

When employee background checks become an invasion of privacy

By Nicol Myburgh

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Employee background screening has become an integral part of the recruitment process. Many companies use it as a means to not only verify potential employees' education, experience and other credentials before appointing them, but also to ensure that they hire the right candidate for the role - someone who will bring value to the business and be a worthy ambassador for the brand.



Image source: Getty Images

But checking that recruitment candidates have not falsified their CV information and will be a good culture fit for the organisation is all good and well, but how deeply can employers delve into a person's background before the screening process becomes an invasion of privacy?

There's a fine line between checking a potential employee's qualifications and references, and investigating aspects of their lives that have nothing to do with the job they are applying for.

References and credit checks

The best indicator of future performance is your record of past performance, and good references usually mean a good employee. There's nothing wrong with checking a candidate's references – in fact, it's highly recommended – but if you start looking at the person's credit history and behaviour, and whether they have a criminal record, you're treading on thin ice.

Many companies are not aware of the National Credit Act Amendment 19 of 2014, which came into effect in March 2015. It stipulates that pre-employment checks on consumer credit records may only be performed if the role for which the candidate has applied requires honesty in the handling of cash or finances. Furthermore, this responsibility must be specified in the job description.

So unless the position you're looking to fill involves working with money, checking the candidate's credit record constitutes a violation of their privacy and is illegal.

Criminal records

The same applies to criminal record searches, which are governed by labour legislation. For example, if a person applies for a position as a driver, but was previously arrested for driving under the influence and as a result has a criminal record, they can be disqualified from the position. But if the person is applying for a job as say, an admin clerk, the drunk driving conviction would be irrelevant. Consequently, a criminal record check can only be done if it is pertinent to the job for which you are hiring.



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Employers also need to bear the PoPI Act in mind when collecting information for background screening purposes. Accessing information that is available in the public domain – social media accounts, personal blogs and the like – is fine. All other information, including personal identity details, is protected under the PoPI Act and therefore off limits.

But whether or not the background screening you want to do is relevant to the job, it is necessary to obtain the applicant's consent before processing any of their personal information.

How not to overstep

To avoid overstepping when conducting background checks, rather engage the services of a reputable background screening and vetting company.

These service providers are fully conversed with the legalities and ethics around employee screening and not only know where the line is but where not to cross it.

Violating someone's privacy during the recruitment process, or choosing not to hire them for reasons that have nothing to do with the job description can land a business in hot water, and they could find themselves slapped with a lawsuit. This will not only cost the company thousands in legal fees, but could irreparably damage its reputation and brand.

Conducting background checks on potential employees mitigates the risk against a bad hire, which can be costly for the business, but these must be done ethically and within the bounds of legislation.

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