

When can employers conduct criminal record checks?



Employers are generally permitted to perform criminal record checks in the following scenarios:

1. Job Relevance and Bona Fide Requirements:

- If the job position involves working with vulnerable populations (children, elderly, or individuals with disabilities), handling sensitive information, financial transactions, or safety-sensitive positions, a criminal record check is typically justified and acceptable.

2. Informed Consent:

- Employers must obtain informed consent from the candidate or employee prior to conducting a criminal record check.

3. Privacy Legislation Compliance:

- Criminal record checks must comply with privacy laws, including the **Personal Information Protection and Electronic Documents Act (PIPEDA)** or relevant provincial privacy legislation.

Provincial and Territorial Variations

Canadian provinces and territories have slightly different guidelines regarding criminal record checks:

Province/Territory	Can employers conduct checks?	Special Considerations or Conditions
Federal	Yes	Checks must relate directly to the requirements of the job.
Ontario	Yes	Allowed if relevant to the job; governed by Ontario Human Rights Code.

Province/Territory	Can employers conduct checks?	Special Considerations or Conditions
British Columbia	Yes	Allowed if relevant; must comply with the B.C. Human Rights Code.
Alberta	Yes	Checks permitted but must relate directly to legitimate job requirements under the Alberta Human Rights Act.
Québec	Yes	Criminal checks allowed only when directly related to job requirements; must respect Québec's Charter of Human Rights.
Manitoba	Yes	Allowed, but employers must prove necessity related to job requirements.
Saskatchewan	Yes	Checks permitted if job-related; must align with Saskatchewan Human Rights Code.
Nova Scotia	Yes	Permitted but must demonstrate relevance and compliance with Nova Scotia Human Rights Act.
New Brunswick	Yes	Checks allowed when justified by specific job requirements.
Newfoundland and Labrador	Yes	Allowed when directly related to the job role.
Prince Edward Island	Yes	Must have relevance to job role and requirements.
Northwest Territories	Yes	Permitted if demonstrably related to job responsibilities.
Nunavut	Yes	Allowed if directly relevant to job duties; must comply with Nunavut Human Rights Act.
Yukon	Yes	Must relate clearly to job responsibilities and meet the Yukon Human Rights Act requirements.

Limitations and Guidelines

- **Relevance and Necessity:**
Employers must demonstrate that criminal record checks are directly related and essential to the duties and responsibilities of the specific role.
- **Avoiding Discrimination:**
According to Canadian human rights legislation, including the Canadian Human Rights Act, employers must avoid discrimination based on previous criminal convictions unless they directly relate to the position's specific requirements.
- **Handling of Information:**
Employers must ensure that any information obtained through a criminal record check is treated confidentially, securely stored, and only shared on a strict need-to-know basis.
- **Employee Rights:**
Employees have the right to know the results of their criminal record check, dispute inaccurate information, and must have the opportunity to discuss or explain any findings.

Continued Employment Checks

Employers can also require criminal record checks periodically during employment, especially for sensitive roles. Again, informed consent, clear justification for the checks, and compliance with privacy legislation remain mandatory.

Practical Best Practices for Employers

- Establish clear policies outlining why, when, and how criminal record checks are conducted.
- Always obtain informed consent from employees or candidates.
- Ensure criminal record checks are relevant and necessary for specific job duties.
- Train HR professionals and hiring managers about privacy compliance, discrimination prevention, and proper handling of sensitive information.

Conclusion

Canadian employers are permitted to conduct criminal record checks for hiring and continued employment, provided they strictly adhere to human rights and privacy legislation. Employers must clearly demonstrate relevance to job requirements, obtain informed consent, maintain confidentiality, and ensure transparency to maintain compliance and foster an ethical and inclusive workplace environment.