

Background Checking Quiz



QUESTION

What is the principal difference between a criminal background check and a vulnerable sector record check?

ANSWER

A criminal record check tells you if you have a criminal record. A vulnerable sector record check is conducted for specific employment purposes. An example of a vulnerable sector record check determines if an applicant has been charged or convicted of any kind of sexual offence.

WHY IS IT RIGHT

Pre-Employment Screening & Background Checks

There's only so much you can glean about a candidate from their resume and cover letter. Interviews are a great opportunity to get to know a candidate a little better, but people tend to put their best foot forward in such situations. *I work too hard* and *I care too much* are probably the most common, but least candid, answers to the *what's your biggest flaw* question.

Background checks are an employer's opportunity to *fact check* a job candidate. This pre employment screening could mean verifying their educational credentials, getting feedback from former bosses or checking to see if they have a criminal record.

Employers, want to know as many details as possible about the top candidate before hiring them. You must also give every candidate a fair chance and be reasonable in what information you gather.

Privacy Law in Canada

It is essential that, as an employer, you know and understand the limits of what information you can and cannot collect about your job candidate and how it should be handled upon collection. Background checks are governed by privacy law. The Federal Privacy Act and the Freedom of Information and Protection of

Privacy Act regulate what is permissible for background checks in the public sector. For federally regulated industries like banking and telecommunications, background checks are guided by the *Personal Information Protection and Electronic Documents Act* (PIPEDA). In the private sector, employee information isn't always subject to privacy law.

Background Checks in Canada – Be Reasonable

Any type of background check should be done in good faith. You may want to gather as much information as possible before hiring a candidate, but you also need to be reasonable about the relevance of the information you gather to the candidate's ability to perform their job. Do you need to know your cashier's driving record? Does your science tutor's credit record matter?

When Performing A Background Check – The Considerations

Informed consent is always the best practice when collecting information about potential employees. Your collection of information should also be reasonable in its scope, use and disclosure. **When performing a background check:**

1. don't collect more information than what you need or is relevant to the job position;
2. only use the information for the purpose for which it was stated to be used;
3. properly store and protect the information so that it is only accessible to those for whom it is relevant;
4. make all personal information you collect about a potential employee available to them to view and verify its veracity; and
5. delete or destroy the information once it is no longer needed or necessary.

Avoid Discrimination

Background checks open up the possibility for a wide range of discrimination concerns. It is illegal to ask questions about a candidate's age, sex, place of origin or other human rights-protected grounds during the application process. The Human Rights Commission even prohibits you from refusing employment because of a summary offence (i.e. a minor driving related conviction) or because someone has been convicted of a criminal offence for which they've received a pardon.

Background checks can often turn up information about a candidate's age, citizenship and other human-rights protected grounds and can therefore lead to accusations of discrimination depending on how the check impacts your hiring decisions.

Therefore, ***it is best to make a conditional offer of employment pending the results of the background check.*** Additionally, you should make it clear from the outset to all candidates what background checks will be performed and why. This way, all applicants can expect the same treatment and, as long as the relevant background checks come up clean, the job.

Takeaways for employers

In Canada, there are two main takeaways:

1. Do not conduct background checks until you have made a candidate a conditional offer of employment.
2. All background checks should be reasonable to the needs of the job and done with the informed consent of the candidate.

Types of Background Checks

A. Education Background Checks

Education Background Checks are meant to confirm that your candidate's educational qualifications are accurate. There are no specific legal restrictions prohibiting employers from confirming the accuracy of a candidate's qualifications or transcripts with an educational institution. However, employers should exercise caution; contacting a school could reveal where a student was educated or what year they graduated: information from which age and country of origin might be inferred and the potential for discrimination arise from illegal interview questions.

B. Professional Qualifications Check

This type of background check involves confirming a candidate's professional experience. Have they worked where they said they worked and for as long as they have claimed? This check does not involve questioning former employers about your candidate's performance or personality. For that, you will need to consult your candidate's employment references.

C. Employment References Check

Whereas with professional qualifications check you are merely confirming that the candidate has indeed worked at a place for a specified period of time, a reference check allows you to get a former boss's take on your candidate's competency, workplace productivity and behaviour.

There aren't any restrictions about contacting references at any point during the hiring process. However, it is advisable to have a standard set of questions to ask references of all candidates to avoid bias or discrimination.

D. Background Credit Checks

It is permissible to conduct credit checks and refuse employment based on their results. However, they are really only necessary for positions where the employee would have the opportunity to commit theft or fraud such as bank employees or accountants.

Before conducting a credit check, written notice must be provided to the candidate. Because conducting a credit check requires information about the candidate's age, it should not be performed until after a conditional offer of employment has been presented.

E. Driver's Record

This record check requires the person's name, address and drivers license number and will bring up information about your candidate's driving and license details. A driver record check is really only a bona fide occupational requirement for jobs like drivers, truckers and some sales positions.

F. Criminal Background Checks

While you may think it would be nice to know if your job applicant has a criminal record, criminal background checks aren't always necessary. In most cases, an employment check will suffice. Criminal background checks are reasonable for employees who will be working in positions of trust or dealing with vulnerable populations such as the young, old or disabled. Since criminal background checks can easily bump up against human rights law and privacy issues, it is best that employers demonstrate that there is a bona fide occupational requirement for conducting one. Employers must receive written consent from their prospective employee before performing any sort of criminal background check.

There are three types of criminal record checks: Criminal Record Checks (CRCs), Police Information Checks (PICs), and Vulnerable Sector Checks (VSCs). CRCs bring up criminal and summary convictions. PICs disclose convictions, outstanding and discharged charges. VSCs are the most comprehensive. They perform all the checks of both CRCs and PICs and include if the person has received a pardon for a sexual offence conviction. Some industries, such as child and elder care, are required by statute to ensure their employees have undertaken a VSC,

If you need to perform criminal background checks on prospective employees, it is imperative that you do not single out any particular candidate for said check. Doing so would be discriminatory and therefore illegal.

Additionally, you cannot discriminate against someone who has been convicted of an offence unless you can demonstrate that this offence will directly impact their ability to perform the job.

KNOW THE LEGISLATION BEFORE CONDUCTING BACKGROUND CHECKS

Privacy Legislation

Federal privacy legislation governs the collection, use and disclosure of personal information in the commercial and consumer context. However, the privacy legislation applicable to the employment relationship depends on the province of employment, unless a business is subject to federal employment and labour law. Comprehensive legislation regulating collection, use and disclosure of employee personal information in the private sector currently exists in Alberta, British Columbia, Quebec and federally. Manitoba has also introduced comprehensive privacy legislation, which is not yet in force. Even where collection is lawful, employee personal information collected as part of background-check processes should only be used for the purposes collected and should be subject to appropriate confidentiality safeguards.

Human Rights Legislation

Each province in Canada and the federal jurisdiction have enacted human rights legislation that prohibits discrimination in employment based on specified individual characteristics, beliefs and relationships known as "prohibited grounds of discrimination." The human rights statute applicable to a particular business limits an employer's ability to use information collected during a background check when making employment decisions if that information relates to a prohibited ground of discrimination.

In addition to the common prohibited grounds of discrimination (race, colour, religion, age, sex, sexual orientation, marital status, family status and disability), some Canadian jurisdictions also list as prohibited grounds criminal convictions that are unrelated to the position sought, criminal convictions for which a pardon has been obtained and/or convictions of an offence under provincial law.

WHY IS EVERYTHING ELSE WRONG

POTENTIAL EMPLOYEES

Will I know if my background is being checked?

Yes. Potential employers, or anyone else requiring a background or criminal check, must obtain informed consent waivers in order to undertake any background checking. Typically, separate waivers are required for reference checks (**in which you provide the reference names and contact information, and permission to contact those people**); background checks (**for which you are typically required to provide your full name, date of birth and SIN (if credit/verification is required)**); and criminal checks (**for which you are required to provide specific permission in addition to any permissions you may have given for other checks**). Vulnerable Sector Searches require additional consent to search this database.

Will I know the results?

Background checks: Most employers don't take the time to share the details of background checks, especially if there are no red flags raised (a potential employer is unlikely to call you to say, "We found out you do, in fact, have a BA from Queens").

Reference checks: Most potential employers don't bother to share the results of reference checks – if they go well, they offer you the job; if they don't, you might never hear why. The best option is to get in touch with the people you listed as references and ask if they've heard from a potential employer or third-party reference-checking company.

Criminal checks: Most employers won't take the time to let you know you 'passed' a criminal check, since you already know you haven't got a criminal record. They may let you know if something comes up on your record that they find concerning.

Vulnerable sector record checks: Need to be obtained from a local police department in the city in which the Applicant resides. Because of the detail involved in these checks, and because they are typically only done for specific employment purposes, you will know the results.

Who can conduct reference, background and criminal checks?

In Canada, any company conducting reference and background checks must have signed permission from the Applicant in question.

A GUIDE FOR EMPLOYEE'S BACKGROUND CHECKS AND HOW THEY IMPACT

Employment background checks and employment pre-screening can easily be a privacy nightmare for job seekers. Employers may try to go to fairly extensive and sometimes invasive lengths to feel you out. To be frank, employers do have a

duty to hire someone who won't be a risk to their company, brand, or other coworkers. In some situations, they have a legal requirement to explore your background and could be fined or held legally responsible if they don't do their due diligence in hiring. However, they cannot and should not attempt to gather more information about you than is necessary to make that determination.

It's important to know your privacy rights when applying for jobs. Employers can and will use a lot of personal information to make hiring decisions, but they can't access or use all of it. You may not be able to avoid background checks, but you can at least resist invasive practices while you're applying for jobs.

Why are employers allowed to check my background?

There are a large number of reasons employers may identify for why they need to run a background check. Realistically, there is a much smaller number of legal reasons that they can check your background, with a very limited number of ways they can use that information to reject or accept your application.

In the UK, Canada, US, and EU, background checks will usually serve the following purposes:

- To determine if you're legally eligible to work in the country (e.g., citizenship status or you have a legal work visa)
- To check criminal history for work with sensitive populations (healthcare and childcare)
- Financial history for *sometypes* of work
- To ensure you meet certain health requirements for the work in *somescenarios*
- To ensure you're a right fit for the job, based on your skills, past work history, work habits, and personality

These five reasons are, for the most part, the only *legal* reasons you'll find in most countries. While laws exist regarding immigration work status, for all countries, you must have a legal work permit of some sort to work in that country if you are not a citizen. Employers can discriminate based on legal work status without consequence if you do not have the proper work permits.

There is also some leeway for employers to search your background for other information. Additionally, not all employers will use official background check companies or services to search your background. Some may employ private investigators, perform online searches of your social media, or call listed references and former employers.

What information can employers legally use?

There is a lot of variation in every country regarding what information employers can use to deny or accept you for a job position. However, in almost every case, employers cannot use **racial or ethnic background, political opinions or views, genetic history, age, gender, maternity status, sexual orientation, or closed or pardoned criminal convictions** to deny you a job. In Canada and the US, in particular, human rights rules exist that significantly limit what personal information can be used to reject you for a job.

Should I care about my privacy if I have nothing to hide?

Simply put, yes you should! Although legal requirements limit what information an employer can use to deny a job, it is incredibly difficult to prove an employer denied you a job because of private information that was illegal for the employer to use against you. Unless someone has a written, audio record or visual record of the employer finding and using private information against you, there is little you can do.

However, ensuring that your private information is highly secure online will help prevent this from occurring. **This includes making sure your social media accounts have the highest possible privacy settings.**

Consider the job's background check requirements before applying

Before understanding what a background check entails for your country, it's a good idea to explore the employment application and inquire with your potential employer about the depth and breadth of the background check process. As employers differ, here are some common questions you can ask:

- How far back does the background check extend?
- What kind of information do you look for in a background check?
- What kind of crimes might preclude me from this position?
- Does the background check also include financial history?
- If financial history matters in the background check, what do you look for? (e.g., credit score, liens, bankruptcies)
- How much weight do you place on expunged or sealed records?
- Will my social media or web presence be scrutinized in the process?

Avoid:

- Avoid employers that ask for your social media passwords as a prerequisite for the job. While this is not specifically *illegal*, it is highly *unethical* and almost certainly an invasion of privacy.
- Avoid employers who play fast and loose with personal information. It's not always easy to know which employers might be guilty of this, so you may want to check job search forums and business ratings on the company.
- If the company has a known history of data breaches, you may want to be wary, especially if it means giving that company your private information even during the application process.
- Employers asking for private health records. This is illegal in most countries, and cannot be used to determine your job eligibility in most cases either.