



Background Checks Are a Good Idea, but Be Careful What You Wish For

Insights

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Virtually every thoughtful employer wants to hire the very best employees they can find. And why not? Good workers produce better products, provide better service, give maximum effort, learn and adopt the company's best practices and culture. Bad employees are indifferent, if not outright negative about the company, its customers, its products, its values.

Not surprisingly, good employers want to learn as much as they can about their job candidates **before** they hire or promote them, which of course explains the increasing popularity of, and reliance on, background checks. Background checks, it is hoped, will uncover pertinent information about a job applicant's past that will better inform the employer's hiring decisions. And, in the interest of thoroughness, many employers utilize outside agencies rather than their own human resources personnel to ferret out background information on job candidates.

In the first place, a company's own HR staff may not be licensed or trained in how to conduct complete, legal, background checks. Suffice it to say, typing an applicant's name into the Google search bar is quite possibly going to produce incomplete, outdated, or downright false information. Licensed third party agencies, however, typically will retain persons properly trained and licensed to obtain financial information, credit worthiness, any history of litigation or civil liability, traffic infractions and, of course, more serious criminal background information.

That said, employers using outside agencies still must be wary of, and fully informed about, the Fair Credit Reporting Act (FCRA), a federal statute that governs what information can properly be obtained, how it may be obtained, and what must be disclosed to the job applicant or current employee if such a check, known as a "consumer report", is going to be undertaken.

Applicants and current employees **must** be informed in writing a consumer report will be obtained. The Notice must be in a stand-alone notice, separate and apart from any other document being provided at the same time to the employee. It cannot be part of or even stapled to a job application. The applicant or employee must agree in writing to the report being obtained. If they apply to your business multiple times, they must receive and complete an agreement to the report **each and every time** they apply. If a report comes back with negative information, it must be provided directly to the applicant or employee, by the reporting agency, and the agency's contact information provided to the applicant or employee. The applicant or employee **must** be provided a full opportunity to

correct or explain any negative information revealed in the report. Any conditional job offer cannot be withdrawn until the applicant or employee has had a full opportunity to correct any misinformation.

Failure to abide by the obligations under the FCRA can result in legal claims by those adversely affected, with penalties ranging from \$100.00 to \$1,000.00 per violation, plus the applicant or employees' legal fees and costs. For large employers found to have systematic violations of the statute, they face potential collective action claims, which savvy plaintiffs' lawyers will file on behalf of all "similarly situated" applicants or employees, leading to penalties and legal fees in the hundreds of thousands of dollars.

Every employer wants to have their eyes and ears wide open when considering a job applicant or possible promotion, so they select the best candidate. But just as importantly, if not more so, they must have their eyes and ears wide open to their obligations under the FCRA so they vet their candidates fairly, and legally.

Related People



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FCRA and Background Screening