

# Employee Backgrounding Do's and Don'ts

## A Quick Checklist

by Glenn Hammer

What Employers must do, can do, and cannot do when Backgrounding a candidate is tightly defined by Federal and State laws, as well as case law. Many laws address Employee Backgrounding, especially: FCRA (Fair Credit Reporting Act), ADA (Americans with Disabilities Act), Equal Employment Opportunity laws, and Privacy laws.

### Do's

- Do** look at Employee Backgrounding as Due Diligence. Verify all important information and carefully document the process.
- Do** background everyone, every time -- including: part-time employees, temps, contractors, and volunteers. The cost of a background check is insignificant when compared to the cost of a bad hiring decision. It only takes one really bad employee to significantly hurt a business.
- Do** customize the background check based on the position. Low risk positions may only need prior employer verification and reference checks. High risk positions justify greater diligence.
- Do** regularly update employment documents (applications, releases, offer letters, etc.). If your current forms are over two years old, or were purchased at the stationery store, they are probably inadequate.
- Do** conduct periodic checks of employees holding positions of trust regarding cash, convertible inventory, or finances. Fraud is a multi-billion-dollar business: protect yourself.
- Do** conduct periodic checks of employees holding driving positions. Federal and State laws and some insurance policies mandate regular driving record checks. Employers should conduct such checks even when not required.
- Do** ask prior employers and references about the candidate's honesty and if there is any history of violent behavior.
- Do** ask only job-related questions. Much of the litigation, regulation, and law in the backgrounding area is aimed at stopping the abusive use of personal information.

### Don'ts

- Don't** assume that temp agencies or search firms background their candidates. Most don't unless required by the employer.
- Don't** have a general policy of "no comment" to employment reference calls on former employees. New California Law provides added protection for answering prospective employer's inquiries (and may create new liabilities if you don't answer).
- Don't** simply rely on the references provided by the candidate. These references may be close friends, relatives, or shills (phony references). The best references are often former co-workers and supervisors not provided by the candidate.
- Don't** require hiring managers to do background checks beyond the basic reference checks. They are too busy. Hire professionals who will do it more quickly, cheaply, and thoroughly.
- Don't** use anyone willing to provide information from questionable or illegal sources. Those who use or pass-along illegally obtained information set themselves up for significant legal problems.