



Staffing Industry Resources | Best Practices Series



BEST PRACTICES

for carrying out

BACKGROUND CHECKS for the Staffing Industry



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7 Best Practices For Staffing Background Checks

Background checks are an essential tool for making your decisions. When used properly, they can enable an organization to recruit people who have integrity and impeccable character. However, background checks can also have potential downsides. Legal mishaps in carrying them out can open up an organization to costly class action suits.

Therefore, when carrying out background checks, care needs to be taken in order to maximize the benefits without turning them into a legal nightmare. This requires a well-thought out strategy for utilizing them. To set out such a strategy, it is necessary to implement certain best practices. **Below are 7 background check best practices for the staffing industry.**

1. Create a Background Check Policy

Background checks should never be carried out in a **vacuum**. Neither should they be carried out haphazardly. They should be carried out against the background of a well articulated policy. Therefore, the first best practice is to create a background check policy.

The policy has to be relevant to the specific needs of the organization. Among others, it should specify the kind of information that you will collect, for what purpose, what decisions will be made based on the information. The policy should also spell out storage, access and sharing of the information. Above all, it should spell out who will be responsible for the different processes involved.

A background check policy is important because it streamlines the collection, storage and dissemination of employee or applicant background information. When established protocols are in place, incidents of people making mistakes because they had to make a judgment call are reduced.

2. Follow Disclosure Laws

The Fair Credit Reporting Act (FCRA) is the law which governs how background checks should be carried out. At the core of the FCRA is the idea that a background check should not be carried out without authorization from the employee or applicant (the person about whom the information will be collected). As such, it sets out strict guidelines under which the authorization should be obtained.

Among the guidelines is a requirement of “disclosure”. A disclosure is basically supposed to enable an employee to make an informed decision about the background check. The FCRA spells out precise requirements through which a disclosure can be judged legal.



Examples include:

- it should be written and provided to the applicant in a stand-alone document
- it should inform the applicant of the kinds of info which may be unearthed in the background check
- it should inform the employee of their FCRA rights (e.g. the right to obtain a copy of the Background Check Report)

These are just a few of the requirements. There are many more. Each of these requirements must be followed to the letter. The slightest mistake makes the whole Background Check illegal. Any decision made from it can be subject to serious litigation. A good example is the case of Delhaize America which had to settle a \$3 million class action after getting sued for violating disclosure laws. (<http://www.consumerfinancialserviceslawmonitor.com/2015/03/food-lion-parent-settles-3-million-background-check-class-action/>)

3. Formalize Adverse Action Notices

The **FCRA** also spells out strict procedures to be followed when a background check is to result in an adverse action. An adverse action is basically an action which has negative implications for an employee or applicant e.g. not hiring the applicant or firing an employee.

Among the procedures are adverse action notices. These are basically notices which are sent to the employee or applicant. There are two kinds of notices i.e. pre adverse action notices and adverse action notices. Each of these has a strict

set of guidelines on their timing, content and supporting documents. The tiniest deviation from the guidelines can be grounds for a lawsuit.

The easiest way to handle adverse action notices is to make them part of your procedures. Establish sending the notices as part of your background checks protocol. This is the only way of ensuring that no one forgets sending them and exposes your organization to unwanted lawsuits.

4. Pay Attention To Changing Laws

The law is generally dynamic. New laws are formulated almost every other day. Existing laws also get updated. To stay on the safe side, make sure you pay attention to the changing laws (both state and Federal) regarding Background Checks.

Besides the laws, pay attention to the legal guidelines and documents which are periodically released by agencies like the **Fair Trade Commission (FTC)**. Failure to pay attention to such guidelines can set up your organization for legal problems.

A case in point is the recent \$3 million class action lawsuit settled by Kmart. The case was brought after Kmart had fired an employee after carrying out a background check. Kmart had actually followed



every FCRA procedure to the book.

However, it made just one tiny mishap. It sent the applicant an outdated version of the FCRA statement of rights issued by the FTC. This alone was enough to find it guilty of an FCRA violation. The moral of the story is “make sure that every Background checking document you have is up-to-date”.

5. Hire A Reputable Screening Company

The quality of the background check comes down to who does it. Therefore, to yield actionable information, it is essential to hire a reputable background screening company. Such a company usually has the expertise to find out whatever info is needed within the shortest time possible.

However, a reputable company doesn't simply unearth for you good quality information. It also keeps you abreast with the latest legislations surrounding background checks. Most of them can also handle aspects like sending the Adverse Action Notices, thereby saving you the trouble.

Basically, a reputable company will not just get provide you with top-quality background checks, it can also help you to stay abreast with the latest legal changes. Given that some states have specific laws which directly or indirectly



impact Background Checks, such legal updates can prove invaluable.

6. Conduct Individual Assessments

Simply because a background check has thrown up a red flag doesn't mean that you should immediately carry out an adverse action. The **Equal Employment Opportunity Commission (EEOC)** recommends conducting an individual assessment before taking an adverse action. Although this recommendation isn't mandatory, it is certainly worth considering.

An individual assessment is simply taking a closer look at whatever red flags have been thrown. The reason for this is simple: even the most experienced background checking companies get it wrong. Also, sometimes, an inconsistency may be a matter of a simple misunderstanding. Calling an employee or applicant to explain the situation may actually clarify it. Now, there is actually no legal penalty for not carrying out an individual assessment. However, failure to do so can cause you to lose an otherwise great employee over a simple misunderstanding. Therefore, before carrying out an adverse action, be sure that the information on which you are basing the action is impeccable.

7. Build A Partnership With Your Screening Company

The competency of a screening company isn't enough to get you maximum benefits from its services. What matters is the quality of relationship that you have with the company. For instance, take the issue of being furnished with the latest changes in background-checking legislations. No company is going to

give you such information if your interaction with them is standard. After all, you hire them to do background checks, not give you legal updates.

To get such extras, you need a special relationship with the company. Essentially, you need to build a partnership with them. A partnership enables you to get a personalized service from the company. Rather than carrying out standard background-checks, it can tailor the checks to the specific needs of your organization. A partnership also enables you to enjoy extra services from the company e.g. sending Adverse Notices on your behalf.



The good news is that forming a partnership with a screening company is quite simple. All you have to do is approach them. Most are always looking for such partnerships (partly because it guarantees them repeat business). In some cases, they can even offer you some discounts (or at least more convenient payment options). Ultimately, it ends up a win-win for both parties. In a nutshell, those are some of the top background check best practices.

Therefore, if you want to enjoy maximum benefits from your background checks while avoiding legal snafus, then the above tips can enable you to achieve just that. Simply implement them and background checks will become an invaluable tool in your arsenal. Best wishes.