



HIRING AND RETENTION

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BEST PRACTICES FOR BACKGROUND CHECKS

More than 90% of employers in the U.S. rely on criminal background and credit checks to screen employees, according to the Society of Human Resources Management (SHRM). Recently, the Equal Employment Opportunity Commission (EEOC) issued guidance in 2012 on the use of criminal background checks and recently, in conjunction with the Federal Trade Commission (FTC), published two “best practices” guidelines. One set of guidelines is for [employers](#) and the other is for [job applicants and employees](#).

“These agencies made an effort to speak directly to employees, advising them of employer obligations,” says HR Consultant Rebecca Kellner, JD. “Based on the 2012 guidance and the recent joint EEOC/FTC guidance, employers should be sure they are in compliance to avoid legal claims.”

Assess three factors

The EEOC has said that one of its top priorities is eliminating barriers to hiring, and its recent guidance for employers are a testament to that. Essentially, the EEOC noted that minorities have a higher incident of criminal convictions statistically. Consequentially, employer policies that bar employment of convicted felons may have a disparate impact on minorities. To avoid this, the EEOC recommends that employers assess three factors of the criminal history of an individual candidate. Those factors include the:

1. Nature and gravity of the offense
2. Time that has passed since the offense
3. Nature of the potential job position

FCRA requirements

Kellner says that while she does not see a lot of employers engaging in discrimination, she does frequently find that employers are not strictly following the Fair Credit Reporting Act (FCRA). To further eliminate barriers to hiring, the EEOC and FTC’s guidance highlight an employer’s requirement to comply with the FCRA when using a third party to conduct background checks.

“Some employers think the Act only applies to credit reports, but it applies to all background checks,” Kellner says.

Based on the joint guidance, the following are important reminders about what the FCRA requires for employers that use a third party to conduct background checks:

- Background checks can include, but are not limited to, screens of an applicant or employee’s criminal history, credit record, medical information or social media use.
- Employers must obtain the applicant or employee’s written permission prior to conducting the background check. This authorization must be separate from the application.
- Before taking an adverse action based on the results of a background check, including a decision not to hire the applicant, the employer must provide the employee or applicant with a copy of the report and a copy of “A Summary of Your Rights Under the Fair Credit Reporting Act,” which is published by FTC.
- After taking adverse action, such as not hiring the applicant as a result of the background check, the employer must tell the applicant or employee (1) that



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he or she was rejected because of information in the report; (2) the name, address, and phone number of the company that sold the report; (3) that the company selling the report did not make the hiring decision and cannot give specific reasons for it; and (4) that he or she has a right to dispute the accuracy or completeness of the report, and to get an additional free report from the reporting company within 60 days.

Comply with EEOC guidance

Unfortunately, adhering to the guidance has been confusing and difficult for some employers. For employers of any size, take the following steps to comply with the EEOC's guidelines:

- Employers should thoughtfully and consistently implement background checks for legitimate business reasons only. A decision to perform a background check on an applicant or employee based on a person's race, national origin, sex, religion, disability, genetic information or age is illegal.
- If you do conduct a background check, make sure it complies with the Fair Credit Reporting Act.
- Do not automatically bar a candidate with any sort of criminal history absent a law that prevents consideration of the applicant due to the conviction, such as for certain caregivers or teachers. Evaluate each applicant's background check as it relates to the duties of the position and who the employee would be interacting with.
- Document all individualized assessments of applicants' background checks.

- Before disposing of any background reports, employers should ensure that they have complied with applicable recordkeeping requirements and only dispose of reports in a secure manner. Secure disposal may include burning, pulverizing or shredding paper documents and disposing electronic information so that it cannot be read or reconstructed.

Why do background checks?

Job applicants may have a criminal record that would compromise their job placement, yet they do not always disclose this information. Therefore, employers may want to be cautious and pre-screen potential employees to:

- Discourage applicants from hiding a criminal background or falsifying their credentials.
- Eliminate any uncertainties about applicants in the hiring process.
- Encourage honesty while going through the hiring process.
- Minimize negligent hiring liability.

Although background checks do present some costs, the risk of hiring someone without having performed this screening could carry greater financial consequences. If you need more information about protecting yourself from liabilities associated with hiring and termination, contact Associated Financial Group at 800-258-3190 or info@AssociatedFinancialGroup.com.



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