

RCW 28B.112.080 Sexual misconduct—Offers of employment—

Requirements. (1) Beginning October 1, 2020, prior to an official offer of employment to an applicant, a postsecondary educational institution shall request the applicant to sign a statement:

(a) Declaring whether the applicant is the subject of any substantiated findings of sexual misconduct in any current or former employment or by any association with which the applicant has, or has had, a professional relationship, is currently being investigated for, or has left a position during an investigation into, a violation of any sexual misconduct policy at the applicant's current and past employers, and, if so, an explanation of the situation;

(b) Authorizing the applicant's current and past employers or relevant associations to disclose to the hiring institution any sexual misconduct committed by the applicant and making available to the hiring institution copies of all documents in the previous employer's personnel, investigative, or other files relating to sexual misconduct, including sexual harassment, by the applicant; and

(c) Releasing the applicant's current and past employers or relevant associations, and employees acting on behalf of that employer or association, from any liability for providing information described in (b) of this subsection.

(2) Beginning July 1, 2021, prior to an official offer of employment to an applicant, a postsecondary educational institution shall:

(a) Request in writing, electronic or otherwise, that the applicant's current and past postsecondary educational institution employers, or relevant associations when a finding has been declared by the applicant, provide the information, if any, described in subsection (1)(b) of this section. The request must include a copy of the declaration and statement signed by the applicant under subsection (1) of this section; and

(b) Ask the applicant if the applicant is the subject of any substantiated findings of sexual misconduct, or is currently being investigated for, or has left a position during an investigation into, a violation of any sexual misconduct policy at the applicant's current and past employers, and, if so, an explanation of the situation.

(3) (a) Pursuant to (c) of this subsection, after receiving a request under subsection (2)(a) of this section, a postsecondary educational institution shall provide the information requested and make available to the requesting institution copies of documents in the applicant's personnel record relating to substantiated findings of sexual misconduct.

(b) Pursuant to (c) of this subsection, if a postsecondary educational institution has information about substantiated findings of a current or former employee's sexual misconduct in the employee's personnel file or employment records, unless otherwise prohibited by law, the institution shall disclose that information to any employer conducting reference or background checks on the current or former employee for the purposes of potential employment, even if the employer conducting the reference or background check does not specifically ask for such information.

(c) If, by June 11, 2020, a postsecondary educational institution does not have existing procedures for disclosing information requested under this subsection, the institution must establish procedures to begin implementing the disclosure requirements of this subsection no later than July 1, 2021.

(4) (a) The postsecondary educational institution or an employee acting on behalf of the institution, who discloses information under this section is presumed to be acting in good faith and is immune from civil and criminal liability for the disclosure.

(b) A postsecondary educational institution is not liable for any cause of action arising from nondisclosure of information by an employee without access to official personnel records who is asked to respond to a reference check.

(c) The duty to disclose information under this section is the responsibility of the postsecondary educational institution to respond to a formal request for personnel records relating to a current or prior employee when requested by another employer.

(5) (a) When disclosing information under this section, the postsecondary educational institution shall keep personal identifying information of the complainant and any witnesses confidential, unless the complainant or witnesses agree to disclosure of their identifying information.

(b) Personal identifying information that reveals the identity of the complainant and any witnesses is exempt from public disclosure pursuant to RCW 42.56.375.

(6) Beginning October 1, 2020, a postsecondary educational institution may not hire an applicant who does not sign the statement described in subsection (1) of this section.

(7) Information received under this section may be used by a postsecondary educational institution only for the purpose of evaluating an applicant's qualifications for employment in the position for which the person has applied.

(8) This section does not restrict expungement from a personnel file or employment records of information about alleged sexual misconduct that has not been substantiated.

(9) Public institutions of higher education shall share best practices with all faculty and staff who are likely to receive reference check requests about how to inform and advise requesters to contact the institution's appropriate official office for personnel records.

(10) The student achievement council shall convene a work group and report to the legislature by November 30, 2024, regarding the ability of institutions of higher education to consider if applicants or current employees have committed sexual misconduct at meetings or conferences of academic and professional associations; and, how institutions of higher education and Washington agencies may encourage adoption of policies and procedures regarding sexual misconduct committed at such association events. [2023 c 79 § 3; 2020 c 335 § 6.]

Intent—2023 c 79: "In 2020 the legislature established RCW 28B.112.080 requiring colleges and universities statewide, both public and private, to ask job applicants to declare whether they had been the subject of substantiated findings of sexual misconduct by a current or previous employer, whether they are the subject of current investigations of sexual misconduct by their employer, or whether they resigned employment during an ongoing investigation. It requires postsecondary educational institutions to request documentation of substantiated findings or investigations prior to extending an offer of employment,

In academic settings, sexual misconduct can take place outside the context of employment. For example, an employee of one university might harass a student or employee of a different university in a professional setting such as a conference or meeting. A growing number of scholarly associations sponsoring conferences or other events have adopted codes of conduct and investigative procedures to address the problem of sexual misconduct in these contexts. The legislature intends to expand the declaration required of applicants for employment to include substantiated findings by scholarly associations. Further, the legislature intends to expand the requirement to request documentation to include substantiated findings generated by scholarly associations." [2023 c 79 § 1.]

Findings—Intent—2020 c 335: See note following RCW 28B.112.040.