

REFERENCING & INTEGRITY CHECKS

OVERVIEW:

Reference checking is a common activity performed by recruiters as part of their service to clients. Ensure that you protect yourself by understanding the legal and contractual obligations you have in delivering to both clients and candidates.

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Establishing & Managing Contractual Obligations

Subsection 20(3) of the Employment Equity Act requires one when assessing the suitability of a job applicant, to use one or all of the following four criteria:

1. Formal qualifications;
2. Prior learning;
3. Relevant experience; and/or
4. Capacity to acquire within a reasonable period, the ability to do the job.

The Act however fails to define these.

Effective reference checking processes while operating within the constraints of the law that offer Constitutional legal protections against discrimination and privacy, and within the bounds of the APSO Code of Ethical & Professional Practice provide the tools to meet both legal and ethical demands.

An ethical perspective

Whilst APSO does not dictate to its members how to run their businesses or what services to offer, the APSO Code of Ethical & Professional Practice sets the minimum expectations of members when managing reference checking on behalf of their clients and candidates. The following clauses clarify the expected requirements:

Clause 2.6.3 “Reference checks shall be taken out at an appropriate time in the recruitment process as mutually agreed with the client.”

Clause 2.6.4 “Verification of qualifications shall be carried out at an appropriate time in the recruitment process as mutually agreed with the client.”

Clause 2.7 “Requirements for credit, criminal and other checks must be agreed with the client.”



Contractual Perspective

From a purely contractual point of view this requires that mutual agreement must be reached with your client to manage their expectations on all levels of the reference checking process.

Employment Reference Checks

Mutual agreement must be reached on how many reference checks your client will require you to provide with the understanding that a referee is not obliged to give a reference other than to confirm a position and period of employment.

From a risk management perspective, it is recommended that a verbal reference be reduced in writing and confirmed with signature by the referee. Furthermore that the consultant responsible for placement be the person who conducts reference checks to ensure the questions asked are relevant and have bearing on the job assignment. This process also ensures that a referee has the opportunity to correct any misconceptions or inaccuracies that may arise.

Agreement should also be reached on when in the recruitment process these are required to be conducted.

Disclosure must be made to the client if a reference has not been able to be traced or if the referee is a family member. The onus rests on the member to verify that the referee is who he or she is represented to be in terms of position held and reporting structure.

Furthermore, if a CV presents a fact that raises a potential red flag, for example where a candidate states a reason for leaving due to company closure on numerous occasions, this should be independently verified and disclosed.



Verification of Qualifications

Mutual agreement is required to be reached on what relevant qualifications need to be checked and whether your client requires a full qualification verification stretching back as far as Matric, for example, as it often the requirement when dealing with large financial or insurance institutions.

Where the progression of qualifications listed is beyond the expert knowledge of the consultant, verification should be obtained as to relevance or authenticity from a professional body regulating that sector or from the relevant faculty offering that qualification.

Disclosure should also be given on how these checks are conducted and then agree upon the process of verification. For example, is the consultant simply working on “face value” by the production of certificates, or have the qualifications been vetted via an appropriate third party agency, or with the tertiary institutions themselves. Qualification fraud is on the rise and consultants should be aware of the risk of accepting information on face value alone.

Credit Checks

Although there is no legislation specifically prohibiting the checking of credit references of job applicants, you should proceed with caution. If challenged in court, the onus would be on the member to prove that credit checking was essential due to the operational requirements of the job.

The National Credit Act forbids an employer (or recruiter) from discriminating on the basis of an ITC record, except if the employee will be handling cash or hold a position of seniority or trust. So, even if you’re recruiting for a position as a bank cashier, establishing that an applicant has a bad credit reference does not imply that she will steal.

From a risk perspective, mutual agreement must be reached with your client on the operational necessity of a credit check relating to the job specification and once established and recorded, agreement must be reached on the manner and degree of disclosure of the credit check to your client.

Criminal Checks

When dealing with criminal checks, mutual agreement must be reached on the timing, manner, extent, depth and process of verification. As a service provider you would need to ensure that you use a reputable verification service and that your client has agreed to the method of verification, that being either ID/name clearance or the more in-depth fingerprint checks.

Timeframes required for verification and possible delays must be appropriately managed. Furthermore full disclosure of positive results must be made to your client and where these raise suspicion or reveal a potential red flag, for example a conflict between ID number and disclosed name of the candidate, further investigations must be made.

It is important to remember that the results of a criminal check are only valid for the specific time that it was taken out as much can change within a day, week or month.

Medical Checks

Medical testing is prohibited, unless legislation permits or requires the testing, or it is justifiable in light of medical facts, employment conditions or the inherent requirement of the job as specified in Section 7 of the Employment Equity Act.

Consultants should note that medical testing is defined to include any test, enquiry, question or other means designed to ascertain or which has the effect of enabling the employer (or recruiter) to ascertain, whether a prospective employee has a medical condition.

This would include any questions relating to pregnancy, for example.

Who pays?

There is no regulation that stipulates who is responsible for the payment of verification checks, however it is an International standard that these check costs should never be passed onto the job seeker/candidate.

It is imperative that your terms and conditions of business clearly stipulate whether these checks are included in your standard recruitment fee, or whether the client would be expected to pay for these additionally.

Working Smart

Naturally it would be beyond the scope of any standard service level agreement (SLA) to contractually manage every expectation which may also constantly change or evolve.

A standard check list completed and signed by the consultant and the client and attached to each individual job assignment addressing these aspects will provide clarity to both parties. This could simply be referred to as an addendum to the standard SLA.



What are the risks?

Potential legal remedies available to your client if you fail to deliver on your contractual obligations include:

- Damages awarded for breach of contract;
- Delictual damages if the client acted to their detriment upon a false or misleading representation made; and/or
- Criminal charge of fraud

To protect yourself, ensure that you fully understand the legal obligations for conducting verification checks, educate your client, and mutually agree on the processes to be followed. Provide your consultants with the knowledge and expertise to capably manage these processes and limit the risk to your business.