BACKGROUND INVESTIGATION UPDATE COURSE

LEC Region 7, 9, 10

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Garden Grove CA

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CALIFORNIA COMMISSION ON

PEACE OFFICER STANDARDS AND TRAINING

INTRODUCTION TO POST

- Established by Legislature in 1959 to set minimum selection and training standards for California law enforcement
- 160 full-time staff members
- 45 Law Enforcement Consultants
- Funded by State Penalty Assessment Fund - penalty assessments on criminal and traffic fines (and General Fund for FY2019)
- Participation is voluntary

MISSION STATEMENT

- The mission of the California Commission on Peace Officer Standards and Training (POST) is to continually enhance the professionalism of California law enforcement in serving its communities.

- Play "This is POST Video"
- https://post.ca.gov/video-overview-of-post

TWO GOALS OF BACKGROUNDS

- The pre-employment background investigation satisfies two goals:
- 1) assuring compliance with all applicable minimum standards for appointment, and
- 2) screening out candidates who, based on their past history or other relevant information, are found unsuitable for the positions in question.

BACKGROUNDS ARE CRITICAL INVESTIGATIONS

- Backgrounds are among the most important investigations that a law enforcement agency will ever conduct.
- The manner in which a background investigation is conducted can make the difference between hiring an individual who will truly protect and serve versus someone who may cause harm to oneself, the agency, and society.

NEW FORMS AND PROCESSES

- New Tabs Pending
- New narrative format



BACKGROUND REGULATIONS

- III. Backgrounds [Reg. 1953(Peace Officers) & 1959(Public Safety Dispatchers)]
- a. Initial background
- b. Update background [Reg. 1953(f)]
- i. Separation over 180 days
- ii. Separation 180 days or less
- Attach "Update" to the original file and indicate it is an update. (Commission Regulations 1953(f) and 1959(f))

VERIFICATION FOR QUALIFICATION FOR POLICE OFFICER APPOINTMENT

- Verification for Qualification for Police Officer Appointment (Required for all Police Hires effective January 1, 2023) REQUIRED TO BE INCLUDED IN ALL POST POLICE BACKGROUND INVESTIGATIONS. POST FORM 2-355

VERIFICATION FOR QUALIFICATION FOR POLICE OFFICER APPOINTMENT

- This new form should be completed by whoever has knowledge that the relevant statutory and regulatory requirements have been met for the peace officer appointment. However, the form MUST be signed by the authorized hiring authority designee. Designation of this individual is the responsibility of the hiring agency. The form should be completed AFTER all relevant statutory and regulatory requirements have been met and verified, but BEFORE the appointment of the individual to a peace officer position. The form is to be placed in front of the background narrative in the background file. For agencies utilizing the POST Background Tabs, this will be under Tab "A". It will be reviewed during the annual POST consultant audit.
- Form located at: https://post.ca.gov/portals/0/post_docs/publications/2-355.pdf
- See bulletin at: https://post.ca.gov/Portals/0/post_docs/bulletin/2023-02.pdf

ATTESTATION OF POLICE OFFICER ELIGIBILITY POST FORM 2-356

- Attestation of Police Officer Eligibility - POST FORM 2-356
- On January 1, 2023, the previously used Notice of Appointment/Termination, POST 2-114, was deactivated. The new Notice of Appointment will only be accepted online via the Electronic Data Interchange (EDI), all other submissions will not be accepted.

ATTESTATION OF POLICE OFFICER ELIGIBILITY POST FORM 2-356

- POST participating departments are required by Regulation 1003 to notify POST of employment transactions of their department involving peace officers, reserve peace officers, dispatchers, and records supervisors within 10 days of appointment. If you do not have the appropriate permission, please complete the EDI Agency Access Application form (3-101) listed below.
- Any peace officer employed by a POST-participating agency who does not receive their authority through one of the above penal codes is subject to all Senate Bill 2 requirements. For all appointments made Prior to December 31, 2022, POST has automatically issued the POE to all eligible peace officer.

ATTESTATION OF POLICE OFFICER ELIGIBILITY POST FORM 2-356

- An Attestation is only required for peace officers newly appointed to your agency, regardless of whether they are a recent academy graduate or a lateral. This is not required for non-peace officer classifications, including TRN. You will not need to submit an Attestation for these individuals until you change their classification from TRN to an eligible peace officer classification.
- The following peace officer classifications are subject to the requirements to PC section 13510.9 and Commission Regulation 1202: PC section 830.1 PC section 830.3, PC section 830.1 (c) Jail Deputies PC section 830.32, PC section 830.2 except those described in subdivision (d) (CDCR), PC section 830.33.

ATTESTATION OF POLICE OFFICER ELIGIBILITY POST FORM 2-356

- This document must be uploaded with the notice of appointment for newly appointed peace officers or any peace officer that is a lateral or has had a break in service via the POST Electronic Data Interchange (EDI). Download this document, initial, sign where required, and upload the document to the notification of appointment. If any missing information is identified, it will be returned to the agency for correction. After a notice of appointment is completed, POST will verify that all information is completed before the peace officer is added to the agency roster. If any missing information is identified, it will be returned to the agency via EDI. The peace officer will not be added to the agency roster until the form is completed and reviewed by POST
- Form located at: https://post.ca.gov/portals/0/post_docs/publications/2-356.pdf
- See bulletin at: https://post.ca.gov/Portals/0/post_docs/bulletin/2023-05.pdf

EDI AGENCY ACCESS FORM - POST FORM 3-101

- EDI Agency Access Form - POST FORM 3-101
- Agency representatives with Electronic Data Interchange (EDI) access will need to request and be granted additional security permissions to view any POST Profiles shared with the agency via the PASS system. Agency access requests must be submitted and approved via the EDI Agency Access Application Form (POST 3-101).

EDI AGENCY ACCESS FORM - POST FORM 3-101

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EDI AGENCY ACCESS FORM - POST FORM 3-101

- Even if you had EDI Agency access before January 1, 2023, you would need to complete a NEW 3-101 form to give you the ability to conduct new functions, such as separating a person from your agency on the official state roster. POST bifurcated the Appointment and Termination processes because the Penal Code now requires agencies to submit an Affidavit of Separation which did not exist prior to January 1, 2023.

EDI AGENCY ACCESS FORM - POST FORM 3-101

- Everyone who previously had NOAT access and maintained their access to the Notice of Appointment screen in EDI will now require additional access permissions. This is a new level of access and some agencies have expressed concerns about the information now required when separating an officer and whether it is appropriate for line level staff to have this information. Everyone has to apply for access to the Notice of Separation is you are tasked with removing folks from your rosters.
- Form located at: https://post.ca.gov/portals/0/post_docs/publications/3-101.pdf

AFFIDAVIT OF SEPARATION - POST FORM 2-357

- As of January 1, 2023, any submission of a Notice of Separation, for a peace officer separating from employment, must include an Affidavit of Separation, Form 2-357 (pdf), from the employing agency. The Affidavit of Separation, Form 2-357, is used to provide written notification to POST that a peace officer has been separated from service, in accordance with Penal Code (PC) section 13510.9.

AFFIDAVIT OF SEPARATION - POST FORM 2-357

- This form is required regardless of whether the peace officer has separated in good standing. The agency shall complete a Notice of Separation and upload the completed and signed Affidavit of Separation, Form 2-357, to the Electronic Data Interchange (EDI) within ten days of initiating any separation of a peace officer. This form shall be signed by the agency head, or their authorized designee, under penalty of perjury.

AFFIDAVIT OF SEPARATION - POST FORM 2-357

- The reasons for separation are the following:
- 1) Retired, 2) Resigned, 3) Deceased, 4) Involuntary Separation, 5) Resigned/Retired Pending Complaint, 6) Administrative Charge, or 7) Investigation for misconduct (see below).

- The reasons for a misconduct separation are the following:
- 1) Dishonesty, 2) Abuse of Power, 3) Physical Abuse, 4) Sexual Assault, 5) Demonstrating Bias, 6) Egregious Repeated Acts, 7) Law Enforcement Gang, 8) Failure to Cooperate with Investigation, 9) Failure to Intercede. (Can also note Other)

AFFIDAVIT OF SEPARATION - POST FORM 2-357

- The reason for separation must be further identified if it is due to serious misconduct as defined in PC section 13510.8(a). The agency must also identify on the Affidavit of Separation, Form 2-357, whether the separation was part of a settlement of a criminal, civil, or administrative charge. A copy of the Affidavit of Separation must be provided to the peace officer identified on the form. The peace officer shall be advised of their right to respond in writing to the Commission if they believe the facts and reasons for separation differ from those provided by the agency on the Affidavit of Separation, Form 2-357.

AFFIDAVIT OF SEPARATION - POST FORM 2-357

- A signed or digital signature is accepted as long as it is a secured digital signature (automatically date and time stamped). This will not be accepted via email or standard mail. It must be uploaded in EDI.
- Form located at: https://post.ca.gov/portals/0/post_docs/publications/2-357.pdf
- See bulletin at: https://post.ca.gov/Portals/0/post_docs/bulletin/2023-06.pdf

BACKGROUND LATERAL TRANSFERS

- c. Lateral Transfers
- i. New agency must complete entire process
- ii. Qualifying service (especially for a prior reserve)
- d. Double badging and per diem employees
- i. Each agency must have completed its own hiring process
- ii. Contracts with allied agencies

POST RECORDS CHECK (MUST BE DONE FOR ALL LATERAL OFFICERS)

- Beginning January 1, 2023, agencies who appoint peace officers must ensure that, prior to appointment, the prospective peace officer has not voluntarily surrendered their certification or had any previous certification(s) suspended or revoked pursuant to Penal Code §13510.8. Additionally, Penal Code §13510.9 requires agencies, as part of the background investigation process, to inquire as to the facts and reasons a peace officer became separated from any previous employing law enforcement agency.

POST RECORDS CHECK (MUST BE DONE FOR ALL LATERAL OFFICERS)

- Information about the certification status of officers and information about previous law enforcement employment, including the dates and reason(s) for separation, can be found on an applicant's POST Profile, and must be checked prior to appointment. In order to provide agencies and background investigators with this information in a timely and convenient manner, POST has developed an online system for potential peace officer applicants to directly share their POST Profile with prospective agencies as part of the hiring and selection process.

POST RECORDS CHECK (MUST BE DONE FOR ALL LATERAL OFFICERS)

- For all inquiries related to peace officer certification status, employment verification, POST Profiles, reasons for separation from employment, or documentation regarding allegations of serious misconduct, please submit a request using NextRequest.
- A background inquiry FOR ALL LATERAL POLICE OFFICER APPLICANTS must be made online at the following website: https://postca.nextrequest.com/. The following is a step-by-step process to complete this task.
- 1) Go to https://postca.nextrequest.com/ Please make every effort to research the records you are requesting, prior to submitting your request. There is a vast amount of information, resources, and records available on the POST Website, by utilizing the search tool, or browsing the topics related to your request.

POST RECORDS CHECK (MUST BE DONE FOR ALL LATERAL OFFICERS)

- Click on "Make a Request" link. The request will open and provide you a text box to add specific details as to what information you are requesting. In order to ensure these requests are not publicly accessible, the requestor must select "Background Investigation Request" using the dropdown tab.
- The response you received will vary depending on what you are asking for. The comments below are some suggested verbiage to make sure you get the information you are required to collect and include.
- "I am conducting a background investigation for lateral candidate John Smith, (POST ID). Pursuant to Penal Code §13510.9(d)(3), I am requesting any information POST possesses regarding reasons for separation from previous employment as a peace officer as well as information regarding any possible allegations of serious misconduct. I am also requesting a copy of the candidate's POST profile."

POST RECORDS CHECK (MUST BE DONE FOR ALL LATERAL OFFICERS)

- Once you fill in the text box, use the dropdown tab to select the department and enter all of your information as the requester and then hit the "Make a Request" button at the bottom of the page.
- 4) Shortly after making the request, you will receive a link sent to your E-Mail address, you will need to click on this link which will take you to the "Account Setup" page. You will be prompted to create a password. Once your account is setup, keep your Login information secure. You can now use that to login into the system directly once account is confirmed.

POST RECORDS CHECK (MUST BE DONE FOR ALL LATERAL OFFICERS)

- Upload Waiver form. If you are requesting a copy of the candidate's POST profile, this is where you will now be able and required to please submit a copy of the waiver after you receive an acknowledgement your request was received (NextRequest does not allow requestors to upload documents until they have had contact with the agency).
- If you are also requesting information regarding allegations of serious misconduct, please include this as part of your request. You are only required to ask about reasons for separation from prior employment, but POST is required to provide information about allegations of misconduct, if the potential employing agency asks for it.

POST RECORDS CHECK (MUST BE DONE FOR ALL LATERAL OFFICERS)

- Questions about this requirement or the process may be directed to BGInfoRequest@post.ca.gov. For agencies utilizing the POST Background Tabs, this will be under Tab "C". It will be reviewed during the annual POST consultant audit.
- You can keep track of all of your requests and their status in your NextRequest account. To be able to create an account and receive records, you must complete the EDI Agency access form 3-101, even if you correctly have access you will need to resubmit, make sure to select the box to review POST PROFILES.

POST TRAINING PROFILE (SHOULD BE CHECKED FOR ALL LATERAL APPLICANTS)

- You will have this if you added to the nextrequest process we just discussed. If not you can get it this way as well.
- The Commission on Peace Officer Standards and Training (POST) Profile contains information about, Peace officer certification status, including any professional certificates issued and whether or not any of the certificates have been revoked, suspended, or surrendered, Peace officer employment history, including the date(s) and reason(s) for separation from any previous POST participating law enforcement agency, Any POST-certified training completed by the peace officer. For agencies utilizing the POST Background Tabs, this will be under Tab "C". It will be reviewed during the annual POST consultant audit.

POST TRAINING PROFILE (SHOULD BE CHECKED FOR ALL LATERAL APPLICANTS)

- POST Regulation 1953(e)(3)(D) requires all agencies appointing peace officers to verify the candidate's qualification for appointment as a peace officer pursuant to Government Code section 1029. POST Regulation 1953(g)(1) requires that all supporting documentation obtained during the course of the background investigation shall be included in the candidate's background investigation file.
- Proof of compliance with the listed requirements is met by placing a copy of the candidate's POST Profile in the background file along with the "Criminal and Other Qualification Records Checks- Local, State, and National."
- Police applicants can share a copy of their profile with any department they are applying to, the following is the process of how a profile can be shared.

POST TRAINING PROFILE (SHOULD BE CHECKED FOR ALL LATERAL APPLICANTS)

- 1) The police applicant logs into their POST PASS account. Once you are signed into your POST pass account, you will see new items under the "For You" section, including "Your POST Profile" and "Your CPT Status". The applicant will click on the POST profile to share it with an agency they would like to work at. The applicant can click on the CPT status to see what they have completed and need to complete in the current Continuing Professional Training cycle, which is from January 1, 2023, to December 31, 2024.

POST TRAINING PROFILE (SHOULD BE CHECKED FOR ALL LATERAL APPLICANTS)

- 2) Once you click on the POST profile, you will be on the page for "Pre-Employment agency access form. Click on the "Select and Agency" and choose the department you want the form sent to, then select the "Access Expiration Date", this will be the date the department can no longer see your information.

POST TRAINING PROFILE (SHOULD BE CHECKED FOR ALL LATERAL APPLICANTS)

- 3) The agency can view the profile in EDI under the Personnel Tab, and then the Pre-Employment Access tab. A copy of the POST profile for the applicant will be sent to the EDI representatives for the agency (only folks who have submitted a 3-101 form with the permission to view profiles will be able to view them. You can view and print profile and include in the applicant's background file.

POST TRAINING PROFILE (SHOULD BE CHECKED FOR ALL LATERAL APPLICANTS)

- Individuals can also download a copy of their own profile when needed. To request a copy of your POST Profile visit https://post.ca.gov/post-profile, OR request a copy of a POST Profile Report for another individual who has provided you with a written, signed authorization requesting the profile (the signed authorization must accompany this form). In order to process your request, the applicable section in Part B must be checked, signed, and dated. Please indicate how you would like the profile report transmitted (item 18). To submit your completed and signed request, Email scanned form to: peaceofficervoe@post.ca.gov
- Form located at: https://post.ca.gov/portals/0/post_docs/publications/2-126.pdf
- See bulletin at: https://post.ca.gov/Portals/0/post_docs/bulletin/2023-07.pdf

MARK 43 ACCESS APPLICATION(IF NEEDED)

- This online reporting platform will provide law enforcement agencies an avenue to report allegations of serious misconduct to POST, pursuant to SB2. Serious misconduct reporting via Mark43 is a web-based reporting system designed to enable agencies to meet the 10-day notification requirements of the Penal Code 13510.9. Agencies are limited to a maximum of two users in Mark43 unless otherwise indicated. Additionally, the POST Mark43 system is only used for agency reporting of serious misconduct to POST and does not replace EDI for appointments, terminations, and other required reporting. For User account assistance contact Mark43UserSupport@post.ca.gov For reports and other assistance contact AgencyReportsHelp@post.ca.gov The POST Mark43 Helpdesk contact number is (916) 227-4511.
- Form located at: https://post.ca.gov/portals/0/post_docs/publications/2-361.pdf
- See bulletin at: https://post.ca.gov/Portals/0/post_docs/bulletin/2022-50.pdf

EDI CORRECTION TO RECORD-POST FORM 2-362

- Agencies that submit an incorrect appointment via EDI will need to notify POST in writing within ten days, with a justification for the correction request. Requests should be submitted to the EDI Unit of the Strategic Communications Bureau using the Correction to the Record, Form 2-362 at EDI@post.ca.gov. If an individual is reinstated, agencies have ten days to reappoint in EDI and submit a correction to the record in writing, along with the reinstatement documents to the Certification Bureau. Agencies may submit corrections to EDI provides by completing the Correction to Record form and emailing directly to EDI@post.ca.gov
- Form located at: https://post.ca.gov/portals/0/post_docs/publications/2-362.pdf

UPDATED PERSONAL HISTORY STATEMENT - POST FORM 2-251

- Updates to the POST PHS address changes in state law and Commission regulations. Major revisions include replacing the citizenship question with employment eligibility (Section 1: Personal, Q. 8), adding questions specific to applicants with prior peace officer experience, including serious misconduct questions (Section 5: Experience and Employment, Qs. 46 – 46.11), adding Government Code section 1029 questions (Section 8: Legal, Qs. 66.1 – 66.13), modifying and adding questions relevant to law enforcement gangs, hate group membership, and other bias-relevant information (Section 10: Other Topics, Qs. 98-101)

UPDATED PERSONAL HISTORY STATEMENT - POST FORM 2-251

- Effective January 1, 2023, pursuant to Commission Regulations 1953(c)(3) and (g)(2), respectively, the peace officer personal history statement (PHS) form must include inquiries addressing all disqualifications for peace officer appointment as specified in Government Code section 1029(a), and agencies must ensure that the background files for all newly appointed peace officers include the new Verification of Qualification for Peace Officer Appointment (POST 2-355) form (see Bulletin 2022-46).

UPDATED PERSONAL HISTORY STATEMENT - POST FORM 2-251

- Form located at: https://post.ca.gov/portals/0/post_docs/publications/2-251-phsPeaceOfficers.pdf
- See bulletin at: https://post.ca.gov/Portals/0/post_docs/bulletin/2023-02.pdf
- For agencies utilizing the POST Background Tabs, this will be under Tab "B". It will be reviewed during the annual POST consultant audit.

POLICE OFFICER MEDICAL EVALUATION - POST FORM 2-253

- Medical Evaluation Reporting Requirements – 1954(e). The evaluating physician shall submit a medical suitability declaration to the department that shall include the following information: (A) The physician's printed name, contact information and medical license number, (B) The candidate's name, (C) The date the evaluation was completed, and (D) A statement, signed by the physician, affirming that the candidate was evaluated in accordance with Commission Regulation 1954.

POLICE OFFICER MEDICAL EVALUATION - POST FORM 2-253

- The statement shall include a determination of the candidate's medical suitability for exercising the powers of a peace officer. Prior to appointment as a peace officer, the candidate must be determined to be medically suitable. The department shall maintain the medical suitability declaration in the candidate's background investigation file; the declaration shall be available to POST during compliance inspections.

UPDATED PERSONAL HISTORY STATEMENT - POST FORM 2-251

- Page 5 of the medical report (Medical Suitability Declaration) must be included in the background investigation to be reviewed during the POST audit, the remaining pages containing medical results should be kept in the confidential personnel file in the agency.
- https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fpost.ca.gov%2Fportals%2F0%2Fpost_docs%2Fpublications%2F2-253MedicalExamReport.doc&wdOrigin=BROWSELINK
- Form located at: https://post.ca.gov/portals/0/post_docs/publications/2-252MedicalHistoryStatement.pdf
- For agencies utilizing the POST Background Tabs, this will be under Tab "N". It will be reviewed during the annual POST consultant audit.

DISPATCHER MEDICAL EVALUATION - POST FORM 2-365

- Medical Evaluation Reporting Requirements - 1960(e) (1). A medical suitability declaration shall be submitted to the department that includes the following information: (A) The physician's printed name, contact information and medical license number, (B) The candidate's name, (C) The date the evaluation was completed, and (D) A statement, signed by the physician, affirming that the candidate was evaluated in accordance with Commission Regulation 1960. The statement shall include a determination of the candidate's medical suitability for performing as a public safety dispatcher. (2) The department shall maintain the medical suitability declaration in the candidate's background investigation file; the declaration shall be available to POST during compliance inspections.
- https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fpost.ca.gov%2Fportals%2F0%2Fpost_docs%2Fpublications%2F2-265MedicalExamReport.doc&wdOrigin=BROWSELINK
- Form located at: https://post.ca.gov/portals/0/post_docs/publications/2-264MedicalHistoryStatement.pdf

POLICE OFFICER PSYCHOLOGICAL EVALUATION

- Psychological Evaluation Reporting Requirements – 1955(f). The evaluator shall submit a psychological suitability declaration to the department that shall include the following information: (A) The evaluator's printed name, contact information and professional license number, (B) The name of the candidate, (C) The date the evaluation was completed, and (D) A statement, signed by the evaluator, affirming that the candidate was evaluated in accordance with Commission Regulation 1955. The statement shall include a determination of the candidate's psychological suitability for exercising the powers of a peace officer. Prior to appointment as a peace officer, the candidate must be determined to be psychologically suitable. The department shall maintain the psychological suitability declaration in the candidate's background investigation file; the declaration shall be available to POST during compliance inspections.
- https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fpost.ca.gov%2Fportals%2F0%2Fpost_docs%2Fpublications%2Fpsychological-screening-manual%2FPsychEvaluationRpt.docx&wdOrigin=BROWSELINK

POST BACKGROUND TABS

- POST no longer provides background tabs to agencies/organizations for use in background files. However, POST highly recommends that background investigators continue using tabs to ensure completeness of the files as well as to assist POST personnel during audit inspections. Tabs may be downloaded and printed, or agencies/organizations may order tabs in black and white at a discounted price and have them shipped directly from the FedEx Doc Store.
- Download dispatcher tabs (pdf)
- Download peace officer tabs (pdf)
- Order directly from FedEx Doc Store

SOCIAL MEDIA – 1953(E)(12)

- The new year has brought some changes in how California police background investigators shall summarize the results of their background investigation in their narrative report. The report must include sufficient information for the agency head to extend, as appropriate, a conditional offer of employment.
- As a result, the background investigators report shall reference the background investigation shall include findings obtained through the social media search per POST regulation 1953(e)(12).

SOCIAL MEDIA – 1953(E)(12)

- The regulation states in part that every peace officer candidate shall be the subject of a social media search for statements, postings, and/or endorsements made by the candidate that are relevant to suitability for peace officer employment, including bias-relevant information consistent with the requirements of Commission Regulation 1955(d)(3).

SOCIAL MEDIA – 1953(E)(12)

- The social media check requires that a search be conducted of postings made by the candidate to determine suitability for peace officer employment, regardless of where the postings are made, including, but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.
- It does not, however, require nor permit infringement of a candidate's privacy rights.
- All searches must be conducted in accordance with state and federal laws. Only information that is relevant to peace officer suitability should be reported and documented.

SOCIAL MEDIA – LABOR CODE ISSUE

- Section 980 of the Labor Code prohibits employers from requiring or requesting applicants to: "(1) Disclose a username or password for the purpose of accessing personal social media. (2) Access personal social media in the presence of the employer. (3) Divulge any personal social media." What does this mean for law enforcement employers (i.e., POST-participating departments) who must conduct a social media check?

SOCIAL MEDIA

- Whether Labor Code section 980 applies to public sector employers is unsettled. Some cases hold that Labor Code provisions must specifically be made applicable to public employers to bind them. [See e.g., Johnson v Arvin-Edison [174 Cal.App.4th 729 (2009)] (unless a Labor Code provision specifically states it applies to public employers, it is presumed to apply only to private employers.]

SOCIAL MEDIA

- While the Legislature may have so intended in enacting Labor Code section 980 (because, among other things, an example given as a justification for it was a background investigation of a Maryland correctional officer) no provision was included in the legislation specifically applying it to public agencies.

SOCIAL MEDIA – 1953(E)(12)

- Social Media Content Considerations
- POST requirements – bias screening, immoral behavior, illegal activity, background investigation dimensions and general behavior indicative of unsuitability
- · Publicly available
- · Seek legal counsel advice with regard to private social media accounts
- · Careful consideration of protected information
- · Restrict to candidate information only
- · Number of followers/friends etc. should r be considered

SOCIAL MEDIA – 1953(E)(12)

- Searchable sites may include, but not be limited to:
- · Social networking (e.g., Facebook, Instagram, LinkedIn)
- · Blogs (e.g., Twitter)
- · Video (e.g., YouTube, TikTok)
- · Forums (e.g., Quorum, Reddit)
- Reporting Limits and Considerations
- · Report only information relevant to peace officer suitability
- · Do not include information about others
- · Redact irrelevant information
- · Verify accuracy of information
- · Provide sources – URLs, webpages
- · Provide documentation – screenshots, printouts, e

SOCIAL MEDIA – 1953(E)(12)

- This would include evidence of bias-related behaviors, traits and/or attributes, illegal and/or immoral behaviors, or other behaviors that indicate unsuitability to be a peace officer. This could also include evidence that may mitigate past behaviors, such as positive character traits and/or activities that indicate that the individual has matured and/or rehabilitated.

SOCIAL MEDIA – 1953(E)(12)

- All results should be directly related to either the background investigation dimensions or the bias assessment framework. Employers should not be provided information that is protected under fair employment laws, privacy provisions, or any information that is not relevant to peace officer suitability. This may include pregnancy status, religion, disability information, political affiliation, and sexual preference to name a few. Results should be restricted to candidate information only

SOCIAL MEDIA

- Proof shall consist of documentation verifying a social media search was conducted which, at a minimum, shall include written documentation of websites searched and/or services used, including webpage URLs and findings.
- When there is evidence of activity relevant to peace officer suitability, documentation shall consist of screenshots, printouts, website links, and/or other documentation verifying the information and shall be limited to that which is relevant to suitability for peace officer employment.

SOCIAL MEDIA

- How far back should the social media search be conducted (e.g., should only recent social media postings be reviewed)?
- A5: It depends. A younger candidate may not need as lengthy of search as an older candidate. Evidence of unsuitable behavior may necessitate a longer history search to determine patterns of behavior. Departments should establish a cybervetting policy to ensure that all candidates are being treated in a fair and consistent manner.

SOCIAL MEDIA

- Where in the background file should the social media findings be placed?
- A6: Documentation (e.g., printouts, screenshots) should be included under Tab L – Relatives/Personal References. The Tabs are in the process of being updated with the new regulation requirements and SB-2 information. In general, the location of current Tab information will not change. Social media findings, including bias-relevant information, must be included in the narrative report.

COMPLIANCE INSPECTIONS

- Pursuant to Penal Code Section 13512, POST conducts regularly scheduled inspections.
- These audits verify that agencies in the POST program are in compliance with the statutes, regulations, procedures, and documentation requirements associated with the background investigation process.

COMPLIANCE INSPECTIONS

- What is a POST compliance inspection?
- How are inspections scheduled?
- How much notice will I get before the visit?
- What agency records are reviewed?
- How often does POST conduct compliance inspections?
- How should I prepare?
- What will the consultant need?
- How long will the inspection take?

COMPLIANCE INSPECTIONS

- We are checking to see if every person hired to be a police officer, dispatcher, or reserve officer was done so in accordance with the law, all are in compliance with all required training, have the legislatively mandated courses if applicable, have the correct POST certificates, the agency has a full accurate roster for the agency and every employee is properly entered into EDI, the POST database.

COMPLIANCE INSPECTIONS

- Every POST police agency in the State of California are visited at least once a year by their regional consultant for an annual compliance audit.
- I have seen some agencies worry about the process, however, if the agency follows the steps in the process while hiring and conducting the background investigation, the audit will be uneventful, and the department should receive high marks.

COMPLIANCE INSPECTIONS

- Review of agency records
  - Requirement of participation in the POST program
  - CCR Regulation 1010
- Regularly scheduled inspections to verify that agencies are in compliance with documentation requirements and appointment standards
  - California Penal Code Section 13512

COMPLIANCE INSPECTIONS

- Consultant will need the following:
- Appropriate location to work
- Power source for the computer
- WI-FI access and code
- Background files of those hired since the last inspection
- Internal agency roster

COMPLIANCE INSPECTIONS

- The length of time will be determined by:
  - Size of the agency
  - Number of files to be reviewed
  - Completeness and organization of files
  - Normally, 4 hours is scheduled for smaller agencies while larger agencies may require multiple days
  - Compliance Review Results Letter sent to agency's Chief Executive
- Follow-up visit may be necessary

COMPLIANCE INSPECTIONS

- If deficiencies are detected, they work with the agency by suggesting methods for correction and establishing a timetable for correction.
- A follow-up visit may be scheduled to assure that the deficiencies are corrected. Consequences may be invoked if agencies resist or fail to correct problems within a reasonable period of time.

BACKGROUND TABS

- To help agencies organize the process, a series of tabs have been created to assist background investigators in organizing information and documentation required by the POST Peace Officer Selection Requirements (Commission Regulations 1950-1955).
- Each tab cites the relevant POST requirement, including the documentation requirements associated with each area of investigation.
- These tabs are a tremendous help in expediting the document inspection process by the regional consultant.

TAB A - BACKGROUND NARRATIVE REPORT

- Commission Regulation 1953(g) (1)
- The background investigator shall summarize the background investigation results in a narrative report that includes sufficient information for the reviewing authority to extend, as appropriate, a conditional offer of employment.

- Oversights/Problems:
- Narrative does not provide sufficient detail (e.g., "all references were positive").
- No documentation in file to allow for actual identification of contacts interviewed and what was said.
- Narrative fails to address all mandatory areas of inquiry. (Recommend follow tab format)
- Narrative includes all information with no supporting documentation in tabs.

TAB B - PERSONAL HISTORY STATEMENT

- Commission Regulation 1953(c)
- Every peace officer candidate shall complete, sign, and date a personal history statement at the onset of the background investigation.
- A personal history statement can be either the POST Personal History Statement – Peace Officer, POST 2-251 or an alternative personal history statement.

- Common Oversights/Problems:
- Sections of the form are incomplete or inaccurate.
- No signature on last page.
- Candidate has not initialed each page, if required by PHS form.

TAB C - DOJ/FBI FINGERPRINTS/FIREARMS CLEARANCE

- Commission Regulation 1953(e)(3) (B)
- A state search shall include forwarding the candidate's fingerprints to the California Department of Justice (DOJ) to establish the candidate's legal eligibility for employment (GC § 1029) and eligibility to possess a firearm [Penal Code § 29805(c); U.S. Code Title 18 § 922(d) (9)].
- Proof of a state search shall be documentation issued by the DOJ consisting of an official clearance return and an authorization to possess and carry firearms.

TAB C - DOJ/FBI FINGERPRINTS/FIREARMS CLEARANCE

- **The authorization shall be relevant to the peace officer position and shall have been generated no more than one year prior to the date of employment.**

- Common Oversights/Problems:
- Confusing a delay notification with an actual clearance return.
- Confusing a DOJ concealed weapons print return for reserve officers with a Firearms Clearance: a reserve officer needs the same fingerprint returns as a full-time officer.
- Reports are more than one year old and/or associated with a different position (e.g., non-sworn, correctional officer).
- Failing to request returns from both DOJ and FBI on the Live Scan request form.

TAB D - DRIVING RECORD CHECK

- Commission Regulation 1953(e)(4) (A)
- Every peace officer candidate's driving history, if any, shall be checked to assess behaviors consistent with the safe and appropriate operation of a motor vehicle and adherence to the law.
- (B) Proof of the driving history check shall consist of a written driving record history from the Department of Motor Vehicles or other official driving record. The record shall be dated no more than one year prior to the date of employment.

- Common Oversights/Problems: Reports are more than one year old.
- Copy of CDL in file in lieu of driving record. Missing official DMV printout.

TAB E - LOCAL LAW ENFORCEMENT CHECKS

- Commission Regulation 1953(e)(3) (A)
- Local searches shall include inquiries with local law enforcement departments where the candidate has lived, worked, attended school, or frequently visited.
- Proof of local searches shall be documented by a letter or other written documentation from each department contacted.

- Common Oversights/Problems:
- Missing from file or not covered in narrative.
- Not waiting for all returns. FOLLOW UP on returns, be responsive yourself.
- Did not send requests to everywhere the applicant has lived and worked.

TAB F - CREDIT RECORDS CHECK

- Commission Regulation 1953(e)(11) (A)
- Every peace officer candidate shall be the subject of a credit record search with a bona fide credit reporting agency (i.e., Experian, TransUnion, Equifax) to determine the candidate's credit standing with lenders, as an indication of the candidate's dependability and integrity.
- Common Oversights/Problems:
- Reports are more than one year old.
- Report is not from bona fide credit reporting agency (i.e. Experian, Transunion, Equifax).

TAB G - EDUCATION VERIFICATION

- Commission Regulation 1953(e)(5) (A)
- Every peace officer candidate shall meet one of the following minimum education requirements pursuant to Government Code § 1031(e):
- 1. Be a high school graduate of one of the following: a. A U.S. public school, or b. An accredited U.S. Department of Defense high school, or c. An accredited or approved public or nonpublic high school.
- 2. Pass the General Education Development (GED) test or other high school equivalency test approved by the State Department of Education that indicates high school graduation level.

TAB G - EDUCATION VERIFICATION

- 3. Pass the California High School Proficiency Examination, or
- 4. Have attained a two-year, four-year, or advanced degree from an accredited college or university.

- Common Oversights/Problems:
- Documented education does not correspond/support education claim on PHS.
- Transcripts are not official.
- Diploma rather than transcript is included.
- Copy of transcript is not certified or lacks notation that it was copied from the original.
- School is not accredited/approved per Government Code Section 1031(e).
- Includes training records rather than, or in addition to, education records (e.g., transcripts). (Training records should be placed under the MISC tab.)

TAB H - CITIZENSHIP/AGE VERIFICATION

- What is required by POST, which is solely a firearms clearance.
- NICS will not clear a DACA candidate. NICS is the federal database that is searched for the FBI clearance required by POST and checked by DOJ.
- POST requires a firearms clearance, including the FBI check, as part of the background, and Penal Code section 832.15, requires DOJ to notify the department if the peace officer applicant is prohibited from possessing a firearm pursuant to state or federal law.
- Although we require a firearms clearance as part of the background process, we do not require that candidates possess a firearm, rather that is an agency requirement.

TAB H - CITIZENSHIP/AGE VERIFICATION

- Commission Regulation 1953(e) Citizenship
- Proof of U.S. citizenship shall consist of an official government-issued birth certificate, naturalization documentation, or other citizenship documentation deemed acceptable by POST. The document shall be an original OR a certified copy.
- Age – 1953(e)(2) (A) Every peace officer candidate shall be minimally 18 years of age on or before the date of appointment as a peace officer.
- Common Oversights/Problems:
- Document is not a certified, or investigator-attested -to copy of a certified, birth certificate.
- Accepting an "Abstract of Birth" in lieu of an official birth certificate.
- Passport or passport card is not current/valid.

TAB I - MILITARY HISTORY CHECK

- Commission Regulation 1953(e)(10) (A)
- When applicable, a candidate shall be required to present proof of Selective Service registration or military service records. (B) Proof of a military history check shall consist of written verification of Selective Service registration, except for women or any man born prior to January 1, 1960.
- For any candidate who indicates military history on the personal history statement, proof shall consist of an official copy of their DD-214 long form or equivalent documentation of foreign military service, if available.

- Common Oversights/Problems: Document submitted is not DD-214 Long Form.
- No documentation is offered for willful failure to register.

TAB J - DISSOLUTION OF MARRIAGE CHECK

- Commission Regulation 1953(e)(8) (A)
- Every peace officer candidate who indicates one or more marriage dissolutions on the personal history statement shall have his/her court issued dissolution documents and legal separation decrees reviewed as an indication of personal integrity, financial responsibility, and other relevant aspects of candidate suitability. (B) Proof shall be documented by a copy of all final documents.
- Common Oversights/Problems: Failure to include entire court-issued final dissolution of marriage/domestic partnership, with an affixed court date/ verification stamp, in the file Only entry of judgment in file

TAB K -EMPLOYMENT HISTORY CHECKS

- Commission Regulation 1953(e)(6) (A)
- Every peace officer candidate shall be the subject of employment history checks through contacts with all past and current employers over a period of at least ten years, as listed on the candidate's personal history statement.
- (B) Proof of the employment history check shall be documented by a written account of the information provided and source of that information for each place of employment contacted.

- Common Oversights/Problems: Insufficient number of employers contacted (regulations require at least 10 years worth). Contacts with employers not dated.
- No supporting documentation (e.g., questionnaires, employer comments) in file
- Using former evaluations in lieu of personal contact with employers.

TAB L - RELATIVES/PERSONAL REFERENCES

- Commission Regulation 1953(e)(7) (A)
- Every peace officer candidate shall be the subject of reference checks through contacts and interviews with relatives, including former spouses, and personal references listed on the candidate's personal history statement.
- Additional references, provided by the initial contacts, shall also be contacted and interviewed to determine whether the candidate has exhibited behavior incompatible with the position sought.

- Common Oversight s/Problems: Contact information not included in file. Contacts with references not dated.
- No supporting documentation (e.g., questionnaires, comments) in the file.
- No documentation of contact with secondary references or ex-spouses/ partners.

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TAB M - NEIGHBORHOOD CHECKS

- Commission Regulation 1953(e)(9) (A)
- Every peace officer candidate shall be the subject of contacts and interviews with current and, where practicable, previous neighbors to determine whether the candidate has exhibited behavior incompatible with the position.
- (B) Proof of neighborhood checks shall be documented by written information showing the identity of each neighbor contacted, the neighbor's relationship to the candidate, and an account of the information provided by the individual.

- Common Oversight s/Problems: Residential history included instead of actual contacts with current/former neighbors. No checks of past residences. Contacts with neighbors not dated.
- No supporting documentation (e.g., questionnaires, neighbor comments) in file

TAB N - MEDICAL/PSYCH CLEARANCES

- Commission Regulations 1954 and 1955.
- Medical Evaluation Reporting Requirements – 1954(e) The evaluating physician shall submit a medical suitability declaration to the department that shall include the following information:
- (A) The physician's printed name, contact information and medical license number, (B) The candidate's name, (C) The date the evaluation was completed, and (D) A statement, signed by the physician, affirming that the candidate was evaluated in accordance with Commission Regulation 1954.

TAB N - MEDICAL/PSYCH CLEARANCES

- Psychological Evaluation Reporting Requirements 1955(f) The evaluator shall submit a psychological suitability declaration to the department that shall include the following information:
- (A) The evaluator's printed name, contact information and professional license number, (B) The name of the candidate, (C) The date of the evaluation, and (D) A statement, signed by the evaluator, affirming that the candidate was evaluated in accordance with Commission Regulation 1955.
- Common Oversights/Problems: Suitability declaration signed by medical assistant or nurse practitioner rather than physician/psychologist. Confidential medical/psychological information in file. Evaluation completed more than one year prior to date of employment/ appointment.
- No documentation in file, merely a note that clearance letter is kept at HR. No medical license number or contact information for physician/psychologist. Statement indicating the evaluation was conducted per Regulations 1954/1955 not included on clearance.

TAB MISC

- Other Documentation Additional/miscellaneous items.
- Waiver copies
- Detection of deception examination, training records, and other items
- Social media search results
- Training certificates
- Anything else that dies not fit under the other tabs

QUESTIONS

ECO

I. Backgrounds [Reg. 1953(Peace Officers) & 1959(Public Safety Dispatchers)]
   a. Initial background
   b. Update background [Reg. 1953(f)]
      i. Separation over 180 days
      ii. Separation 180 days or less

- Attach "Update" to the original file and indicate it is an update. (Commission Regulations 1953(f) and 1959(f))

   a. Lateral Transfers
      i. New agency must complete entire process
      ii. Qualifying service (especially for a prior reserve)
   b. Double badging and per diem employees
      i. Each agency must have completed its own hiring process
      ii. Contracts with allied agencies
   c. Interim Chief's
   d. Status change. Some appointments will not require an update if within the same agency;
      i. Regular > Reserve
      ii. Reserve > Regular
      iii. Reserve > Reserve

ECO

I. POST Regulations and Resources (11 CCR 1008)
   a. Three-Year Rule {6 year exception}
      i. Appointment to Peace Officer or Reserve Officer Level I
      ii. RII does not stop the clock (time on 3 year rule) [Reg. 1008(c)]
         1. An individual has a maximum of three years following completion of academy training to obtain initial qualifying employment.
      iii. "Qualifying Service" **[Reg. 1008(a)]**
      iv. ***Six-Year Exception-*** *An individual who successfully completed a Regular Basic Course, Specialized Investigators' Basic Course, or the Basic Course Waiver Process* ***on or after July 1, 1999, but who never served*** *in a California peace officer/Level I reserve officer position for which a Regular or Specialized Investigators' Basic Course is required, may requalify by successfully completing a POST-certified Requalification Course one time within six years from the date of basic course or waiver process completion. After six years, an individual must successfully complete the appropriate basic course (RBC or SIBC) to requalify, regardless of when the Requalification Course was completed.*

ECO

a. Available resources
   i. Background Investigations Manual (located on the POST website under "publications.)
   ii. Your regional consultant (POST website, search Regional Training Map and select your county)
   iii. POST Background file tabs
      1. ALWAYS Use during investigation
         a. Use during Supervisory review of packet
         b. Use by investigator
         c. By decision makers
      2. Post employment decision ('hired or not) – Recycle the TABS
         a. If hired, leave tabs in until file is reviewed by POST
         b. If not hired, remove and reuse

ECO

I. Legal Issues
   a. Pre-employment process
      i. EEOC guidance [Consult with your legal counsel]
      ii. POST guidance
         1. Peace Officers [1950-1955]
         2. Dispatchers [1956-1960]
         3. Gov't Code 1029-1031
      iii. Agency policy
         1. Level of inquiry
         2. Legal requirements
         3. Professional standard
      iv. Online screening questionnaires (limitations)
      v. Pretest Coaching or mentoring (limitations/liabilities)
   b. Before the Conditional Offer of Employment (COE)
      i. Direct questions (limitations as to subject matter/areas of inquiry)
      ii. Inadvertent discoveries
   c. After the Conditional Offer of Employment (COE)
      i. Medical screening (**Mandatory**)
      ii. Psychological screening (**Mandatory**)
      iii. Voice Stress Analysis / Polygraph (optional)
      iv. Other 'reliability/truthfulness' methods (eye movement detection)-(optional)

ECO

I. Waivers
   a. General guidelines [Consult with your legal counsel]
      i. Obtaining
      ii. Providing copies
      iii. Placement in the background file
      iv. Disclosure of background info to other agencies

I. Recent changes-
   a. SB 2
      i. What is it
      ii. Who does it impact
      iii. POST website resources
   b. Electronic Data Interchange (EDI)
      i. Profile review
      ii. Certification
      iii. Verification of Qualification (placement)
      iv. Prior complaint, charge or allegations
   c. Disqualifiers
      i. GC 1029
   d. Citizenship- changes
      i. Document options
      ii. Age requirement
   e. Areas of inquiry
      i. Bias related activity
      ii. Law enforcement gang activity
      iii. Social media checks
   f. Investigator training
      i. Upcoming requirement
   g. NDI
   h. Personal History Statement
      i. Current version available on the website
   i. Background TABS
   j. AB655 / PC 13680 - 13683

ECO

I. Common Problems / Issues we encounter/Why use TABS?
   a. Issues that arose due to COVID-19- still an issue in some areas
      i. "Social Distancing" and people's desire to stay away from others
      ii. Medical/Psychological screenings (usually not your issue)
      iii. Inability to contact specific people in person or by phone
         1. Businesses closed or working remotely
         2. Neighbors/References being more unavailable
      iv. Inability to get some records
         1. Schools, DMV, County Records offices closed or working remotely without access to all records.
   b. How to use TABS? (Pre-audit tool, audit expediter, quick reference tool)
   c. Common Issues;
      - The use of TABS will reduce errors and allow for missing documents to be identified and added to the packet. POST provides the template for the TABS on our website under FORMS. Blue TABS for Peace Officer and Green for Dispatchers. There is also an option to order them directly from the FedExDoc store on-line.

ECO

i. Narrative
   1. Vague as to who was contacted
   2. Need to show bias related questions were asked
   3. Need to show social media checks were done
   4. Follow BGI standard format/include ALL categories
   5. Use topic headings for easy reference
   6. Different types
      a. POST format (TABS)
      b. Chronological order
      c. Agency specific

ii. PHS
   1. Not signed
   2. Outdated version
      a. POST website
      b. POST Bulletins
      c. Regional Consultant
      d. CAPTO/LETMA meetings

iii. Fingerprint returns
   1. Completed for a CCW instead of a peace officer applicant.
   2. Firearms return for a Public Safety Dispatcher, not required.

iv. Driving history

v. Local Law Enforcement Checks
   1. Agency used CLETS printouts
   2. Failure to contact agencies

vi. Credit Check

vii. Education- (break this down with specifics) **(Don't forget accreditation!)**
   1. Use of digital transcripts
   2. Official transcripts

- Accredited institution

ECO

i. Citizenship
    1. Changes for non-citizens
        a. Valid eligibility to work documentation
    2. Abstract of birth- Define.....short form/long form/overseas birth/naturalization, marriage/etc. **(We no longer accept Abstracts of Birth. Must be full government issued birth certificate)**
ii. Military (registration, male/female, DD214)
    1. Verify any legal issues while in the military are not a disqualifier
iii. Dissolution of Marriage (behind the TAB place either the dissolution docs, or indicate N/A) **(If applicable, the file shall contain a copy of the first page of the final decree which identifies the plaintiff and respondent, final court decree, and a file stamp in the upper right corner indicating the order has been filed with the court.)**
iv. Employment History
    1. Closed businesses....
    2. Refer to prior backgrounds from other agencies
v. Relatives/References
vi. Neighborhood
    1. knock and talk, not just form letters
    2. Document due diligence

ECO

i. Med./Psych.
   1. **"Suitability Declarations"**, formerly known as clearance reports or letters not to POST standards
   2. Not signed by an authorized medical professional
   3. New requirement for our form

- misc. Other Documents
  - What is common in this tab and what should not be included.

I. Conclusion