



DEALERS

Background Check Best Practices

BY WILLIAM J. LYNOTT ON JAN 18, 2017



Avoid the legal stumbling blocks of background checks while confirming new hires

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These days every new employee brings a possible threat to your business, including theft, sexual harassment, physical violence, identity theft, fraud and drug use. Background checks in the security industry are obviously much more important and stringent than the checks performed by an average company, due to the trusted nature of security and the fact that many technicians are granted unsupervised and often unfettered access into people's homes and businesses.

The potential for ruinous legal actions is clearly

higher today than ever – which is why a background check could potentially save your business. However, it is essential that background checks be conducted within the maze of laws designed primarily to protect job applicants.

“The use of background checks is governed by a multitude of federal, state, and even local laws and regulations,” says labor law attorney David Roth, at Denver-based Fisher Phillips. “For example, the Fair Credit Reporting Act requires advance notice to the applicant that a background check will be made, and the applicant must provide written consent for the procedure. Further, it requires that the employer provide a copy of the report to the applicant before and after taking any adverse action.”

The Fair Credit Reporting Act, along with other laws and regulations, makes it advisable to consult with an attorney experienced in labor law before adopting a policy of making pre-employment background checks. “Some laws actually *require* employers to conduct background checks,” says Roth. “For instance, background checks are usually required for applicants who will be working with children, the elderly or the disabled.”

Benefits and Stumbling Blocks

“A comprehensive background check should include criminal convictions, civil filings, credit history (where permissible) and social media,” says labor attorney Todd Wulffson, Managing Partner, at Carothers, DiSante & Freudenberger, LLP., of Irvine, Calif.

Wulffson also points out that a comprehensive background check reduces the risk of “negligent hiring” cases against the employer by precluding applicants who, if they commit any bad act in the workplace, provide an easy argument that they should never have been hired because of their history. “Another benefit,” he adds, “is that eliminating applicants through various types of background checks reduces the pool of applicants – thus simplifying the interviewing process.”

Pre-employment background checks often discourage applications by individuals who are trying to hide something, Roth adds. They may also increase an employer’s ability to avoid negative publicity should an employee’s actions or history become public.

The cost for conducting background checks has dropped sharply in recent years. The cost for a limited background check in a single state can be as low as \$25 – which, of course, must be factored into the hiring process.

Wulffson says to keep in mind that improperly conducted checks could potentially violate federal, state or local laws, and monetary penalties for noncompliance with those laws can be significant. These laws and regulations may be complex and difficult to follow, and may require the assistance of legal counsel. “If the background check process eliminates a great deal of applicants – most of

whom are of the same race – the federal Equal Employment Opportunity Commission, a state agency or an enterprising plaintiff’s attorney may claim that the company used the background check as a means to discriminate in the hiring process,” Wulffson says.

“Also, if the company does a background check before legally compliant notice and consent has occurred, and someone other than the employer does the check, the company may have violated federal law,” he adds. “The Fair Credit Reporting Act or state equivalents, which carry penalties on their own, may be used as the basis for an invasion of privacy or failure to hire case.”

Remember, too, that background check information, especially if taken from social media sites, may not always paint an accurate portrait of an individual, and decisions based on social media may be more susceptible to claims of discrimination.

“Keep in mind,” says Wulffson, “that the employer does not need the applicant’s consent to review publicly-available information about the applicant - which can include criminal records, civil filings and social media sites. However, if the employer does not apply the same level of scrutiny to all applicants, or learns personal information about the applicant that cannot be used to make a hiring decision (e.g. religious affiliation, sexual orientation, cultural or national origin identity, marital status, disability status, etc.) the company risks a lawsuit for invasion of privacy or discrimination if the applicant is not hired.”

Best Practices for Security Dealers

“Any background check should involve a cost/benefit analysis,” Wulffson says. “This will usually require consultation with competent employment counsel or experienced human resources professional. Our advice for an overall best practice is that the benefits of a standard background check – *i.e.* a criminal records check and verifying employment/references – outweighs the burdens. Checking these two areas is not expensive, and the risk to the employer for not doing such a minimal and reasonable check is simply too high.”

In addition, Wulffson says, credit checks should only be done where legally permissible and relevant to the position. “Civil records checks, such as finding cases where the applicant was a plaintiff or a defendant in a past lawsuit, should only be performed for executives or other high profile positions,” he adds.

“Finally, social media checks should only be done when social media skills are relevant to the job, or the position will be high-profile with the company,” Wulffson concludes. “Although applicants must be told upfront what background checks are to be done, the checks must be done only after an employment offer has been made, but before employment begins. This provides a system that is legally compliant, as fair as possible to the applicants and protective of the employer’s interests.”

Sources

The digital age has made it easier than ever to conduct pre-employment background checks. There are hundreds of online companies available to conduct searches from the most basic up to the highest level including criminal backgrounds.

For more information on how to conduct a background check log on to:
www.howtodobackgroundchecks.org.

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