

Employment Disqualification – Ask the Expert



Many companies run background checks and education verification on potential employees, but how do you communicate why an applicant failed their verification?

This can be a tricky situation to navigate, but it is best to lead with respect. While you may want to let the applicant know why they failed their background check, there are some technicalities that can prevent your access to the report while you still may need to provide the applicant with information regarding their verification status.

QUESTION

As an Ontario HR director, I have an inquiry about a recent applicant we had for an open role at our company. They failed a section of their verification but the agency who ran the security check won't clarify which requirement they failed to meet. Do we face a risk by not being able to provide the applicant with a copy of their background check and a reason as to why they failed the screening process?

ANSWER

In Ontario, Canada, the rights of applicants regarding background checks—especially when those checks are performed by a third party or used to make an adverse employment decision—are governed by privacy and human rights legislation, and in some contexts, consumer reporting laws.

EXPLANATION

Here's what you should know:

Obligation to Disclose: Consumer Reporting Agencies (if involved)

If the background check was performed by a consumer reporting agency (as defined under the Ontario Consumer Reporting Act), and the employer/client relied on that report to make a decision (like rejecting a candidate), certain legal obligations apply:

Written Notice of Adverse Action: If a decision is made based on a consumer report, the applicant has a right to be informed that a consumer report was used.

Right to Access the Report: The applicant is entitled to request and receive a copy of the report from the consumer reporting agency that prepared it.

So, if your client used a third-party background screening company, and that company qualifies as a consumer reporting agency, then the applicant must be informed and can request the report.

Employer-Led Verifications (Non-Consumer Report)

If the employer conducted the verification themselves (e.g., called schools or past employers directly), and no consumer reporting agency was involved:

- There is no clear legal requirement under Ontario law for the employer to disclose the details of the verification results.
- However, withholding reasons entirely can raise transparency and fairness concerns, especially if the applicant disputes the result.

Human Rights Considerations

If the applicant believes they were denied employment due to discriminatory reasons (e.g., race, age, disability, etc.), they may file a complaint with the Ontario Human Rights Commission. A lack of transparency could make it harder for an employer to defend against such a claim.

Privacy Law Implications

While Ontario does not have a general private-sector privacy law (like PIPEDA in federal jurisdictions), PIPEDA may still apply if your staffing company operates federally or deals with clients across provinces. Under PIPEDA:

- Individuals have the right to access personal information collected about them.
- You (as the staffing agency) may have an obligation to provide access to what was shared or learned—unless an exception applies (e.g., confidentiality or legal restrictions).

Recommended Actions

Clarify with your client whether a consumer reporting agency was used. If so, your applicant may be entitled to the report.

Advocate for transparency: Ask your client if they can at least confirm whether the verification failure was due to education, employment, or another factor—without disclosing confidential sources.

- Document communications with the client and the applicant in case the issue escalates.
- Consider including clear language in your staffing contracts that outlines how background verifications will be handled and what disclosures will be made to applicants.

Here is our [background checking policy](#), which you can implement going forward to avoid any confusion and non-compliance in the future.