

# Checklist for Conducting Background Checks

Have you considered conducting background checks as part of your hiring process? The practice is fairly typical in the banking and financial services industries, as well as for those who work with children, the elderly, or people with disabilities. If you're wondering whether you should do so as well, check out our overview of the process below.

## **Identify the business reason for conducting pre-employment background checks.**

Background checks add time and expense to the hiring process, and they can create risk, so if you're thinking about conducting them company-wide or for specific positions, you should have a business reason for doing so. In short, you should know *why* you want to conduct them.

In many cases, the objective is to protect the organization or the people within it. An employer might not want someone convicted of theft or fraud handling large sums of money. An applicant with a history of abusing others probably shouldn't be in the profession of supervising children.

If there's no particular need for background checks, however, it may be best to forgo doing them. If you're required or have good reason to do them, then you can move to the next step.

## **Educate yourself on federal and state laws pertaining to background checks.**

Under the Fair Credit Reporting Act (FCRA), employment background checks are a type of consumer report and may include credit history and criminal records. Before getting a consumer report, you must tell the applicant or employee that you use information in their consumer report for decisions related to their employment, get written permission from the applicant or employee, and certify compliance with FCRA requirements to the company running the check. More information about these and other requirements under the FCRA can be found [here](#).

The Equal Employment Opportunity Commission (EEOC), which enforces anti-discrimination laws, has guidance on obtaining and using criminal records. That guidance says that employers should only inquire about felony convictions, inform the applicant that a criminal record does not automatically bar employment, and ensure that there is a legitimate business reason for requesting this information. You can learn more about these EEOC guidelines [here](#).

Additionally, states have their own laws governing background checks. You can search for any applicable state laws [here](#).

**Make the employment offer contingent on passing the background check.**

Once you've elected a finalist for a position, you can issue an employment offer that is contingent upon passing a background check. Essentially, you're telling the finalist that they'll get the job only if the background check doesn't reveal anything that would cause you to rescind the job offer. Making the job offer conditional protects your organization, and it tells the finalist what to expect so they're not caught off guard.

**Obtain consent from the job candidate.**

If the information you will be obtaining is considered a consumer report, be sure to get written permission from the applicant or employee before you conduct the background check. If, however, you're merely conducting an investigative report based on personal interviews regarding the applicant's character, general reputation, or personal characteristics, then you should inform them in writing that you requested this report within three days of doing so.

**Decide whether the results would preclude employment.**

Before reviewing the report, you should have determined what kinds of results would preclude employment. With these standards in mind, you can evaluate the report to conclude whether you should proceed with the hire or rescind the job offer.

The EEOC cautions employers not to discriminate when using background information. Employers, it says, should:

- Apply the same standards to everyone, regardless of their race, national origin, color, sex, religion, disability, genetic information (including family medical history), or age (40 or older);
- Take special care when basing employment decisions on background problems that may be more common among people of a certain race, color, national origin, sex, or religion; among people who have a disability; or among people age 40 or older;
- Be prepared to make exceptions for problems revealed during a background check that were caused by a disability.

**Proceed with the hire or rescind the job offer**

There are very specific notification steps required under the federal Fair Credit Reporting Act (FCRA) should you elect to revoke a job offer after receiving the results of the background check.

Before taking an adverse action based on information in a consumer report, you must provide the applicant with a notice that includes a copy of the consumer report you relied on to make your decision as well as a copy of *A Summary of Your Rights Under the Fair Credit Reporting Act*, which the company that gave you the report should have provided to you.

The next steps include the following:

- Inform the applicant of the adverse action either orally or in writing;
- Provide them with the name, address, and phone number of the consumer reporting company that supplied the report;
- Provide a statement that the company that supplied the report did not make the decision to take the unfavorable action and cannot give specific reasons for it; and
- Inform the applicant of their right to dispute any inaccurate or incomplete information and get an additional free report from the company if the applicant asks for it within 60 days.

**Preserve the report.**

Background check records must be preserved for one year after the records were made, or after a personnel action was taken, whichever comes later. If an applicant or employee were to file a charge of discrimination, you would have to maintain the records until the case is concluded.

After that time, you should securely dispose of the report and any information gathered from it. Securely disposing of the information means that it cannot be read or reconstructed. We recommend shredding these items.