

Credit background checks

How to vet a job candidate and reduce legal risk

INTERVIEWED BY ROGER VOZAR

As we emerge from the worst recession in memory, employers are cautiously rebuilding their workforces. Many long-term unemployed are starting to get interviews and offers, and some are seeing a new wrinkle: credit background checks.

Those checks might unearth financial problems that would cause an employer to reject a candidate. But beware of the Fair Credit Reporting Act (FCRA), the Consumer Credit Reporting Reform Act and additional state laws.

It is important to protect the company's bank account by ensuring that access is limited to those who can be trusted. So how can you tell for sure? While there is no fail-safe guarantee, credit background checks can raise red flags early in the process.

"The wisest course for employers is to make the best hires they can, using all of the legitimate, nondiscriminatory information accessible to them within the law," says Karen C. Lefton, a partner in the Labor & Employment group at Brouse McDowell.


Smart Business spoke with Lefton about her recommendations on conducting credit background checks.

What steps should a company take as it makes hiring decisions?

- 1) Get the candidate's consent for the credit check in advance and in writing. Work with your attorney to create a clear consent form. It should state that the candidate acknowledges and agrees that the consumer-reporting agency will furnish a report to the employer, and that the employer intends to use the information for employment purposes.
- 2) Engage a reputable consumer-reporting agency, one well versed in the limitations of the FCRA, to conduct the review.
- 3) Provide the agency with reasonable

KAREN C. LEFTON
Partner, Labor & Employment practice group
Brouse McDowell

(330) 535-5711
klefton@brouse.com

 **WEBSITE:** Find out more about Brouse McDowell's Labor & Employment law services at www.brouse.com.



Insights Legal Affairs is brought to you by **Brouse McDowell**

criteria for its review, such as verification of the applicant's Social Security number, balances totaling \$2,000 or more that are at least 60 days past due, lack of credit, current garnishments on earnings, overdue child support or other outstanding collections of \$2,000 or more.

- 4) Make sure the report is limited to the criteria sought. If the search turns up information that the employer should not know about — the candidate's disabled child, for example — that information should be withheld to insulate the employer from any allegation of discrimination in the hiring process.
- 5) Before taking adverse action, provide the candidate with written notice that a copy of the report is available, as is a summary of his or her rights under the FCRA. Keep in mind that errors occur. The 'John Smith' applying for a job may not be the same 'John Smith' with a horrendous credit history. Fairness requires that all candidates be given the opportunity to contest black marks. Only then can you ensure that hiring decisions are based on bona fide qualifications, or the lack thereof. The hiring decision should be based largely on whether there is increased company risk, whether that risk is outweighed by the benefit of the candidate's other credentials and the specific access his or her new position gives him or her to company funds.

Can credit checks be used as a basis to not hire or promote someone?

Yes, if you have followed the steps outlined. You are not required to hire a CFO mired in debt to collect your receivables or to pay your bills. Further, the FCRA does not distinguish between job candidates and current employees, meaning that consumer reports may be used to evaluate a person for promotion, reassignment or retention. But, again, employees must give conspicuous consent to the performance of credit checks.

What should be part of a background check, and does it vary by position?

Good credit and sound financial history are absolutely essential when an employee has access to money, whether yours or a customer's. And don't be lax because the sums aren't huge. A local library employee, fired after \$350,000 was discovered missing, goes on trial for aggravated theft later this month, accused of stealing nickels and dimes regularly over six years. Criminal background and driving records also might be relevant. A history of violence or criminal behavior are disqualifying for employees working in secluded areas with customers or in the customers' homes. A bad driving record can knock out a delivery position candidate. Employers must be vigilant to avoid putting customers, co-workers or the public in peril due to bad hiring decisions. ●