

# EEOC GUIDANCE & BACKGROUND CHECKS



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## CORBETT GORDON:

In 2012, the EEOC, the Equal Employment Opportunity Commission - the federal agency that enforces anti-discrimination laws - issued guidelines for use of criminal background checks. Interestingly they targeted and protected Hispanic and African American males as those who have been profiled more often, arrested more often and therefore convicted more often. The premise is that there could be discrimination against these protected groups if background checks are not appropriately used. Now, what do they mean by appropriate use? They mean you look first at the job, and ask what does the job require? If the job is handling money then it makes some sense to ask if somebody has had problems with handling money in the past or been incarcerated for embezzlement for instance. But if the job has nothing to do with something like handling money then getting into that is making an assumption because the person across the table looks a certain way or that that person might have a record of some kind, is not appropriate. So it starts with the job and then it goes on to, are you tailoring your interview and your application in a way that fits the position of the person who is applying or are you just scatter-shotting, and eliminating a lot of people who might be very good employees, but who might not be able to pass a background check.

## PAMELA MACK:

Employers choose to run background checks for variety of reasons. It has been mentioned before, but a lot of has do with negligent hiring and employers are worried about having a negligent hiring lawsuit against them. But I think also they're doing everything they can to protect their organization and to give them a feeling of protecting the employees that they have and they feel that knowing this information up front might give them that sense of protection, and the ability to control the environment a little better. They want to know the person they're hiring, they want to feel like they have a better understanding, and in the interview process you can only learn so much. I think that they feel, and we feel as well, that when background checks are in place that we're getting a more honest impression of them and maybe information that they didn't want to share with us. It's just an idea of getting to know that you're not bringing someone

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into your culture, into your business that might not be a good match, because of their particular history. Now whether or not that means they're gonna have those problems in your office of course, nobody knows but I think it gives somewhat of a sense of security.

Information from a background check comes from a lot of different sources. I know that most of the employers that I spoke to still believe there's a big brother system - that we put the information in and put in the name and social security number and boom, we'll get a report that has everything about the applicant that you ever want to know. That's completely not true. There is information from all sorts of different sources and we check several sources. Some background screening companies will just run a database but there's a ton of information on a database, it's not all accurate, it's not all up to date.

Real identifiers for that information are name and date of birth, so you have a lot of information if you have a common name that might not relate to you. Even still the truth is, there are people involved in every part of the process of a background check at the courthouse, at the background screening company. There are always going to be people involved, so there's always a possibility that information could be inaccurate. The Fair Credit Reporting Act (the FCRA), has implemented guidelines and regulations actually that you need to send a letter, called the adverse action letter, and a copy of the report to your applicant if you find adverse information. That gives them the opportunity to dispute that information because everyone knows there's a possibility that the information is not accurate.

Criminal background checks are not always accurate or complete and unless you go to the courthouse. Unless you're using a competent screening company, that has checked with the courthouse, things may pop up that are no longer relevant. An arrest record is not a conviction, something may be expunged but may show up in some other form of background. And unless you go check with the courts, you don't know that.

So the background screening process can involve a lot of different types of searches, most employers are first looking for felonies or misdemeanors and that's kind of your general background check. But you can also tailor it for example by running a sex offender registry if the employee is gonna be working with vulnerable populations like children or the elderly. You can run motor vehicle reports if the employees is going to be driving for the company. There might be financial information you want to run if they are working at the finances of the company, but you probably shouldn't be looking for any of that information if those things do not apply to the job. So the idea is to tailor the search to look for the information that you need to make sure that they are a good match for that job and not to get a bunch of information that's not relevant.

The Fair Credit Reporting Act regulates anything that comes from a background screening company to an employer and it requires all sorts of things. The main three things that most employers are concerned about for background screening, are that 1) they have a permissible purpose which is usually employment, 2) that they have a signed disclosure form and authorization prior to doing the screening and 3) that they will send an adverse action letter and a copy of the report to the applicant if there is any information that is found on the report that might prevent them from hiring.

CORBETT GORDON:

Nature / time / nature refers to the gravity and the nature of the offense that the person has committed, the amount of time since that offense, and then the nature of the job for which the person is applying. If those don't line up in a way that makes sense then you may have a problem. If there's been an infraction, for instance a conviction of some kind that doesn't have any relevance to the job then you're going to be out of compliance because you're not matching up the job with the requirements of the job in the person's own history. Time is important, because the longer the amount of time between the crime and the job application (particularly the greater the amount of time since the person has been released from incarceration), the less likely it is that that person will reoffend.