


# Montefiore Einstein

<b>HUMAN RESOURCES POLICY AND PROCEDURE MANUAL</b>	<b>SUBJECT: Background Checks</b>
<b>APPROVED:</b>   <b>DAVID BRODSKY</b>	<b>POLICY NUMBER: II-5</b>
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	<b>DATE REVIEWED/ REVISED: 11/07/23</b>

## GENERAL POLICY:

It is the policy of Montefiore Medical Center to conduct a background screening on all candidates to whom it offers employment.

## POLICY APPLICABLE TO:

All applicants for employment.

Background checks for House Staff will be conducted directly by the House Staff office in accordance with this policy.

Employee and Labor Relations will be responsible for conducting an analysis of whether pending criminal action and/or conviction that occurs during employment will result in termination of employment for current employees.


## PROCEDURE:

HR Recruitment and Staffing Office will be responsible for conducting background checks throughout Montefiore for applicants in accordance with applicable law.

### A. Next Phase After Interview Process

- a. If Montefiore is interested in moving forward with a candidate after the interview process, the candidate will be advised in writing that Montefiore wants to move to the next phase of the recruitment process.
- b. HR Recruitment and Staffing will ask the candidate to sign a Consent and Disclosure Form for a consumer report. If the candidate chooses not to sign the Consent Form, they will no longer be considered for employment.
- c. Once the Consent Form is signed by the candidate, HR Recruitment and Staffing will provide it to an external vendor who will conduct a multi-state and county screening of non-criminal information, including but not limited to education verification, but excluding criminal history search and the Sexual Offenders Database search.
- d. HR Recruitment and Staffing office will conduct:
  - i. An OIG Compliance search;
  - ii. Searches using the Statewide Central Register in accordance with the N.Y.S. Office of Children and Family Services regulations; and
  - iii. Staff Exclusion List (SEL) searches in accordance with the N.Y.S. Justice Center.
- e. If the candidate clears that phase (including not having made false statements,

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misleading omissions, entered false information, or engaged in forgery), they may then move on to the next phase of the hiring process.

**B. Rescinding When Candidate Makes False Statements, Misleading Omissions, Enters False Information, or Engages in Forgery.**

1. Montefiore will rescind an employment offer to an individual who makes any false statements, makes misleading omissions, enters false information, or forges any signatures in any type of Montefiore record, including but not limited to the employment application, the Conviction Form and/or the Consent and Disclosure form for the background investigation, or during any part of the employment process.
2. If the pre-employment background investigation screening results (generally received within 24-48 hours but longer for international searches) identify information that is inconsistent with the information provided by the applicant:
  - a. The applicant will be provided with a Notice of Intent to Take Adverse Action based on the discrepancy/inconsistency, along with (if applicable):
    - “A Summary of Your Rights Under the Fair Credit Reporting Act” as prescribed by the Federal Trade Commission
    - A copy of the background screening report
    - New York Correction Law 23A
    - Any documents or other materials that support Montefiore’s claim of intentional misrepresentation by the candidate.
  - b. Applicants will have five business days from the date of the letter to respond in writing to HR Recruitment and Staffing department by providing information or additional evidence to explain the discrepancy/inconsistency. During this time, the applicant’s position will be kept open.
  - c. If the applicant states that there is a discrepancy on the background screening report, they will have five business days from the date of the letter to notify the external vendor that the information is incorrect. The applicant’s position will remain open during this time. The external vendor will investigate any alleged discrepancies and notify Montefiore of the results of investigation, generally within 72 hours from the request.

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- d. HR Recruitment and Staffing department will review the additional information provided, if any, and make a final hiring decision.
  - i. If the decision is to proceed with the hire, HR will confirm the individual's start date.
  - ii. If the decision is to rescind the offer based on the discrepancy/inconsistency, the applicant is sent a Notification of Adverse Action letter along with "A Summary of Your Rights Under the Fair Credit Reporting Act" as prescribed by the Federal Trade Commission.
  - iii. If the applicant credibly demonstrates either that the information provided was not a misrepresentation or that a misrepresentation was unintentional, HR Recruitment and Staffing will perform the Fair Chance Analysis (set forth below) before taking adverse action against the applicant.

## C. **Conditional Offer (Criminal Search)**

1. Candidates that clear the non-criminal history screening checks will move on to the next phase of the hiring process, which includes:
  - a. HR Recruitment and Staffing providing a conditional offer letter to the prospective employee that will clearly states that the job offer is contingent upon successfully completing pre-employment physical exam, drug testing, criminal history background check investigation and required paperwork.
  - b. HR Recruitment and Staffing will ask the candidate to complete and sign: (i) the Consent and Disclosure Form for a background investigation and (ii) the Conviction Form. If a candidate chooses not to sign the Consent Form or the Conviction Form, the offer of employment will be rescinded.
  - c. Once the Consent Form is signed by the candidate, HR Recruitment and Staffing will provide it to an external vendor who will conduct a multi-state and county background screening including but not limited to social security search, address trace, criminal history search, Sexual Offender's database search, and motor vehicle records.
  - d. National Practitioner Data Bank queries will be done in accordance with HRSA regulations.
  - e. Fingerprinting will be done in accordance with N.Y.C. Department of Education and N.Y.S. Justice Center regulations.

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2. If the background investigation screening results indicate a criminal conviction or pending case, the applicant will be contacted by a Montefiore Security Investigator to discuss the details around the conviction(s) or pending case(s). Prior to issuing the pre-adverse action packet described below, the Montefiore Security Investigator will contact the candidate and solicit:
  - a. information regarding each of the factors to be considered, including the facts and circumstances underlying the criminal convictions and/or pending charges; and
  - b. any evidence of rehabilitation or good conduct the candidate would like Montefiore to consider.

This information will assist HR Recruitment and Staffing Office in completing the Fair Chance Notice.


3. The results of all of the searches (including information obtained by the Montefiore Security Investigator) will be reviewed by the Director of Recruitment and Staffing in Human Resources or designee, applying the analysis required by New York State and City law as set forth below, to determine whether an offer will remain valid or should be rescinded.

**D. Factors to Consider When Candidates Have Criminal Convictions and Process to Follow When Determination is Made to Rescind Offer Based on Criminal Background Check.**

Criminal convictions are not an automatic bar to employment.


1. The following are considered non-convictions and will not be a bar to employment and do not need to be analyzed using the factors below. These include:
  - Arrests that did not result in a conviction.
  - Instances when the police decided not to charge the candidate following their arrest.
  - Cases in which the prosecutor declined to prosecute the candidate following their arrest.
  - Convictions that have been sealed, expunged or statutorily sealed.
  - Convictions for which the candidate was pardoned.
  - Convictions for which the candidate was referred to or participated in a pre- or post-trial diversion.

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- Criminal action that has been adjourned in contemplation of dismissal (“ACD”) unless the order to adjourn in contemplation of dismissal is revoked and the case is restored to the calendar for further prosecution.
  - Convictions/adjudications as a youthful offender or through the juvenile justice system.
  - Offenses other than felonies and misdemeanors (i.e. violations, infractions, non-criminal offense, or other petty offenses).
  - Termination of criminal action in favor of the accused, including dismissal or acquittal of charges.
  - Cases where the verdict was set aside or the judgment was vacated by the court and no new trial was ordered, nor is any appeal by the prosecution pending.
  - Disposition of a criminal matter under federal law or the law of another state that results in a status comparable to aforementioned “non-convictions” under New York law.
2. For all other offenses, the conviction history will be analyzed and the following factors taken into consideration:
- The seriousness of the criminal offense.
  - The age of the candidate at the time the criminal offense (not the date of the conviction) occurred. If the candidate was age 25 younger at the time of the offense, it will be considered a mitigating factor.
  - Whether the specific duties and responsibilities are necessarily related to the employment sought.
  - The bearing, if any, the criminal offense has on the candidate’s fitness or ability to perform their duties or responsibilities.
  - The time that has elapsed since the occurrence of the criminal offense.
  - The information produced by the candidate, or produced on the candidate’s behalf, with regard to his/her rehabilitation and good conduct. This includes a Certificate of Relief from Disabilities or a Certificate of Good Conduct, both of which create a presumption of rehabilitation.
  - Montefiore’s legitimate employer interests in protecting its property, and the safety and welfare of its patients, employees, and visitors.

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- The public policy of New York State to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
3. For candidates that have a pending criminal case, the following factors will be taken into consideration when conducting the analysis:
- The seriousness of such offense or offenses;
  - Whether the person was 25 years of age or younger at the time of occurrence of the criminal offense or offenses for which the person is alleged to have committed, which shall serve as a mitigating factor;
  - The specific duties and responsibilities necessarily related to the employment sought by the person;
  - The bearing, if any, of the criminal offense or offenses for which the applicant is alleged to have committed, on the applicant's fitness or ability to perform one or more such duties or responsibilities;
  - Montefiore's legitimate employer interests in protecting its property, and the safety and welfare of its patients, employees, and visitors;
  - The policy of New York City to overcome stigma toward and unnecessary exclusion from employment of persons with criminal justice involvement;
  - Any additional information produced by the applicant, or produced on their behalf, in regards to their rehabilitation or good conduct, including but not limited to history of positive performance and conduct on the job or in the community.
4. If Montefiore is considering rescinding the conditional offer based on the background check (for either those with criminal convictions and/or pending criminal action):
- a. A Fair Chance Act Notice is completed which is available online at [https://www1.nyc.gov/assets/cchr/downloads/pdf/FairChance\\_Form23-A\\_distributed.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/FairChance_Form23-A_distributed.pdf)
  - b. The applicant will be provided with a Notice of Intent to Take Adverse Action explaining the analysis that was used in the decision by Human Resources along with:
    - "A Summary of You Under the Fair Credit Reporting Act" as proscribed by the Federal Trade Commission
    - A copy of the background screening report

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- o New York Correction Law 23A
  - o Copy of the completed Fair Chance Act Notice
  - o Copy of any other document(s) relied on to determine that the applicant has a criminal record.
- c. Applicants will have five business days from the date of the letter to respond and/or appeal Montefiore’s decision in writing to HR Recruitment and Staffing department by providing information or additional evidence of rehabilitation that could affect Montefiore’s decision. During this time, the applicant’s position will be kept open.
- d. If the applicant states that there is a discrepancy on the criminal history background screening report and/or provides additional evidence of rehabilitation or any information relevant to an Article 23-A analysis, they will have five business days to either notify the external vendor that the information is incorrect or provide additional evidence of rehabilitation or good conduct to Montefiore. The applicant’s position will remain open during this time.
- e. If the applicant reports a discrepancy in the criminal history background check report, the external vendor will investigate any alleged discrepancies and notify Montefiore of the results of investigation, generally within 72 hours from the request.
- f. If the applicant provides additional evidence of rehabilitation or good conduct, HR Recruitment and Staffing department will review additional any information or documents provided, if any, and make a final hiring decision. This includes re-assessing the Article 23-A factors outlined in Section D (2) above.
- g. After five business days, once any discrepancies in the original report have been resolved or if the candidate does not contest the results and HR has reviewed all documents and additional information received, HR Recruitment and Staffing will determine the final outcome. If the decision is to proceed with the hire, HR will contact the candidate with the decision and confirm the individual’s start date. If the decision is to rescind the offer, the candidate will be notified of the outcome by Montefiore.

## E. Arrests and Charges and/or Criminal Convictions That Occur During Employment.

Employee and Labor Relations, in conjunction with HR Recruitment and Staffing Office, will be responsible for making an assessment on whether a current employee’s criminal action or convictions that occur during employment are a bar to continued employment.

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Pending criminal action and/or criminal convictions that occur during employment are not an automatic bar to continued employment.

Non-convictions for employees, as defined above in Section D (1), will not be a bar to continued employment, may not be considered, and do not need to be analyzed using the factors below.

Montefiore will not automatically discipline or terminate an employee based on a pending case or conviction.


Montefiore, however, will terminate an employee if there is a direct relationship between the employee's criminal history and the job or if continuing to employ the employee creates an unreasonable risk to Montefiore's property or to the safety of individuals (e.g. employees, patients, family members of patients, *etc.*) or the general public. Montefiore will make that determination based on consideration of the following factors:

- The seriousness of such offense or offenses;
- Whether the person was 25 years of age or younger at the time of occurrence of the criminal offense or offenses for which the person was convicted, or that are alleged in the case of pending arrests or criminal accusations, which shall serve as a mitigating factor;
- The specific duties and responsibilities necessarily related to the employment held by the person;
- The bearing, if any, of the criminal offense or offenses for which the employee was convicted, or that are alleged in the case of pending arrests or criminal accusations, on the employee's fitness or ability to perform one or more such duties or responsibilities;
- Montefiore's legitimate employer interests in protecting its property, and the safety and welfare of its patients, employees, and visitors;
- The policy of New York City to overcome stigma toward and unnecessary exclusion from employment of persons with criminal justice involvement;
- Any additional information produced by the employee, or produced on their behalf, in regards to their rehabilitation or good conduct, including but not limited to history of positive performance and conduct on the job or in the community.

Employees may be placed on an unpaid leave of absence while Montefiore conducts the above analysis.



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Montefiore will provide the employee with its initial analysis and give the employee five business days to respond.

If the employee provides additional information, Montefiore will take that information into account in completing its analysis and will provide the employee with its final written determination.

**F. Process and Factors to Consider When Current Employees Intentionally Misrepresent their Pending Cases or Conviction History**

1. Montefiore will terminate an employee's employment when they intentionally misrepresent their pending criminal action or conviction history.
2. Before terminating an employee based on a perceived intentional misrepresentation, Montefiore will provide the employee with a copy of any information that led Montefiore to believe that the employee intentionally misrepresented their criminal record and afford the employee five business days to respond.
3. Montefiore will review the information provided by the employee, if any, and make a final decision.
  - i. If the employee credibly demonstrates either that the information provided was not a misrepresentation or that a misrepresentation was unintentional, Montefiore will perform the Fair Chance Analysis, as set forth above in Section D, before taking adverse action against the employee.
  - ii. If the decision is to terminate the employee based on the misrepresentation, the employee will be sent notification advising that their employment is terminated and the effective date of the termination.
4. The employee will be on an unpaid leave of absence and their position will be kept open during this period of time.

G. Montefiore may conduct a background check of an employee during the course of their employment for reasons including, but not limited to, transfers, promotions, and education differentials.

*All Medical Center Human Resources policies and practices are guidelines and may be changed, modified or discontinued at any time by the Medical Center's Senior Vice President of Human Resources, or designee, with or without notice. Exceptions do not invalidate the basic policy.*