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Red Flags on Background Checks

Pre-employment background checks are a critical piece of due diligence that help employers to discover potential “red flags” about job candidates before finalizing their hiring decisions. According to a survey conducted by HR.com in 2017, 96 percent of employers conduct at least one background check as part of the candidate screening process.



The prevalence of background checks in the hiring process has created a narrative in which employers consider what is necessary for candidates to “pass” or “fail” a background check. However, background checks are not a pass/fail system—they are a protocol designed to give hiring managers as much relevant information as possible to make an informed hiring decision.

What constitutes a background check red flag—or a piece of information that might cause an employer to reconsider a hiring decision, rescind a job offer, or disqualify a candidate from consideration—will vary significantly depending on the employer, industry, position, candidate, details of, and context surrounding the red flag, and other factors.

In this white paper, we will take a closer look at background check red flags to help employers and job seekers understand how background screening might affect hiring decisions or employment chances.

Types of red flags

Because employers seek different skills and qualifications from their candidates, the significance of a red flag on a background check depends on the situation. Here are a few common red flags that may act as a barrier to employment.

Criminal history

The most common type of pre-employment background check looks for criminal history because it is the red flag that most employers are interested in discovering. Per HR.com, 93 percent of employers conduct database or national criminal checks, and 97 percent perform county or state checks or both.

In most cases, these checks are to find convictions. Many states have laws that prohibit the use of arrest records in hiring decisions because arrests without corresponding convictions are not proof of guilt. As a result, there is debate over whether employers should be allowed to consider arrests as red flags or even as relevant details about a candidate's background.

Even in states where arrest records are fair game for employment consideration, employers are typically concerned with discovering severe criminal offenses. Felony convictions tend to be the biggest red flags, particularly violent crimes and sex offenses. Criminal history checks—including the US OneSEARCH database at backgroundchecks.com—incorporate sex offender registries and terrorist watch lists, as these sources can help reveal similarly severe red flags. Misdemeanor criminal convictions may not be the same barrier to employment as felonies, sex offenses, or terrorist acts, but that fact depends on the job.

Per the Equal Employment Opportunity Commission (EEOC), employers should not bar candidates based on the fact that they have criminal records as doing so has a disparate impact on minority groups. EEOC guidance instructs employers to consider the context of a conviction and its relevance to the job.

Considerations include the severity of the crime, how long ago the crime occurred, whether the candidate has had a clean record since, and whether the conviction might interfere with a candidate's ability to perform the job.

For example, consider a conviction for driving under the influence of alcohol. A DUI conviction is a clear red flag for any job involving driving, as it speaks to the candidate's safety and trustworthiness behind the wheel and the level of liability risk that an employer would need to take on by hiring that individual. For a job that doesn't involve motor vehicles—such as a desk job—a DUI is not necessarily relevant, and employers should not, under EEOC guidance, automatically consider it a red flag. In the same vein, a conviction for embezzlement would likely be a red flag for a job involving the control of finances or sensitive information, but not necessarily for a bus driver position.

Resume information

Another key background check is the resume verification, which can check the validity of information such as a candidate's claimed work history, educational background, professional licenses or certifications, and references. While 85 percent of Americans say they have never lied on a resume, per a 2019 Monster survey, 85 percent of hiring managers have found inaccuracies or lies on a candidate's resume. Research from Checkster suggests that 78 percent of job seekers at least stretch the truth.

Resumes play an essential role in hiring. They help hiring managers to decide which candidates are most qualified for a job and worthy of advancing to the next stage of the screening process (typically the first interview). As resume dishonesty has become a bigger issue—or at least a more publicly acknowledged one—more employers have begun running verification checks to detect resume lies and ensure that they aren't making critical hiring choices based on false information. According to HR.com, 75 percent of employers now verify employment and 76 percent verify professional licenses.

Which resume lies are red flags? Here are a few examples of resume dishonesty that employers are typically seeking out when they run verification checks.

- **Employment dates:** *Gaps in a resume are red flags for some employers regarding a candidate's initiative, employability, and other factors. As such, job seekers sometimes exaggerate employment dates to fill in those gaps.*
- **Exaggerated job titles:** *Sometimes, job seekers try to make their past positions sound more important, interesting, or high-level than they were. In some cases, a candidate will invent relevant job experience to improve their chances of landing a new opportunity. Work history verifications can help separate fact from fiction in these scenarios.*
- **Exaggerated skills or job responsibilities:** *Some candidates inflate their job responsibilities to make past positions sound more important or lie about professional skills to cover what is listed in a job description.*
- **Inflated education history:** *This category can range from a candidate listing a higher GPA than the one that they received to claiming degrees that they never earned. In some cases, candidates tout credentials from colleges or universities that they never attended.*
- **Lies about professional licenses:** *Some jobs require professional licenses, such as doctors and teachers. To get hired, candidates might lie about having a nonexistent, suspended, or expired professional license.*
- **Reasons for leaving previous jobs:** *Sometimes, employment verification background checks can find that a candidate was fired for cause, such as a failure to perform the duties of the job, sexual harassment of a coworker, or other issues. In addition to confirming the specific details listed on a resume, verification checks can shine a light on a candidate's reasons for leaving a job.*

Across these categories, one of the most significant red flags to employers is dishonesty.

Employers want honest workers and don't often take kindly to resume lies because of the behavior or attitude that it reveals. While some forms of resume dishonesty are essential for employers to know about on their own—licenses or degrees can impact whether a person is qualified or even legally allowed to perform a certain job, for instance—honesty or dishonesty speaks to elements of a candidate's character that are often just as vital for hiring managers to grasp.

Driving record problems

Unlike criminal history and resume dishonesty, driving history is only directly relevant to a small subsection of professional positions. However, for jobs that involve operating a motor vehicle or heavy machinery, driving record checks are as critical as any other background check red flag.

The Federal Motor Carrier Safety Administration (FMCSA), the Department of Transportation agency that regulates the trucking industry, requires motor vehicle checks for all drivers. Within these background checks, red flags include speeding tickets and other moving violations, reckless driving, driving under the influence, license suspensions, and other issues that call into question a driver's safety and responsibility behind the wheel.



Maybe the contractor you hire needs to have a certain type of educational background or professional license. Some employers set these requirements themselves, while others are required to follow legal guidelines. For instance, all school bus drivers need to have commercial drivers licenses. A background check for that kind of contractor, therefore, would include a verification of the driver's CDL.

Civil history

While not all civil court history is relevant in an employment context, someone who has been sued for contract breaches, discrimination issues, personal injury, property damage, or other matters could potentially be considered a risky hire. Civil history background checks help reveal these red flags, which may not always have led to criminal convictions. These cases are filed at either the county or federal level.

Poor credit history

Some employers, particularly those hiring individuals for positions that involve money, will use credit history checks to find out how a person has managed money in their personal life. There is significant debate and controversy around these checks, with some critics claiming that they make it more difficult for someone who is struggling to improve their situation through employment.

Bad credit can be the result of poor decision-making with money. It can also be the result of unexpected financial hardship, such as emergency medical bills or unexpected job loss (a common occurrence during the COVID-19 pandemic).

According to the Society for Human Resource Management (SHRM), there are currently ten states that restrict the use of credit history checks for employment (California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont, and Washington), as well as several cities and jurisdictions.

Exceptions will typically allow credit history checks for jobs in which access to funds, accounts, or sensitive personal information creates a risk for theft, embezzlement, misappropriation of funds, fraud, or identity theft.

Drug use

Eighty percent of employers report running drug or alcohol testing, according to HR.com. Some employers are legally required to conduct a drug test. The FMCSA is one example: CDL drivers operating commercial motor vehicles must take a drug test (and receive a negative test result) before they can begin employment. Many other employers require a drug test as part of drug-free workplace policies. In these job settings, any positive drug test is a red flag.

Identity inconsistencies

Social Security Number checks can deliver several benefits for employers. First, they reveal any past names or aliases that a person might have (including maiden names or names that they have legally changed), which helps an employer to conduct a more thorough background check. Second, they reveal a candidate's address history, which employers can use to flesh out a criminal history check with additional county criminal history searches. Third, they verify whether a person is who they say they are or is lying about their identity or using a stolen identity. Any of these outcomes can be a significant red flag during hiring.

Legal considerations

While employers have the right to conduct background checks on their employees—and to adjust their hiring decisions based on red flag findings—that right is not without limitations or regulations. Employers need to understand and consider certain legal requirements to ensure that their background check processes—and the hiring decisions that they make based on their findings—are compliant with local, state, and federal laws.

Guidance from the EEOC dictates certain elements of the background check process. The EEOC stresses the importance of applying the same standards to all candidates, being wary of policies that might have a disparate impact on minorities or protected classes, and focusing on relevant background information when making adverse employment decisions based on background check findings.

An employer that only requires a resume verification check for a white finalist but requires verification checks and criminal history checks for a black candidate is not applying the same standards to all candidates and is violating EEOC guidance. Similarly, barring all candidates who have criminal history rather than considering criminal history on a case-by-case basis and assessing the relevance to the job at hand is a practice with a disparate impact on minorities, a group of people who are statistically more likely to have criminal backgrounds than white candidates.

Any EEOC breaches could potentially lead to potentially costly lawsuits and are critical for employers to avoid. Similarly, the Fair Credit Reporting Act (FCRA) is a document that all employers must obey to the letter when conducting background checks on candidates. The FCRA sets forth rules for how employers should disclose their intentions to conduct background checks, obtain consent from candidates to do so, and notify a candidate if they are being disqualified from job consideration based on background check findings.

Failure to abide by these rules can result in litigation. In 2018, there were 4,531 recorded FCRA lawsuits, according to the SHRM. Many of these lawsuits concern technicalities, such as background check disclosure or consent forms that don't comply with FCRA requirements. Because even small details can lead to costly legal problems, it is essential for employers to consult with their lawyers while designing pre-employment background check protocols.

Impact of COVID-19

The COVID-19 pandemic has changed the shape of work in many ways, from shifting office jobs to a virtual model to dealing an economic blow that led to record-breaking jobless claims. While the coronavirus won't change the importance that background checks have in the pre-employment screening process, it could potentially change what employers look for in a potential employee, including experience, skills, and interpersonal qualities. These shifts could then redefine what constitutes a red flag for a hiring manager.



For instance, post-COVID, employers might use a reference check or employment verification check to learn how well a person can function in a remote work environment. Time management, communication skills, a self-starter attitude: these qualities and skills have always been on the list of things that employers value, but they may matter more in this new era of remote work.

While the work-from-home approach initially appeared to be a temporary response to the pandemic, a May 2020 survey from IBM found that most working adults (54 percent) would prefer to work remotely “most of the time,” even if COVID-19 is no longer a pressing issue. This potentially permanent shift toward remote work could mean that not having certain remote work skills becomes a new red flag for employers.

Another key question to ask about employment red flags in the wake of the pandemic is, “What about COVID-19 testing?” Employers are permitted to require COVID-19 testing for new and existing employees before they enter the workplace and ask employees or new hires if they currently have or have recently had COVID-19. Per the EEOC and the Americans with Disabilities Act, employers cannot ask whether an employee’s family member has had COVID-19 and should avoid making adverse hiring decisions based on whether someone has had or currently has COVID-19.

Existing employees have the right to refuse to be tested for COVID, have their temperatures taken, answer health screening questions, or otherwise participate in COVID-related screenings. Based on current EEOC guidance, it is not clear whether employers can terminate employees for this refusal.

Tenant background checks

Landlords often use background checks to look for tenant red flags in the same way that employers vet their job applicants. Knowing about red flags ahead of time can help landlords to reduce eviction risks, reduce the likelihood of late or missed rent payments, protect the safety of other tenants, and uncover a history of poor tenancy (such as late payments, property damage, excessive noise, and other issues).

Despite the potential benefits of tenant background checks for landlords, these checks have come under fire in a way that employment background screenings have not. In several cities, legislative movements have limited tenant background checks or banned them outright. In Oakland, California, the local city council voted in January 2020 to prohibit landlords from rejecting potential tenants based on criminal history. The justification behind these laws is that tenant background checks can limit access to housing, affect minorities disproportionately, and lead to criminal recidivism.

Landlords in many parts of the country are still allowed to use background checks or red flags in making decisions about tenant applications. However, property managers should take care to review the laws in their city, county, and state to determine whether recent legislation t may impede their ability to legally conduct background checks or use background information in their decisions.

Conclusion

Background checks play an essential role in helping employers to learn about red flags that candidates may have in their backgrounds. Knowing about red flags can help employers to avoid bad hires, which in turn can save companies money, boost company culture, protect employees and customers, prevent risks to the public, avoid negligent hiring lawsuits, and preserve brand image and reputation. Overlooking a red flag can be a costly decision with far-reaching implications.

While acknowledging these factors, it is critical for employers to develop a background check policy that is fully compliant with laws and regulations, doesn't discriminate against protected groups, and fits into our society's changing views on criminal justice reform and equal employment opportunity.

