

**Goals: This session should help the participant:**

- Understand the importance of conducting background checks for certain jobs.
- Recognize the legal limits on background checks.
- Balance an applicant's right to privacy with the organization's need to know.

**1. Why Bother to Conduct Background Checks?**

- Surveys indicate that 30 percent to 50 percent of applicants lie about or exaggerate qualifications.
- An upsurge in workplace theft and violence means you need to make sure you are not hiring people who could harm the organization, its employees, or its customers.
- Negligent hiring suits indicate the need to know as much as possible about potential employees.
  - Companies can be liable if they fail to conduct a background check and an employee subsequently commits an improper or unlawful act that should have been anticipated.
  - These lawsuits are on the increase and are usually brought by co-workers or customers (for example, if an employee steals from a customer or commits a violent act against a co-worker).
- For all of these reasons, you need to use background checks for certain jobs to make sure that the people you hire are competent, honest, and reliable.

**2. Where Should You Focus Your Investigation?**

- Background checks usually focus on one or more of the following areas:
  - Employment, education, military background
  - Criminal record
  - Credit history
  - Driving record

**3. What Are the Legal Limits on Background Checks?**

- Background checks must be conducted and used in ways that:
  - Are relevant to the individual's job
  - Protect the individual's privacy
  - Avoid discriminating against a group or class of job applicants
- Policies on background checks should be consistent for all job candidates for a particular job.
- Criminal background checks may be called for in certain jobs, including:
  - Security personnel
  - Employees working without supervision, especially handling money
  - People who work with vulnerable groups such as children or frail elderly
- When deciding whether to check criminal records, keep in mind that:
  - An arrest is not the same as a conviction.
  - Arrest or convictions may have nothing to do with the job.
  - The arrest or conviction may have occurred so long ago that it's no longer relevant.



–Certain minority or protected groups are more likely to have been arrested, which could make such checks discriminatory.

- Check financial information only when there is a strong business reason—jobs involving large amounts of cash or movable goods or substantial discretion regarding financial operations.
- The Fair Credit Reporting Act only permits you to obtain credit information if you:
  - Tell applicants you’re seeking the information in a clear stand-alone written statement.
  - Get them to sign an authorization giving you permission to obtain a credit report.
- If you reject an applicant on the basis of a credit report, you must give the applicant a copy of the report and a chance to dispute the information.
- For driving jobs, you may check for driving violations, accidents, and license status.
  - The Driver’s Privacy Protection Act, however, prohibits access to personal information, such as address or medical and disability information, without a written and signed consent.
- The Family and Education Rights and Privacy Act may limit access to information about an applicant’s education or professional certification without written and signed consent.
- State laws may also place additional restrictions on background checks.

#### **4. How Can You Balance Employee Privacy Rights with Your Need to Know?**

- Don’t overreach in your investigative efforts—only look for information you really need.
- Limit checks to information that specifically relates to current or future job functions (for example, driving records for work as a driver, theft convictions or debt problems for work with money or company accounts, and drug offenses for work where safety is a serious issue).
- Be sure to maintain the confidentiality of all documentation associated with background checks.
  - Only those in the organization with a need to know should have access to this information.

**Applicable Regulations:** Driver’s Privacy Protection Act; Fair Credit Reporting Act; Family Educational Rights and Privacy Act; Title VII, Civil Rights Act of 1964

#### **Training Tips:**

- Review your background check policy, highlighting job classifications for which background checks are required. Discuss the type of information that may be obtained in each case.
- Distribute samples of release and disclosure forms that must be signed by applicants in order for the company to access background information. Discuss when and how these are used.
- Discuss any state law requirements or limitations relevant to your background checks.

#### **Knowledge Review:**

- Distribute copies of the handout and discuss the guidelines for background checks. Then have participants complete the Background Check Basics Quiz. It provides a useful review of their understanding of the subject.