

Background Checks: When and How to Use Them

Improperly requiring background checks or misusing the information may subject an employer to significant liability.

Many employers today may feel they have the right, if not the obligation, to look into the backgrounds of all of their existing and potential employees. There are, indeed, several benefits to running background checks; among them are screening potential employees whose actions could result in vicarious liability, avoiding negligent hiring claims, protecting the safety of other employees, and protecting proprietary interests.

Although these benefits are compelling, many employers may be unaware that federal and state laws, along with guidance from agencies, such as the Equal Employment Opportunity Commission (EEOC), significantly restrict when and how background checks can be run and also how such checks can be used in making employment decisions. There is no doubt that employers, particularly ones that deal with financial information or whose employees have frequent direct customer or client contact, certainly have legitimate reasons to run background checks and to make decisions based on the information they provide. Nevertheless, as improperly requiring background checks or misusing information learned from those checks may subject an employer to significant liability, employers need to understand how to properly use background checks. In order to do that, employers must recognize what background checks may reveal, the relevance of that information to their business or the employment position, and what steps and analysis need to be performed as part of obtaining and using a background check.

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