



## Employment Screening Trends and Pitfalls

Business in most industries continues its upward trajectory in 2017, and companies are hiring at a brisk pace. With the increased urgency in hiring, some companies have found it necessary to hire first, ask questions later. This can be risky. Employers should be aware of and minimize potential liability during their hiring process.

### Background Screening

Background checks can be useful to help employers make personnel decisions. An employer may, where appropriate, ask questions about an applicant's background or require a background check. But there are some risks involved. Implementing the following may help minimize those risks.

- Be sure to consult with your attorney, and **review and comply** with federal, state, and local laws regarding background checks, as many regulate this information. For example, the "Ban the Box" regulation limits the scope of verbal and/or application questions to help ensure people with criminal convictions have a fair chance to work. It may also define the timeframe during which background checks can be conducted.
- With the help of your attorney, create a **process** that clearly outlines the checks you order (e.g., motor vehicle records, credit checks, criminal checks, drug tests, etc.) and how this information will or won't be used in employment decisions.
- In all cases, make sure your actions are **consistent but not rigid**. Define your decision-making criteria but use good judgement in assessing a candidate's unique, individual circumstances. Treating candidates consistently helps reduce the potential for discrimination.

### Social Media

There is no question that social media is changing the way businesses work. The use of social media in the hiring process is becoming more common and can provide a better picture of a potential candidate. But, a person's online postings could contain many pieces of information that may be considered protected. For example, even a brief search could reveal:

- Age
- Sex/Sexual Orientation
- Race/Color/National Origin/Religion
- Disability/Pregnancy/Medical Conditions

Once you review a candidate's online profile, a court will likely assume you are aware of that person's protected characteristics. If you choose to include a social media review as part of your hiring process, here are some best practices to help reduce your risks:

- Use information available only to the public at large. Do not ask for passwords or attempt to "friend" candidates in order to access private information.
- Develop a policy that clearly outlines permitted uses of the information, sites you review, etc.
- Wait to do your search until after you've met the candidate in person.
- Be consistent—conduct the same searches at the same point in the process for every candidate.
- Ask your attorney whether you should print or save screen shots as documentation if you see something that you use in your hiring decision.
- Consider the source. There are things like cyber bullying and imposter social media accounts. You may want to give the candidate a chance to explain objectionable content.
- Be aware of and comply with federal and state laws that apply.

Keeping up on the latest trends and pitfalls in employee screening is prudent to successful hiring and hiring practices. For more information specific to your situation and state, log in to the [Federated Employment Practices Network \(FEPN\)](#) or consult qualified legal counsel. To learn more about FEPN, contact your [local Federated marketing representative](#).

This article is for general information and risk prevention only. It is not legal or other expert advice, nor does it identify all possible risk exposures. The recommendations may help reduce the risk of loss but are not guaranteed to do so. The information presented may be subject to, and is not a substitute for any laws or regulations which may apply. Consult qualified counsel with questions specific to your circumstances. The information is accurate as of April 2017 and subject to change. © 2017 Federated Mutual Insurance Company.