

Act 15 of 2015—Detailed Analysis

July 22, 2015

Prepared By:

Mary Young, AICUP Vice President of Government Relations
Jihoon Chang, AICUP Intern; Juniata College

Background:

House Bill 1276 became Act 15 of 2015 after its passage in the House and the Senate, and with the signature from the Governor. Act 15 amends Title 23, the domestic relations portion of the Pennsylvania Consolidated Statutes, in order to clarify the definitions and requirements set forth in Act 153 of 2014. Under current law, volunteers and employees who come into direct contact with any child are mandated to receive background checks. Act 15 gives a more comprehensive definition to the phrase “direct contact” and it provides colleges and universities relief by narrowing down the requirement for those who must receive these certifications.

Important Definitions:

Act 15 amends definitions that are pertinent to understanding Act 153 and those who are required to receive background certifications.

Volunteers: Currently, the law regarding volunteers reads: “...adult applying for an unpaid position as a volunteer responsible for the welfare of a child or having direct contact with children.”

Direct contact is defined as: “The care, supervision, guidance or control of children or routine interaction with children.”

Under Act 153, volunteers and paid employees who came into routine interaction with or supervised a child would have had to comply with these background checks. This goes beyond the presumed professors and counselors to cafeteria employees, those working in administrative offices, student-volunteers, etc.

Act 15 resolves some of these issues by redefining “direct contact for volunteers” as “The care, supervision, guidance or control of children **and** routine interaction with children.” The addition of the “and” eliminates the need of a background check for volunteers who may interact with children on one day a year for a special event.

Furthermore, a “school employee” is defined as an individual who is employed by a school or who provides a program, activity or service sponsored by a school. The term does not apply to administrative or other support personnel unless the administrative or other support personnel that have direct contact with children.

The definition of “matriculated student” also eliminates many professors and other employees from the background certifications, since Act 15 exempts college employees interacting with matriculated students from the background certification requirement.

Matriculated students- A student who is enrolled in an institution of higher education and pursuing a program of study that results in a postsecondary credential, such as a certificate, diploma or degree.

Program, activity or service- Programs sponsored by a school or a public or private organization that includes but is not limited to youth camps, sports or athletic programs, and enrichment or educational programs.

Routine interaction- Regular and repeated contact that is integral to a person's employment or volunteer responsibilities.

Immediate Vicinity- An area in which an individual is physically present with a child and can see, hear, direct and assess the activities of the child.

Independent Contractor- An individual who provides a program, activity or service to an agency, institution, organization or other entity, including a school or regularly established religious organization, that is responsible for the care, supervision, guidance or control of children. The term does not apply to administrative or other support personnel unless the administrative or other support personnel that have direct contact with children.

Colleges/Universities:

These revised and newly defined phrases therefore exempt many – if not most – employees and volunteers at institutions of higher education from the previously stated background checks. The law states that employees whose direct contact with children is limited to either prospective students or matriculated students are exempt from this requirement. However, the exemption does not extend to students who are still enrolled in secondary education. In the case of dual enrolled students who are taking courses in these higher education institutions while enrolled in high school, the law requires employees who come into direct contact to receive background certifications.

For employees whose work is within the administrative aspects of the institution of higher education, the language states that school employees are exempt from having to receive background checks for as long as direct contact with children is not integral to their employment. However, independent contractors are required to get the certifications if the contractor has direct contact with children.

Employees for Internships, Externships, Co-ops, etc.

Regarding paid positions as an employee with a program, activity or service, those that are 14 years or older and responsible for the child's welfare must meet the certification requirement. In the event that the program, activity or service is an internship (etc.), **only** the adult who is applying for or holding the paid supervisor position to the intern (etc.) participating in the program must receive certification. This supervisor must also be in the immediate vicinity of the intern during the program.

AICUP believes that the intent of this subsection is to address different programs and which individuals within the respective programs are required to receive certifications. The language separates the employee position from that of an internship mainly due to the temporary status of interns. If the

program, activity or service **does not qualify** as an internship, the employee that is 14 years of age or older must receive certification. In the event that the program **is** an internship, the supervisor is required to receive the background certification and be present in the immediate vicinity of the intern participating in the program. This is in order to prevent prospective interns, and those interested in participating in internships who are temporarily interacting with children, from being deterred by the certification requirement.

Minors:

Minors aged 14-17 who apply for, or are holding a paid position as an employee responsible for a child's welfare or a person with direct contact with children are required to only submit the Pennsylvania State Police criminal history, and certification from the [Statewide Department of Human Services \(DHS\)](#) database as part of their certification. The minors are exempt from the Federal criminal history record portion of background certification. This only applies in the event that the minor resides in the Commonwealth and has resided in the state for the past 10-year period, and the individual, along with their parent or legal-guardian, swears or affirms in writing that they have not been previously convicted.

Exchange Visitors:

An individual in possession of a nonimmigrant Visa, such as a J-1 Visa, is not required to submit certifications under the following stipulations: The individual is applying for a program, activity or service that is not to exceed 90 days in a given year; the individual has not been previously employed in the Commonwealth, another state, District of Columbia, or the Commonwealth of Puerto Rico; and they affirm or swear in writing that they have not been convicted of an offense in the United States, any of the Commonwealths, territories or a foreign nation.

Volunteers:

There are exceptions available to certain categories of volunteers in Act 15. First, if the volunteer is unpaid and if the volunteer resided in the Commonwealth in the past 10-year period, he or she need not receive a Federal criminal history record check. Second, the volunteers are exempt from background certifications all together if they fulfill **all** of the following requirements:

1. The volunteer is enrolled in a school.
2. The volunteer is not a person responsible for a child's welfare.
3. They are volunteering in an event that takes place on school grounds.
4. The event is sponsored by the school in which the volunteer is enrolled as a student.
5. And if the event is not for children who are in the care of a child-care service.

Therefore, volunteers can be partly or entirely exempt from the background certifications for as long as these criteria are met.

Waiver of Fees:

Background certification fees may be waived for volunteers if they fall within set conditions. The waived certification is to comply with the requirement that the individual submit information in relation to being a foster parent, paid employee of a child-care home or service, prospective adoptive parent etc. However, this waived certification cannot be used to fulfill the requirements during the hiring process. The law also states that a volunteer may only be provided a waiver for background certifications once every 57 months.

Lastly, the volunteer must swear or affirm in writing that the waived certification satisfies these preconditions.

Effective Date:

This act is to take effect immediately after the date it was signed into law by the Governor. (07/01/15)

Effective 08/25/15, an individual who is required to have the background checks must receive the certifications every 60 months. This applies to 60 months from the date of their most recent certification, or in the event that their current certification is older than 60 months, they must be recertified within a year.

For more information visit the DHS website: KeepKidsSafe.PA.gov which published guidelines for the newly signed act.