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

- Identify employment situations that may require background checks.
- Understand legal restrictions on background checks.
- Obtain and use background checks properly.

**1. All Background Checks Should Comply with Certain Basic Requirements**

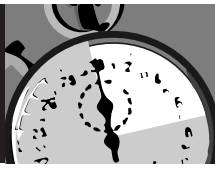
- Follow your company's written policy on background checks, which will tell you when checks may be conducted, for which positions, and what information may be collected.
- Background checks should be limited to only those applicants who have received a conditional offer of employment, and information sought should be job-related.
- Do not conduct background checks on a selective basis; treat all applicants the same.
- Application forms should summarize the specific types of background checks that may be conducted; state that false or misleading information on an application could result in a refusal to hire or, if already hired, discipline up to and including termination; and require the applicant's signature.
- Provide applicants and employees with an opportunity to explain any potentially damaging or negative background information both before and after discovery.
- Maintain the confidentiality of all background check information, and dispose of it properly.

2. Credit Checks Are Governed By Federal and State Laws

- Under the federal Fair Credit Reporting Act (FCRA), financial and personal reports about applicants and employees may be obtained for purposes such as hiring and promotions.
- FCRA distinguishes between two forms of reports:
 - *Consumer reports* such as credit checks provide general financial and personal data about an individual's payment history, overall indebtedness, and addresses of record.
 - *Investigative consumer reports* provide in-depth information about an individual's character, general reputation, personal characteristics, mode of living, etc.
- Before obtaining any type of consumer report, you must:
 - Make a clear and conspicuous disclaimer, in writing, in a document consisting solely of the disclosure, that a consumer report may be obtained for employment purposes.
 - Obtain the individual's signed authorization to obtain the report.
- The Equal Employment Opportunity Commission (EEOC) has stated that credit checks by employers can be potentially dangerous ground.
 - They warn that Title VII prohibits any employment practice that disproportionately screens out racial minorities, women, or another protected group, unless the practice is job-related and consistent with business necessity.

3. There Are Limits on Accessing and Using Criminal Arrest and Conviction Records

- To prevent violating employment discrimination laws, consider the following before making any employment decision based on an applicant's or employee's criminal record:
 - Nature of the crime, length of time since a conviction, and number of convictions
 - Relationship between the job to be performed and the crime committed
 - Rehabilitation efforts and subsequent employment history



- Limit questions about criminal records, to records for which exclusion would be job-related for the position in question and consistent with business necessity.
- An arrest without conviction does not establish criminal conduct, and rejecting an applicant based on an arrest alone is not job-related or consistent with business necessity.
- Keep information about applicants' and employees' criminal records confidential.

4. You May Verify Previous Employment, Education, and Professional Credentials

- You may require job applicants to give you names of previous employers and dates of employment, which you can verify with previous employers without legal restriction.
- The Family Educational Rights and Privacy Act may prohibit a university or college from releasing education or other information without the written consent of the applicant.
- Information about professional licenses and other credentials can be legally obtained from licensing organizations upon request by employers.

5. Laws Limit Access to Some Information from Driving Records without Consent

- If an employee is required to drive or operate a company vehicle on the job, you may need to obtain information regarding an individual's driving record and/or personal habits.
- The Driver's Privacy Protection Act prohibits DMVs from disclosing personal record information (address, Social Security number, etc.) without written and signed consent.
- Driving violations and driver status, however, are not considered personal information.

6. Laws May Affect Reference Checks and Military Service Checks

- Although a number of states have adopted reference immunity laws, many employers remain leery about giving out any information beyond dates of employment and title.
- If you persist, however, sometimes important information may be obtained.
 - Require applicants to sign a release that authorizes you to contact past employers.
- There is no federal law that expressly prohibits employers from inquiring about an applicant's discharge from military service, but some states prohibit such inquiries.
- Before making decisions based on a military service background check, consider:
 - Reason for discharge, length of time since the discharge, and subsequent work history
 - Nature and seriousness of the conduct that led to the discharge
 - Relationship between the job to be performed and the dishonorable discharge

Applicable Regulations: Driver's Privacy Protection Act; Fair Credit Reporting Act; Fair and Accurate Credit Transactions Act; Family Educational Rights and Privacy Act; Title VII of the Civil Rights Act of 1964; state laws

Training Tips:



- Review your organization's background check policy and procedures.
- Identify jobs that require background checks, and explain why checks are required.

Knowledge Review:



–Distribute copies of the handout and discuss best practices. Have participants complete the Background Checks and the Law Quiz. It provides a useful review of the subject.