

Who are you?

Careful when performing employee background checks

Employee background checks are an effective way for an employer to learn more about a job applicant. Inquiring about a person's education, general work history, criminal records, credit history and references may be important, but obtaining such information could lead to serious legal issues. There are, however, ways to avoid trouble with the law and get the necessary information.

"Employers should obtain proper signed authorization from applicants before conducting employee background checks or investigations," says Alfredo Sergio, an attorney in the Employment Law and Commercial Litigation groups of Semanoff Ormsby Greenberg & Torchia, LLC. Doing so, he says, may save a company from defending itself against a lawsuit.

Smart Business spoke with Sergio about background checks, social media and the importance of obtaining consent.

How should an employer go about obtaining background checks?

Employers often want to obtain consumer reports about potential employees' credit, financial history, education and general background information. Because many of these areas of inquiry fall under the Fair Credit Reporting Act (FCRA), it's important for employers to inform applicants what type of information they are going to seek and then get written permission from the applicant before obtaining it. Also, under FCRA, the applicants must be provided with a summary of their rights.

If an employer plans to take action based on the information they receive — for instance, not hiring someone because there is a blemish on their record — the employer must notify the applicant that they are not being hired because of something that was identified on a background check. A

ALFREDO SERGIO
Attorney, Employment Law,
Commercial Litigation groups
Semanoff Ormsby Greenberg & Torchia, LLC
(215) 887-2653
asergio@sogtlaw.com



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procedure should be in place where the applicant can be provided an opportunity to clarify or explain the situation within a certain timeframe.

How should criminal history background checks be handled?

In Pennsylvania, the Criminal History Record Information Act defines what employers are legally permitted to ask applicants regarding their criminal history. In many cases, in order for criminal history to be considered in the hiring process, candidates' transgressions must be related to their job function — for instance, if someone with a drunk driving conviction is applying to be a truck driver.

Also, it is important to be careful when asking about criminal history in the beginning stages of the application process. Some states and municipalities have adopted 'ban the box' initiatives that make it illegal to ask an applicant about arrest or conviction information early-on in the application process. In such jurisdictions, the employer should notify those applicants who are top contenders for a position that an offer will be contingent upon passing a background check.

Can employers use social media when conducting a background check?

Some employers are turning to the Internet to find out more information about

their applicants. It is important to note, however, that an employer must handle information discovered through social media appropriately and with caution, as findings related to an applicant's race, age, gender identity or preference, religion or disability could lead to allegations that the consideration of such personal information in the hiring process amounts to discrimination. Social media can be used as a tool during a background check, but it needs to be used carefully.

Can you call an applicant's previous employer for a reference?

Yes. And in some states, like Pennsylvania, a former employer is protected by law when it provides an honest assessment of their former employee. Many employers, however, choose to give just the most basic of information, such as dates of employment, confirmation of title and salary information, to avoid a potential defamation claim.

What advice would you give about asking for employee references?

Laws regarding employee references vary from state to state. Employers should only obtain the background information they reasonably believe they need to assess an applicant without overreaching, and obtain authorizations from applicants before conducting background checks. ●