



Background checks are an essential part of every employer's hiring and onboarding process. These reports help you determine if candidates are qualified and eligible; protect your brand; and create a safe workplace.

You're probably aware that federal, state and local laws cover background screening, but may not know what applies to you. Use this article to learn the basics and consult with your legal counsel to make sure your screening policies are fully compliant.

Do This

Comply With The FCRA

The Fair Credit Reporting Act (FCRA) is a federal law that protects consumer privacy and rights. It also stipulates employers must:

Provide a standalone disclosure that informs the recipient they want to run a background check.

Provide a standalone authorization that the person must agree to before a background check can be run.

Neither the disclosure or authorization document can contain confusing language or any content that is not relevant to its purpose.

Follow a specific process before taking any adverse action, such as denial of employment, based in part or in whole on the results of a background check.

Comply With The EEOC

The Equal Employment Opportunity Commission (EEOC) is a federal agency that enforces anti-discrimination laws. Employers and organizations may not discriminate against an applicant or employee because of any protected factor, including:

- Race
- Age (for individuals 40 and over)
- Gender Identity
- Sexual Orientation
- Skin Color
- Genetic Background
- Religion
- Disabilities

The EEOC enforces anti-discrimination laws, investigates claims and can file lawsuits.

Be Aware Of State Laws

Most every state has laws that cover employment and background screening. Examples include:

- **Ban the Box:** these laws typically stipulate employers cannot ask about arrests or convictions on job applications and must hold off on running criminal background checks until after an interview or conditional offer.
- **Salary Disparity:** these laws typically prohibit employers from asking applicants about their salary history. This is done to help prevent wage discrimination based on gender or other protected factors.
- **Expungement:** these laws typically stipulate employers may not consider convictions that were sealed or expunged.
- **7-Year Limitations:** these laws typically stipulate that convictions more than 7 years old cannot be considered.

Keep up with new and upcoming laws by visiting our State Laws section.

Laws vary by state. Consult with your legal counsel to ensure you remain compliant.

Follow Best Practices

There are various best practices every employer can follow to help boost their compliance efforts. Some involve complying with laws that are not active where you operate – but may be implemented in coming years.



Not This

Pre-Judge

In the past, employers often had guidelines such as “If an applicant has any type of criminal record, they are not eligible for hire.” Numerous states and cities have passed legislation that prohibits employers from disqualifying applicants who have any type of conviction. These laws are part of a “Second Chance Movement” that is growing throughout the nation.

While you have the right to refuse employment to an applicant who is not qualified or poses a risk, it is essential to avoid blanket policies that automatically exclude certain people. Doing so is a discriminatory practice that could warrant a lawsuit. If a candidate meets your requirements but has a conviction, then best practice is to run an individualized assessment in which you consider the seriousness of an offense, how long ago it occurred, whether or not it has any bearing on the position and other relevant factors.

The goal is to ensure each person is considered on their own merits and not denied employment based on preconceived notions.

Rely On Public Records Websites

There are many public records sites that offer background checks. It is imperative, however, to avoid reports from any business that is not a Consumer Reporting Agency (CRA). A CRA can legally provide a background check that employers may use to make informed business decisions.

Public records sites are not FCRA compliant so they can contain outdated, incorrect and incomplete data. Before you order a report, make sure the site specifies that the business is a CRA that adheres to the FCRA. To play it safe, verify the CRA is accredited by the Professional Background Screening Association (PBSA).

Run Your Own Searches

It may seem like a quick and easy solution – but running your own searches on candidates could create serious problems. When you do your own investigation, it can be difficult to confirm that the information you see is for the right person. Reviewing the correct profile for a candidate or employee can still put your business at risk.

You can learn a lot about a person from their social media accounts. An individual’s page or profile is likely to contain information about their personal lives and interests, including religion, origin and sexual preferences. Even if you find something that could legitimately warrant an adverse action, the individual could make the case you discriminated against them based on a protected factor you saw online. If so, you could be subjected to a discrimination-based lawsuit.

Social media searches should be handled by an accredited CRA. Doing so helps ensure you get results that only contain reportable information you can use in the decision making process. Examples include hate speech, violence and illegal activities.

Remain Compliant

Compliance is mandatory for every business and organization that utilizes background checks. One crucial step is to document your background screening policies and have them approved by legal counsel. Then review that documentation at least annually to ensure it is up-to-date with current laws and best practices.

By having written screening policies, using compliant forms and following best practices, you can demonstrate you are performing due diligence and taking reasonable steps to comply with relevant laws.

Once you have your policies in place and are ready to run background checks, contact Backgrounds Online. We can help customize screening packages that are tailored to meet your specific needs. If you have questions or comments, we are available via phone, email and chat Monday through Friday from 5am to 6pm PT.