

A Better Partnership®



Background Checks What You Need to Know

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Background Checks

90% of employers perform criminal background checks

45% of employers perform credit checks

Why?

- \$4 billion in embezzlement losses every year
- 45% of applications contain a fabrication
- An average business loses 5% of its annual revenue to employee fraud

What Can/Can't You Check?

Can

- Criminal records, credit records, driving records, prior employment, references

Can't

- Medical records, military records, school records

Who Performs the Background Check?

1. Employer
2. Outside Agency

If the Employer Performs the Background Check

- No issues under the Fair Credit Reporting Act
- There are still some concerns

If the Employer Performs the Background Check

Criminal History Consent Form

In connection with my employment, or continued employment, I authorize XYZ Company and its agents to secure conviction-only history. I understand that the results of the criminal history screening may preclude or terminate my employment with XYZ Company.

I authorize the Michigan State Police and/or all other law enforcement agencies to release and disclose to XYZ Company any and all conviction information it may have in its records or may obtain from other sources under my name, address, social security number, driver's license (if applicable), and/or my fingerprints. I hereby waive written or other notice of the release or disclosure of any such information.

I release XYZ Company, the Michigan State Police and all other disclosing agencies, their agents, representatives, officers and employees from any liability, and I waive any claim, relating to the release, disclosure or use of information and for any employment decisions made by XYZ Company as a result of such information.

Name: _____
Last First Middle

Maiden Name/Other Names I Have Been Known By: _____

Social Security Number: _____

Birth Date: _____ Gender: ___M ___F

Driver's License Number: _____

Have you ever been convicted of a felony or misdemeanor?

___ Yes ___ No

If yes, give all details including date, city and state:

Employee Signature

Date

For Purposes of this Authorization and Waiver, a photocopy and/or facsimile copy of my signature shall have the same force and effect as my signature.

If a Third Party Performs the Background Check

- Must comply with the Fair Credit Reporting Act

Background Checks – Fair Credit Reporting Act

- The FCRA is a consumer protection statute designed primarily to protect the privacy of consumer information and to ensure that information supplied by consumer reporting agencies is accurate.
- A “Consumer Report” is a report that contains information about a person’s personal and credit characteristic, character, general reputation and lifestyle, and which is used as a factor in establishing the person’s eligibility for credit, insurance, employment or other purposes listed in the FCRA.
- “Consumer Reports” include criminal background checks, credit reports or other background checks conducted by third parties.

Fair Credit Reporting Act

Before obtaining a consumer report, an employer must:

- Obtain written authorization from the individual
- Notify the individual that report may be used in employment decisions
 - Notice must be in writing
 - Notice must be in a document consisting solely of this notice

Fair Credit Reporting Act

Two step process must be followed if an “adverse action” is taken based on a consumer report:

Fair Credit Reporting Act

Step 1: Before taking an adverse action, the individual must be given a “pre-adverse action disclosure.” The disclosure should:

- Inform the individual what the pending adverse action is
- Inform the individual that the pending action is based, at least in part, on the consumer report
- Inform the individual that he/she must notify you if the information in the report is incorrect, and
- Provide a deadline for contacting you with notice of inaccuracies

This disclosure must include:

- A copy of the consumer report
- A copy of “A Summary of Your Rights Under the Fair Credit Reporting Act”

Fair Credit Reporting Act

Step 2: After taking an adverse action, you must give the individual an “adverse action notice.” This notice must include:

- The name, address and telephone number of the CRA that supplied the report,
- A statement that the CRA that supplied the report did not make the decision to take the adverse action and cannot give the specific reason for it,
- A statement that the consumer has the right to obtain a free copy of the consumer report from the CRA if the consumer requests the report within 60 days, and
- A statement setting forth the consumer’s right to dispute directly with the CRA the accuracy or completeness of any information the CRA furnished.

Fair Credit Reporting Act

**DO NOT ASSUME YOUR CREDIT
REPORTING AGENCY IS DOING THIS
CORRECTLY**

Fair Credit Reporting Act – Consequences of Non-Compliance

- Economic damages (such as lost wages or other monetary losses)
- Emotional distress, humiliation, or similar non-economic damages
- Statutory damages
- Court costs
- Attorney fees
- Punitive damages for deliberate violations

Fair Credit Reporting Act – Other Issues

Once we have a report, what do we need to consider in making our employment decisions?

Background Checks – EEOC and Criminal Convictions

EEOC has a long-standing policy that excluding individuals from employment because they have a criminal record violates Title VII of the Civil Rights Act of 1964 unless the policy or practice is justified by business necessity.

The EEOC's position is based on the fact that such policies may have a disparate impact on African Americans and Hispanics.

EEOC's E-RACE initiative is focusing on "21st Century manifestations of discrimination," which includes credit and background checks, and arrest and conviction records.

Background Checks – EEOC and Criminal Convictions

EEOC Policy Statement provides that an employer must show that it considered the following three factors to determine whether its decision regarding a criminal conviction was justified by business necessity:

- The nature and gravity of the offense or offenses;
- The time that has passed since the conviction and/or completion of the sentence; and
- The nature of the job held or sought.

Background Checks – Credit Information

- Bankruptcy Discrimination
- Seven states prohibit or limit use of credit information in hiring decisions
- 24 states have legislation pending

What Should We Avoid?

- Consideration of arrests without convictions
- Blanket rules
- Unnecessary credit checks

What Should We Do?

- Get proper FCRA forms
- Use the EEOC's language

What About Drug Testing?

Okay, provided you:

- Make a conditional offer of employment first
- Do not consider disabilities learned through medical prescriptions

Social Media – Screening Applicants

- A 2010 Microsoft survey found that 84% of employers and recruiters think it's appropriate to use social networking sites to screen candidates
- In 2006 70% of employers rejected potential employees because of information found out on-line
- 15% of individuals believe their on-line information will matter when getting hired

Social Media – Reported Reasons For Rejecting Applicants

- Provocative or revealing photographs or information (53%)
- Posted content about drinking or using drugs (44%)
- Bad mouthing a previous employer, co-worker or client (35%)
- Showed poor communication skills (29%)
- Made discriminatory comments (26%)
- Lied about their background (24%)
- Revealed confidential information from previous employers (20%)
- Sent message using an emoticon such as a smiley face (14%)
- Used “text language” such as “gr8” to spell “great” (8%)

Social Media – Postings That Helped Applicants Get An Offer

- A profile that provided good information as to the candidates personality and fit (50%)
- A profile that supports the candidates professional qualifications (39%)
- A profile that showed that the candidate was creative (38%)
- The candidate showed good communication skills (35%)
- Profile showed that the candidate was well rounded (33%)
- Other people posted good references about the candidate (19%)
- The profile showed that the candidate had won awards or professional recognition (15%)

Social Media – Screening Applicants

- Privacy Claims
- Civil Rights and Employment Discrimination Claims

Social Media – Screening Applicants

The screenshot shows a Facebook profile for Anne X. Sample. The profile includes a cover photo, a profile picture, and a bio stating that she only shares some profile information with everyone. The profile is divided into sections: Information, Basic Information, Contact Information, and Pages. The Information section shows her relationship status as Divorced, two children, and her current city as Lansing, MI. The Basic Information section lists her sex as Female, current city as Lansing, MI, and two children. The Contact Information section shows her religion as Christian, political views as Liberal, and her education at Michigan State University and Okemos High School. The Pages section lists MSU Alumni Association, American Diabetes Association, and Society of Golden Doodle Owners. The right sidebar contains advertisements for 'Life of Pi fan?', 'Need New Windows?', and 'Love Angels and Demons?'. The bottom of the page shows a chat window with 13 participants.

facebook Home Profile Account

Anne X. Sample Add as Friend

wall info

Anne only shares some of her profile information with everyone. If you know Anne, send her a message or add her as a friend.

Basic Information

Sex: Female
Current City: Lansing, MI
Children: Two
Relationship Status: Divorced

Contact Information

Religion: Christian
Political Views: Liberal
Grad School: Not likely
College: Michigan State: '05
High School: Okemos High School: '99

Location: Lansing, MI

Pages See All (16)

- MSU Alumni Association
- American Diabetes Association
- Society of Golden Doodle Owners

Send Anne a message

Information

Relationship Status: Divorced
Children: Two
Current City: Lansing, MI
Age: 32

Friends

43 friends See All

Life of Pi fan? Like

Need New Windows? Like

Love Angels and Demons? Like

Chat (13)

Social Media – Screening Applicants

The typical Facebook information page expressly reveals the individual's:

- Sex
- Date of Birth
- Marital status
- Religious views

Social Media – Screening Applicants

Facebook postings will also commonly reveal:

- Height
- Weight
- Race
- National Origin
- Disability
- Genetic Information
- Association with members of a protected class

Social Media – Screening Applicants

Things to consider:

- Consistency – “who” and “what”
- Job related criteria only
- Review by a non decision maker
- Disclosure and/or permission
- Some states prohibit (Illinois, Delaware, Maryland)

Michigan's New Law

Prohibits employers from requesting an employee/applicant give employer access to his/her personal internet account.

Thank You

Any Questions?