

A woman and a man are sitting at a table in a meeting, looking at a laptop. The woman is on the left, wearing a light-colored blazer, and the man is on the right, wearing a light blue shirt. They are both looking down at the laptop screen. The background is a blurred office environment with warm lighting.

U.S. Background Screening Policy Considerations

Create a background screening policy for your company with tips from our checklist.

In the event that a job applicant wants to legally challenge your background screening process or decision-making... are you properly prepared to defend your screening program? The answer to that question is likely the same answer to the next question.

Do you have a background screening policy?

Your background screening policy may be your first and best line of defense in litigation. As we know in other personnel-related matters, it's important to have and follow policies and procedures that promote consistency and compliance in the workplace. Documenting your company's processes for requesting, receiving and evaluating background checks will greatly improve your chances of successfully defending your program.



Among the items to consider in your policy:

Begin the process by specifying the purpose and scope of your background screening program.

Determine who the policy is designed to protect.

- Employees
- Company assets
- Company values
- Company reputation

Completely detail who in or out of your organization is covered by the policy.

- Document what positions in your company require background checks.
- Consider contractors, temporary workers and vendors.
- Define policy and process for conducting searches outside of the United States.
- Define how the policy will be communicated to candidates and employees.

Designate who within the organization has the authority and is responsible for the background screening program.

- Who is authorized to request background checks?
- Who is authorized to receive a background check result?
- Who is authorized to evaluate a background check?
- Who makes the final determination on eligibility of candidates?

Define at what point in the hiring process the background check will be requested.

- Conduct checks pre-offer
- After a conditional offer
- Post-offer

Document that the background check process is only one part of a hiring process that may include other decision-making information.

Document the types of background check services that will be ordered for each job position or job classification, tying the services to the nature and duties of the job.

Document any applicable federal, state or regulatory background screening requirements that apply to your organization.

Document what types of information or gaps in information would potentially disqualify applicants for each job position or job classification.

Explain the process for individualized review of any potential adverse decisions not to hire based on the background check.

Consider stating that the company is committed to federal FCRA compliance and understands its obligations under the Fair Credit Reporting Act. Include information that applicants undergoing a background check will be receiving a written disclosure form.

Include information stating that every applicant must sign a written consent authorizing the background check prior to any request.

State the company's commitment to compliance with state and local laws, and understands its state-specific obligations for background screening.

State the company's commitment to compliance with equal employment laws.

Include a process to protect the privacy and confidentiality of applicant information, PII, and other sensitive information that is included in background forms and reports.

Include a process to factor in the guidance provided by the EEOC when considering criminal conviction information in an employment decision. Known factors to be considered include:

- The nature and gravity of the criminal offense(s);
- The time that has passed since the conviction and/or completion of the sentence; and
- The nature of the job held or sought.
- The facts and circumstances surrounding the offense.
- The number of offenses for which the individual was convicted.
- The age of the individual at the time of conviction or release from prison.
- Evidence that the individual has performed the same type of work, post-conviction, with the same or a different employer, without incidents of criminal conduct.
- The length and consistence of employment history before and after the offense.
- Any efforts of the application towards rehabilitation.
- Employment or character references obtained regarding the individual's fitness for the particular position.
- Whether the individual will be bonded for the position.

Include a process to ensure that any adverse action taken based in whole or in part on a background check will be preceded by a written notice sent to the applicant that will include pre-adverse notice, a copy of the background check and the rights afforded to the applicant under federal and state law.

Include a process for taking final adverse action, including direction on how long the company will wait before making a final determination and sending a final adverse action notice (not less than five days).

Document that your company will retain all documentation related to the background check pursuant to legal requirements.

Define how often you audit your process and procedures to evaluate compliance.

Document your rescreening practices, if any, including who is rescreened and the frequency.

Should your company be in the position of having to answer the question, "Do you have a background screening policy?"...Be sure that you can answer "yes."

For more information on U.S. background screening policy considerations or other compliance best practices, please contact us at:

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Sterling Talent Solutions embraces the ever-changing landscape of relevant global, federal, state and local hiring regulations in order to help you navigate Fair Credit Reporting Act (FCRA), Equal Employment Opportunity Commission (EEOC) and other regulations governing pre-employment services.

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