

Employment Background Checks

Many employers perform background checks on job applicants. Background checks can range from a verification of an applicant's Social Security number to a detailed account of the potential employee's history and acquaintances. Here is some of the information that might be included in a background check:

- Driving records
- Vehicle registration
- Credit records
- Criminal records
- Social Security no.
- Education records
- Court records
- Workers' compensation
- Bankruptcy
- Character references
- Medical records
- Property ownership
- Drug test records
- Past employers
- Personal references
- Incarceration records
- Sex offender lists

Some of this comes from public records created by government agencies and may be available for free. In certain cases agencies may only release information with the permission of the candidate. In addition to formal background checks some employers are also "Googling" candidates or checking social media sites such as Facebook, LinkedIn, or Twitter.

What Cannot Be in a Background Check Report?

The Fair Credit Reporting Act (FCRA) sets national standards for employment screening. This law only applies to background checks performed by an outside company, called a "consumer reporting agency". The law does not apply where the employer conducts background checks in-house.

Under the FCRA, a background check report is called a "consumer report." This is the same "official" name given to your credit report, and the same limits on disclosure apply. The FCRA says the following *cannot* be reported:

- Bankruptcies after 10 years.
- Civil suits, civil judgments, and records of arrest, from date of entry, after seven years.
- Paid tax liens after seven years.
- Accounts placed for collection after seven years.
- Any other negative information (except criminal convictions) after seven years.

Under the FCRA, the employer must obtain the applicant's written authorization before the background check is conducted. The authorization must be on a document separate from all other documents such as an employment application.

If the employer uses information from the consumer report for an "adverse action" - rescinding a job offer, terminating the employee, or denying a promotion - it must take the following steps, which are explained further in the Federal Trade Commission's web site.

- Before the adverse action is taken, the employer must give the applicant a "pre-adverse action disclosure." This includes a copy of the report and an explanation of the consumer's rights under the FCRA.

- After the adverse action is taken, the individual must be given an "adverse action notice." This document must contain the name, address, and phone number of the employment screening company, a statement that this company did not make the adverse decision, rather that the employer did, and a notice that the individual has the right to dispute the accuracy or completeness of any of the information in the report.

Federal and state regulations restrict how other types of information may be used.

- Medical Records: Under the Americans with Disabilities Act (ADA) employers may only inquire about an applicant's ability to perform specific job duties and cannot request an employee's medical records. As long as the employee can do the job, with or without reasonable accommodations, an employer may not make a job decision (on hiring or promotion, for example) based on an employee's disability.
- Bankruptcies: The Federal Bankruptcy Act prohibits employers from discriminating against applicants because they have filed for bankruptcy.
- School Records: Under the Family Educational Rights and Privacy Act and similar state laws, educational records are confidential, and will not be released by the school without a student's consent. Colleges and universities may, however, confirm dates of attendance and degree or diploma obtained.
- Workers' Compensation Records: Information from a workers' compensation appeal may be used in a hiring decision if the employer can show the applicant's injury might interfere with his ability perform required duties.

Make Your Employee Background Check Legal

Running an employee background check can not only be helpful in better understanding the applicant, but can also be useful in protecting employers from liability. Employers must still be very careful about what kind of information they ask for and look into, however. If an employer goes too far, he or she may face a lawsuit.

Here are some things to keep in mind when performing an employee background check:

- Be consistent: Have a policy stating which positions a background check will be performed for, what will be checked, and how the information will be used in the hiring process.
- Be reasonable: The best advice is to keep such an investigation reasonable. Running a credit report and checking up on references may make sense, but combing court records, interviewing neighbors and requiring physicals for all applicants probably doesn't.
- Make your investigation business-related: If you are hiring a security guard, then digging into a person's criminal background may be justified; you may not need to go to such lengths for a part-time janitor. Ask for information relevant to the job at hand.
- Get the applicant's consent: Another way to avoid liability in general is to get the applicant's consent before accessing potentially sensitive information. Some things, like credit checks, expressly require you to get the applicant's consent, but even if you might otherwise have access to sensitive information, it pays to be careful and get the applicant's consent in writing.
- Make sure the information found is indeed that of the applicant and not someone with an identical or similar name: This is especially important when Googling or searching social media. Also keep in mind that not all information found on the internet is reliable.

- **Give the applicant a chance to respond:** If you find something that might eliminate the applicant ask for “their side of the story”. Information, even from reputable sources, may be inaccurate.
- **Social Media:** Federal and state law prohibit making employment decisions based on race, religion, disability, marital status, and other personal characteristics. Often this type of information is readily-available on a person’s Facebook or other social media pages. If you regularly check these sites an unsuccessful candidate could claim that they were discriminated against based on this information.

Running Background Checks

Many of these information sources can be checked by the library board and the municipality. The municipal police department will be able to do a check of criminal records, including a check of other states’ records. Larger municipalities may have a Personnel or HR department familiar with background checks.

Note that some of these databases are incomplete because of types of cases that are entered, when the database was implemented, if older records were converted, and when they choose to purge older records.

Publicly Available Databases

- Wisconsin Circuit Court Access <http://wcca.wicourts.gov/index.xls>
- Wisconsin Criminal History Background Check <http://wi-recordcheck.org/>
- Wisconsin Sex Offender Registry <http://offender.doc.state.wi.us/public/>
- Information and Instructions to Verify Social Security Numbers Online
<http://www.ssa.gov/employer/ssnv.htm>
- Verifying employment eligibility from the US Citizenship and Immigration Service.
www.uscis.gov/everify

Additional Information and Resources

- *Using Consumer Reports: What Employers Need to Know*, from the Federal Trade Commission www.ftc.gov/bcp/edu/pubs/business/credit/bus08.shtm
- *A Summary of Your Rights Under the Fair Credit Reporting Act*, from the Federal Trade Commission www.ftc.gov/bcp/edu/pubs/consumer/credit/cre35.pdf
- Job Center of Wisconsin information on background checks
<http://www.wisconsinjobcenter.org/recruiting/backgroundchecks.htm>
- Wisconsin State Law Library employment law information
<http://wilawlibrary.gov/topics/laborlaw/index.php>
- State of Wisconsin *Human Resources Handbook*. Chapter 246, Background Checks
<http://oser.state.wi.us/docview.asp?docid=6658>
- Information from the Wisconsin Department of Justice
<http://www.doj.state.wi.us/dles/cib/crimback.asp>
- UW Madison criminal background check policy & procedures <http://tinyurl.com/ypqg9z> or http://www.ohr.wisc.edu/HR_Memos/UW-

[Madison%20Criminal%20Background%20Check%20Policies%20&%20Procedures%20
11-26-07.pdf](#)

- *Employment Background Checks : A Jobseeker's Guide*, from the Privacy Clearinghouse
<http://www.privacyrights.org/fs/fs16-bck.htm>
- Read about "digital dirt" and the jobseeking process at
www.abilitiesenhanced.com/digital-dirt.pdf.

Forms used by the State of Wisconsin which may be adapted for local use are on the next pages.

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**Authorization to Obtain a Consumer Credit Report and
Release of Information for Employment Purposes**

Pursuant to the federal Fair Credit Reporting Act, I hereby authorize [Company Name] and its designated agents and representatives to conduct a comprehensive review of my background through a consumer report and/or an investigative consumer report to be generated for employment, promotion, reassignment or retention as an employee. I understand the scope of the consumer report/investigative consumer report may include, but is not limited to, the following areas: verification of Social Security number; current and previous residences; employment history, including all personnel files; education; references; credit history and reports; criminal history, including records from any criminal justice agency in any or all federal, state or county jurisdictions; birth records; motor vehicle records, including traffic citations and registration; and any other public records.

I, _____, authorize the complete release of these records or data pertaining to me which an individual, company, firm, corporation or public agency may have. I understand that I must provide my date of birth to adequately complete said screening and acknowledge that my date of birth will not affect any hiring decisions. I hereby authorize and request any present or former employer, school, police department, financial institution or other persons having personal knowledge of me to furnish [Company Name] or its designated agents with any and all information in their possession regarding me in connection with an application of employment. I am authorizing that a photocopy of this authorization be accepted with the same authority as the original.

I hereby release [Company Name] and its agents, officials, representatives or assigned agencies, including officers, employees or related personnel, both individually and collectively, from any and all liability for damages of whatever kind, which may at anytime result to me, my heirs, family or associates because of compliance with this authorization and request to release. You may contact me as indicated below. I understand that a copy of this authorization may be given at any time, provided I do so in writing.

I understand that, pursuant to the federal Fair Credit Reporting Act, if any adverse action is to be taken based upon the consumer report, a copy of the report and a summary of the consumer's right will be provided to me.

Please Print Clearly

1. Name (Full) _____

2. Maiden Last Name _____

3. Print All Former Names Used (A) _____,

(B) _____

4. Social Security Number ____ - ____ - ____ 5. Sex ____

6. Race _____ 7. Date of Birth ____ - ____ - ____

8. Telephone Number _____

9. Current Street Address _____

10. City _____, State _____ Zip _____

11. Driver's License Number _____ State Issued _____

12. Name on Driver's License _____

13. May we contact your employers? _____ 14. May we contact your supervisors? _____

15. Prior residence, past seven (7) years

i. _____

ii. From _____ To _____

iii. _____

iv. From _____ To _____

v. _____

vi. From _____ To _____

16. Have you ever been convicted of or pled guilty or "no contest" to a criminal charge?

. Yes _____ No _____

18. Are you currently awaiting trial, sentencing or disposition of a criminal charge?

Yes _____ No _____

17. Have you even been a defendant in a civil action for intentional tort(s)? (Intentional torts include, but are not limited to, battery, assault, false imprisonment, defamation, fraud, conversion)?

Yes _____ No _____

If you answered Yes to Numbers 17, 18 or 19, provide the Case Numbers, Date of Action, Disposition, Place of Occurrence and Current Status Below:

Please explain. If more space is needed, add supplemental sheets.

By signing below, you are certifying that the above information is true and correct.

Signature _____ Date _____

CONFIDENTIALITY AGREEMENT (FOR EMPLOYEES WITH ACCESS TO INFORMATION ON BACKGROUND CHECKS)

Name _____

Classification/Job Title _____

Department or Agency _____

Division _____

Bureau _____

I understand that in the course of conducting a criminal background check, I may have access to information including, but not limited to, the results obtained from the criminal background check.

I understand that the information listed above, as well as other information to which I have access, is special or confidential information that could either improve or injure the prospects or chances of persons in the recruitment process. I agree to keep this information confidential and not to copy the materials, discuss them with anyone not specifically authorized by the Human Resources Specialist, Manager, or Representative, or allow any unauthorized person access to them. Failure to keep the information confidential may constitute insubordination and/or may result in a violation of a work rule both of which could lead to discipline up to and including termination.

By signing below, I acknowledge that failure to adhere to the requirements set forth in this statement would be a violation both to the public trust and as a condition of my continued employment with the State of Wisconsin.

Signature

Date