What You Should Know About Background Checks

Understanding the Pros and Cons of Pre-Employment Screening
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Introduction

Companies want employees they can rely on. After all, hiring mistakes not only jeopardize productivity but also can become exceedingly costly. Negligent hiring lawsuits have made firms more aware of the pitfalls of failing to adequately screen applicants before bringing them on board. The 21st century emphasis on safety and security also has prompted businesses to look more carefully at the people they’re thinking of hiring.

Just as reference checks allow your company to verify with former employers a potential hire’s accomplishments and personal attributes, background checks delve into additional aspects of a candidate’s activities and behavior in an effort to reveal issues that could affect future job performance.

But performing a background check is rarely a simple proposition. Many types of investigations are subject to considerable restrictions, both legal and logistical. Companies also must obtain the applicant’s consent for most background checks. Moreover, some types of records are difficult to access and review in a comprehensive manner. While technology facilitates these processes to some degree, obtaining reliable information can be much more difficult than is commonly understood.

There is little wonder then that many firms lack a realistic view of what background checks can actually do – or not do – for them. An unfortunate amount of misinformation confronts companies, including advertisements by background-check providers that present an overly simplistic picture of what these searches entail and downplay the potential for obtaining incomplete or inaccurate reports and test results. Consequently, a growing number of businesses are uncertain which measures are necessary, most effective and permissible to use in making hiring decisions.

Despite the difficulties, however, many searches and tests can be useful in evaluating job candidates. Though not perfect, drug tests, for example, can help businesses maintain a drug-free workplace, and, when performed for safety-related job positions, they can help maintain safe working conditions. At the same time, it is important to be aware of these tools’ limitations when considering their use. As an employer, it pays to learn as much as you can about background checks before making any decision regarding whether or how to conduct them. We have prepared this guide to help you better understand the relevant issues affecting a variety of pre-employment screening measures.
WHAT DOES THE TYPICAL BACKGROUND CHECK INCLUDE?

There is no single, “typical” background check. Pre-employment screening can take many forms, depending on the position being filled and the aspects of an applicant’s background an employer considers most important. Sources of information range from federal, state and local governments and educational institutions to past employers, professional organizations, personal references and, of course, the applicant.

WHAT ARE THE MOST COMMON TYPES OF BACKGROUND CHECKS?

Following are the principal measures in use today:

- **Criminal background checks**, which are restricted by a number of state and local laws, involve locating and, in most instances, manually reviewing court records to see if a prospective employee has past criminal convictions. If performed comprehensively, these checks often require a county-by-county, state-by-state search, the costs of which can mount quickly.

- **Education records/academic degree verification** is used to ensure that job applicants have not inflated or otherwise exaggerated their educational and professional achievements on resumes. It is not uncommon for candidates to misrepresent themselves in these areas. Employers can pursue these checks by contacting the applicable educational institutions or state licensing boards.

- **Credit checks** also are restricted by some state and local laws. They are conducted by companies to get a sense of whether a candidate is responsible with money or has financial difficulties that could affect his or her job performance. Credit records are obtained through credit-reporting agencies and may be used for limited purposes, such as jobs that require financial expertise.

- **Driving histories**, like credit reports, may be considered by some to indicate a sense of responsibility – or lack of it. These checks are most often conducted when driving is a job requisite.

- **Medical exams** conducted as a condition of employment are restricted by a number of federal and state laws. After an offer has been extended, however, you may be able to condition it on the applicant’s passing a job-related medical exam that is required of every individual being hired into that position.

- **Drug tests** to check candidates for current substance abuse can help screen out applicants with these problems, which can significantly affect job performance. For some positions, pre-employment drug tests are mandatory. As with other background checks, drug tests may be restricted by state and local laws.

SHOULD MY BUSINESS CONDUCT BACKGROUND CHECKS?

Consider your unique needs

Whether to conduct a background check depends on the nature of your business and the position for which you are hiring. In limited cases, you do not have a choice since federal and state laws require background checks for certain jobs. But for most positions, the need for investigation is determined by the employer. There are a number of factors that can influence your decision whether to dig deeper into someone’s background.

If the job involves handling sensitive or confidential company information or financial responsibilities, for example, a check into an individual’s past habits and activities could focus on safeguarding intellectual property and company assets. Likewise, a background check for a job in security may be designed to protect employee and public safety.

There are many other questions to weigh, including: Is the job highly visible, such as a senior executive or board member position? Does the position involve working with children or the public? The list goes on, but the point is that there are no formulas or universal criteria dictating whether background checks are necessary or appropriate for a position or an organization. Unless a check is required by law, only you can determine what is right for your business. Similarly, you should not assume that staffing companies perform background checks. Most staffing firms, like Robert Half, do not routinely conduct background checks. Therefore, it is important for the employer to locate a qualified provider that specializes in background checks.

WHY NOT CONDUCT CHECKS ON ALL JOB APPLICANTS JUST TO BE ON THE SAFE SIDE?

Checks are not as simple as they may appear

If performed properly, background checks can be much more complex than many realize. Conducting rudimentary searches just to “cover all bases” is unlikely to yield accurate and useful information. That is why your decision to pursue pre-employment screening should be targeted and based on the unique needs of the position and your business.
WHAT EXACTLY MAKES BACKGROUND CHECKS SO COMPLICATED?

There are a number of factors contributing to the complexity of pre-employment screening and the quality of the information yielded.

No central information source

It may come as a surprise to some that there is no single, national source of information for most types of background checks. Criminal records, for example, are generally maintained by individual states or counties, many of which do not store them electronically. Since a job applicant may have lived, worked or spent time in a variety of states or counties, researchers must laboriously sort by hand through public records in multiple jurisdictions, making these checks very time-consuming and costly if performed thoroughly.

Even in an area that is largely computerized, such as credit records, to ensure nothing is missing, employers must contact all three major credit-reporting agencies and follow the protocol of each one. (See “Where to learn more” on Page 12.) And while driving records can be obtained via the National Driver Registration, information must be verified by contacting various state motor vehicle agencies that contribute to the database. In some states, applicants must give their prior consent to a driving-record search.

Possibility of flawed data

Another issue is reliability. Data-entry errors and imperfect testing procedures can contribute to incomplete or inaccurate reports. Drug tests, for instance, are not 100 percent reliable, and false positives can cause awkward situations and necessitate retesting. While some initial tests are fairly inexpensive, confirmatory testing can be significantly more costly. Drug tests also can turn up unrelated facts, such as underlying medical conditions or disabilities, which is information that cannot be used in your hiring decision.

Even the most comprehensive checks yield flawed or incomplete records with greater frequency than some employers realize. When researchers at the University of Maryland studied criminal recidivism rates, they hired a first-rate investigative agency to search the records of 120 convicted criminals in a Virginia county to see what information would be uncovered. The investigative agency found no criminal records at all for 64 of the 120 convicted criminals chosen for the study.1

Need for retesting

The frequency with which you conduct background checks must also be a factor in deciding whether to use these methods for evaluating prospective hires. Academic credentials must be verified only once, but a drug test or criminal background check can become outdated almost as soon as it is conducted.

Legal restrictions

Further adding to the complexity of conducting background checks on job candidates are federal laws governing them, as well as state laws that can vary considerably from state to state. As a result, you may want to consider seeking legal advice before you even request some types of checks. (See “What specifically are the legal considerations?” below.)

As you can see, conducting background checks is frequently not a simple matter. But that doesn’t mean they are not useful tools when pursued appropriately. No matter what types of checks you are considering, becoming aware of the facts concerning their use can help you make the best decision for your organization.

HASN’T TECHNOLOGY MADE BACKGROUND CHECKS EASIER AND MORE RELIABLE?

Yes and no. While it is true that advancing technology is making it easier and quicker to share information in virtually every area of business, computer record searches are ultimately only as good as the data they access. The apparent ease of obtaining information via online background checks obscures the fact that the quality and completeness of the underlying information may not have kept pace with the technology. Many records are simply not available electronically and are accessible via paper-based systems only. And many of the databases that do exist are not updated frequently.

WHAT SPECIFICALLY ARE THE LEGAL CONSIDERATIONS?

Laws limit two fundamental aspects of background checks: collection of information about an individual and the use of that information in making employment-related decisions.

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Gathering information

The Fair Credit Reporting Act (FCRA) and the Americans with Disabilities Act (ADA) are just two of the laws that affect what information can be collected in a background check. Although it uses the word credit in its title, the FCRA governs any type of third-party background investigation that may be used to make an employment decision, not just credit checks. Facts obtained through a third-party investigative agency are covered under FCRA because they are considered consumer reports. FCRA requires you to obtain an applicant's written permission to request a background check and notify the individual of his or her ability to correct possible inaccuracies if you decide to take an "adverse action" (i.e., not hire) based on what you find. State laws also place various restrictions on an employer's ability to collect and use information about candidates in the hiring process. Employers should check with legal counsel to determine which state and federal laws control a given situation.

The release of medical records by healthcare institutions and providers is strictly regulated by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a result, employers are not allowed to collect or consider this information when evaluating job candidates. Medical tests and reports are subject to other laws as well. ADA rules restrict the use of medical tests (other than drug tests) as a condition of employment. You cannot even ask medical-related questions before presenting a job offer. After you've extended the offer, however, you may be able to require a job-related medical exam as long as your company does so for all employees occupying a position of the same level and responsibilities (e.g., all forklift operators).

Use of information

Even if you meticulously adhere to every applicable law when gathering information, your interpretation and use of the results of reports or tests also can be subject to regulation and legal risk. Before using any facts you uncover, you'll need to determine whether they truly affect the applicant's ability to perform the duties of the position for which he or she is applying. In some cases, you may not be able to use the information you acquire at all. For example, some states prohibit the use of arrest records in employment decisions. Others prohibit certain types of convictions from being used in employment decisions.

Fundamentally, no form of screening can disqualify job applicants on an unlawful basis or discriminate against a legally protected group. Equal Employment Opportunity Commission rules and certain judicial decisions disallow tests and screening that may have an adverse impact on applicants based on race, sex or other protected categories. Adopting a blanket rule of hiring only high school or college graduates regardless of the job position, for instance, may be viewed as discriminatory if it has an adverse impact on certain protected categories of applicants. This could also be true if you implement a strict policy of never hiring anyone who has ever had a brush with the law. The safest approach is to first consider the nature of the position and determine if such across-the-board rules are justified as legitimate job requirements before imposing them.

The ADA also regulates what information can and cannot be considered in making hiring decisions. You cannot refuse to hire someone based on a prior workers' compensation claim, for example, simply because you assume he or she is at greater risk for a future occupational injury or is likely to increase your workers' compensation premiums.

Even after you satisfy legal restrictions in gathering and using information, there also are practical considerations to weigh. For example, delving too deeply can cause promising candidates to feel uncomfortable, which can influence their decisions about accepting a job offer once they have completed these tests.

GIVEN ALL OF THESE DIFFICULTIES, ARE BACKGROUND CHECKS REALLY WORTHWHILE?

Go in with your eyes open

The logistical and legal complexities alone should not determine whether you conduct a background check. While there is risk – in addition to the time and expense required – if businesses conduct checks and obtain erroneous information, firms also can invite problems if they fail to adequately screen appropriate candidates.

The point is that you should go in with your eyes open. Performed thoroughly and under the right circumstances, a background check can be a valuable tool for assessing job applicants. Recognize that no two companies’ needs are exactly the same, and weigh the pros and cons as they apply to your particular situation. As mentioned earlier, the decision to implement pre-employment screening measures in your company should be based primarily on your business culture and the requirements of the job. Should you decide to proceed, however, you should be prepared to expand your searches if necessary to extract meaningful information.

IF I DECIDE TO CONDUCT A BACKGROUND CHECK, SHOULD I DO IT MYSELF?

It's best left to the experts

If, after weighing all the factors, you decide to conduct a background check on a job applicant, it is highly advisable to employ the services of a third-party investigative agency. A few companies conduct background checks on prospective applicants.
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How Should I Use the Results I Receive from Background Checks?

Always exercise care with the results of any background check. In particular, you must understand the legal considerations prior to deciding not to hire an applicant based on the results of a background check.

Create a plan in advance as to how you will act on the information you receive. What will constitute a pass or a fail for a candidate? What criteria will you use? Can you establish a system for exceptions?

In selected cases, you may not even want to wait for the results of a background check. Some tests or screenings require several weeks to complete, while others may take only days. You'll need to balance the need for the information you're seeking with the possibility of losing an excellent candidate to the competition. Decide whether it is worth a delay in extending an offer or if you want to go ahead and hire the individual pending the results of a background check you've ordered. You should make the offer contingent upon the successful completion of his or her background check. One way to reduce the chance of surprises when the results are received is to let candidates know up front that you will be performing a background check. This gives them added motivation to be honest with you from the outset.

There may be other situations in which you decide not to consider the results in your hiring decision at all. Your primary goal should be to reconcile your business's need to know with the applicant's legal rights and privacy interests.

What Other Steps Can I Take to Ensure a Good Hire?

Background checks can provide valuable clues as to how an individual may perform once on your payroll, but they are not a silver bullet for making perfect hires. You also need to give careful attention to the basics of the hiring process.

A number of authors have addressed the subject of effective hiring. While a definitive discussion of this topic is not the purpose of this booklet, following are a few pointers:

- Create clear job descriptions. Make sure the description for the job you're attempting to fill is valid and based on current company and department needs. Review the language thoroughly and revise any phrases or sections that do not convey what is required in a straightforward manner. A clear job description can serve as the basis for accurate job postings and thereby ensure qualified individuals apply. It also can help you craft relevant interview questions.
By including the responsibilities and necessary qualifications for each position, you'll also help avoid confusion and potential misunderstandings once new hires begin work.

- **Interview effectively.** The personal interview offers you a multidimensional portrait of an individual and is a unique opportunity to determine whether a candidate is truly a good match for an open position. To take full advantage of the meeting, you'll need to prepare ahead of time. The amount you can learn about a job candidate during the interview depends largely on what you ask. Develop a set of questions that relate to the required skills and experience for the position, but also design ones to dig a bit deeper. Often this simply involves asking the same questions in a different way. Instead of asking what they feel are their strengths, for example, ask candidates what they think was the greatest compliment they've ever received at work. This slightly different twist may also reveal what is most motivational and meaningful to the candidate.

Once the interview has begun, ask for clarification when necessary, but avoid interrupting too frequently. As you listen, consider all of the responses you receive as they relate to the qualities you're seeking for a position, and be sure to take notes. What situations do candidates find positive – or negative? What do their replies reveal about the challenges they may face in your organization? If practical, create a rating system to help you be more consistent in your judgments.

- **Check references.** Because they know that saying too much or too little can have legal consequences, references are increasingly wary of being specific about the performance of past employees. Despite the difficulties, reference checking is still a critical tool for verifying candidates' qualifications and claims about themselves. Companies can invite problems down the road by failing to thoroughly verify the qualifications of potential employees. Still, it is not an easy task today; you'll have to work especially hard to obtain meaningful evaluations.

  Don't delegate reference checking; make the calls yourself. References are frequently more willing to open up with their peers and counterparts. To gain maximum input, whenever possible, use open-ended questions, such as, "How would you describe Ms. Smith's management style?" or, "Can you think of a situation in which she did something extraordinary?"

- **Network your way to other references.** Don't be limited to the names you're given by the applicant. Ask those listed as references for names of other individuals you could call for information. Review your own network of contacts – friends, relatives or business colleagues – who may know the candidate and be able to provide an assessment.

An additional approach is to begin with the candidates instead of the references. During job interviews, let each candidate know if he or she becomes a finalist, you plan to conduct a thorough reference check and that you have a "no reference, no hire" policy. This should prompt the applicant to give honest answers to your questions and also help you with the process.

**FOCUS ON THE ABILITY TO DO THE JOB**

Pre-employment screening can offer some assistance in determining whether or not a candidate will be a successful match for your organization. Unfortunately, there is no "one size fits all" approach to these checks. Nor is there a simple formula for knowing when not to use them. Instead, an employer must determine what, if any, measures are needed based on the nature of the business and the position.

In the future, as more records are computerized and databases are increasingly centralized, background checks may become easier to perform and more reliable. In the meantime, however, if you are considering whether pre-employment screening is appropriate for your organization, arm yourself with information about all of the pertinent issues. If you decide in favor of conducting checks, choose a reliable third-party investigator and seek legal counsel to ensure you are gathering and using this information lawfully.

You can avoid many of the pitfalls of background checks by making sure, in every instance, that you base your assessment of results entirely on a candidate's ability to do the job. Be consistent, be fair, but also be confident that you have done everything in your power to make the right choice for your company and the people you evaluate.
WHERE TO LEARN MORE
Here are some websites you can visit for more information on background checks:

- The National Association of Professional Background Screeners (a starting point for selecting a reputable firm specializing in background checks):
  www.napbs.com
- Credit-reporting agencies:
  www.equifax.com
  www.transunion.com
  www.experian.com
- Text of the Fair Credit Reporting Act:
  www.ftc.gov/os/statutes/031224fcra.pdf
- Americans with Disabilities Act:
  www.ada.gov
- National standards to protect the privacy of personal health information, as mandated by the Health Insurance Portability and Accountability Act of 1996:
  www.hhs.gov/ocr/privacy/

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