

Background Check Laws: Utah

CHRISTINA M. JEPSON, PARSONS BEHLE & LATIMER,
WITH PRACTICAL LAW LABOR & EMPLOYMENT

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 \(http://us.practicallaw.com/6-505-9582\)](http://us.practicallaw.com/6-505-9582)).

OVERVIEW OF STATE BACKGROUND CHECK LAW

1. Please list each 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.

EMPLOYMENT SELECTION PROCEDURES ACT: UTAH CODE §§ 34-46-101 TO 34-46-302

Description

The Utah Employment Section Procedures Act limits:

- The type of information employers may collect.
- The way employers may 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 the last 20 calendar weeks 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 Antidiscrimination and Labor Division.

State Agency

The Utah Labor Commission administers and enforces the law.

DRIVING RECORD: UTAH CODE §§ 41-1A-116 AND 63G-2-202

Description

Utah employers may, with written consent, receive an applicant's or employee's driving records from the Utah Division of Motor Vehicles (Utah Code § 63G-2-202).

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(11) and 41-1a-103).

CRIMINAL RECORD BACKGROUND CHECK: CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES ACT UTAH CODE §§ 53-10-101 TO 53-10-606**Description**

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

Covered Employers

The law covers Utah businesses, organizations, or government entities employing individuals in the following areas:

- National security interests.
- Care, custody, or control of children.
- Fiduciary trust of money.
- Providing health care to children or vulnerable adults.
- Providing vulnerable adults with:
 - care;
 - protection;
 - food;
 - shelter;
 - clothing;
 - assistance with the activities of daily living; or
 - assistance with financial resource management.

(Utah Code § 53-10-102(19).)

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)(d)).

State Agency

The Utah Department of Public Safety administers and enforces the law.

MANDATORY BACKGROUND CHECKS FOR CHARTER SCHOOL EMPLOYEES: UTAH CODE § 53A-1A-512.5**Description**

Utah charter schools must conduct criminal background checks on:

- All school employees.
- Volunteers with unsupervised access to students.
- Any contract employee.
- Governing board members.

(Utah Code §§ 53A-1a-512.5 and 53A-15-1503.)

Covered Employers

The law covers any Utah employer operating a charter school.

Covered Employees

The law covers all employees, contract employees, and volunteers with unsupervised access to students within a Utah charter school.

Private Right of Action

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

State Agency

The Utah State Office of Education administers and enforces the law.

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.

DRIVING RECORD: UTAH CODE §§ 41-1A-116 AND 63G-2-202

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

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

An employer violating the Employment Selection Procedures Act may be fined 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.

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 ANN. §§ 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 may 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;
 - credit history report; or
 - driving record.
- Conduct a review of the employer's internal records.
- 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 § 63G-2-202(4)(b)(ii)).

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 53-10-606**

Terms of Art

As defined, a **qualifying entity** is any Utah business, organization, or governmental entity employing persons or volunteers in the following areas:

- National security interests.
- Care, custody, or control of children.

- Fiduciary trust over money.
- Providing health care to children or vulnerable adults.
- Providing vulnerable adults with:
 - care;
 - protection;
 - food;
 - shelter;
 - clothing;
 - assistance with the activities of daily living; or
 - assistance with financial resource management.

(Utah Code § 53-10-102(19).)

Penalties

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

MANDATORY BACKGROUND CHECKS FOR CHARTER SCHOOL EMPLOYEES: UTAH CODE § 53A-1A-512.5

Terms of Art

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

Penalties

The 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 may obtain the following criminal history record on applicants and employees:

- 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(7).)

Employers must obtain a signed waiver from any applicant or employee before requesting his 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)(b)).

The information received may only be:

- Available to the individuals involved in hiring or conducting the background investigation.
- Used to assist in employment or promotion decisions.

(Utah Code § 53-10-108(4)(c).)

UNAUTHORIZED INQUIRY

There are no specifically unauthorized inquiries under the law.

OTHER LIMITATIONS

There are no other limitations relating to criminal background checks.

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

Utah law does not address questions about convictions or arrests in applications for employment.

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 may not allow employees convicted of a felony or misdemeanor to:

- Provide child care.
- Provide volunteer child care services.
- Reside on the premises where the employer provides child care services.
- Be an owner, director, or member of the governing body of a licensed child care program or a child care program operating under a residential child care certificate.

(Utah Code § 26-39-404(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.

There is no Utah law protecting the employment rights of persons with criminal records.

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 recognize negligent hiring, negligent supervising, and negligent retention claims, but not on the basis of flawed background checks or failure to conduct background checks (*C.C. v. Roadrunner Trucking, Inc.*, 823 F. Supp. 913, 924 (D. Utah 1993); *C.T. v. Martinez*, 845 P.2d 246, 248-49 (Utah 1992)).

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 laws governing obtaining employment references.

GIVING REFERENCES

Utah employers providing information, by request, about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer are presumed to be acting in good faith and may not be held civilly liable. 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 may 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).)

ADDITIONAL RESOURCES

14. 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:

- Obtaining criminal history records.
- The application for criminal history checks.
- Instructions to become a qualified entity to conduct criminal background checks.

The Utah State Tax Commission provides the Release of Protected Motor Vehicle form.

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

There are no other significant background check or references laws, cases, or requirements in Utah.

ABOUT PRACTICAL LAW

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call **1-800-733-2889** or e-mail referenceattorneys@tr.com.