 34-42-1.)

To overcome this presumption, the employee must prove, by clear and convincing evidence, that the employer acted with either of the following:

- Actual malice.
- Intent to mislead.

(Utah Code § 34-42-1.)

Social Networking for Background Checks

13. Are there statutes, regulations, cases, or any other guidance in your state on an employer's use of social networking or other online searches of applicants or employees for employment background check purposes? If so, please briefly characterize them.

Utah Internet Employment Privacy Act: Utah Code §§ 34-48-101 to 34-48-301

Utah employers cannot:

- Request or require employees or applicants to disclose usernames or passwords to access personal online accounts.
- Take adverse action based on an employee's or applicant's failure to disclose the information.

(Utah Code § 34-48-201.)

However, employers can request or require employees to provide usernames or passwords for accessing:

- Any account or service:
 - provided by the employer;
 - obtained through the employment relationship; and
 - used for the employer's business purposes.
- An electronic communications device partly or entirely supplied or paid for by the employer.

(Utah Code § 34-48-202(1)(a).)

Utah law also permits employers to:

- Conduct investigations or require employees to cooperate with investigations based on specific information regarding:
 - activity on an employee's personal online account to ensure compliance with applicable laws, regulatory

requirements, or prohibitions against work-related employee misconduct; or

- an unauthorized transfer to the employee's personal online account of the employer's proprietary or confidential information or financial data.
- Restrict or prohibit an employee's access to certain websites:
 - while using an electronic communications device supplied or paid for by the employer; or
 - while using an employer's network or resources.
- Monitoring, reviewing, accessing, or blocking data stored:
 - on an electronic communications device supplied or paid for by the employer; or
 - on the employer's network.
- Complying with a duty to screen employees or applicants before hiring, or to monitor or retain employee communications that is:
 - established under federal law;
 - established by a self-regulatory organization under the Securities and Exchange Act of 1934; or
 - in the course of a law enforcement application or officer conduct investigation.
- Viewing, accessing, or using information about an employee or applicant that is available in the public domain or without use of a username or password.

(Utah Code § 34-48-202.)

For more information, see [State Q&A, Employee Privacy Laws: Utah](#).

Artificial Intelligence for Background Checks

14. Are there any laws in your state addressing the use of artificial intelligence in conducting employment background checks? If so, please identify and describe their requirements.

Utah law does not regulate the use of artificial intelligence (AI) in employment background checks. For information on major proposed state legislation related to AI, see [US AI Law and Regulation: 2024 Tracker: Major Proposed State Legislation](#).

Additional Resources

15. If the state agency charged with oversight of background check or references laws in your state has useful online guidance or forms, please provide the link for those resources and a brief description of them.

The [Utah Department of Public Safety](#) provides guidance on:

- [Employment/volunteer](#) background checks.
- The [application](#) to become a qualified entity to conduct criminal background checks.

The [Utah State Tax Commission](#) provides the Release of Protected Motor Vehicle Information [form](#).

16. Please describe any other significant background check or references laws, cases, or requirements specific to your state not otherwise addressed in this survey.

In *Graves v. North Eastern Services, Inc.*, the Utah Supreme Court found that expert testimony was not required to establish the standard of care relating to performing an employee background check. This applies where the plaintiffs alleged negligent hiring, negligent training, and negligent supervision. The court explained that the “question of what a reasonable person would do in performing background checks in hiring and in training and supervising employees is one permissibly resolved based on the knowledge and experience of lay persons.” (*Graves*, 345 P.3d 619 at 628.)

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