

REFERENCE CHECKS

Although checking references can be frustrating, you must make a good faith effort to avoid possible claims of negligent hire.

1. Referencing Checking “Dos”

- Do ask each applicant for references, including references other than those provided on the resume.
- Do ask references for other references.
- Do, at least, verify the information provided by the applicant (even dates of employment can be helpful).
- Do ask if they would re-hire the applicant. This simple question can speak volumes.
- Do document all reference checks.
- Consider obtaining a release from the employee to speak with references and former employers.

2. Reference Checking “Don’ts”

- Never disclose to the applicant the results of your reference check. Keeping this information confidential will help in avoiding defamation claims against both you and the former employer.

3. Credit Checks

The Fair Credit Reporting Act sets forth specific requirements for employers who obtain consumer investigation reports from consumer reporting agencies regarding applicant’s work, criminal, and financial history. The following rules of thumb apply:

- Provide a “clear and conspicuous” disclosure if a consumer report is necessary.
- Obtain written authorization by the applicant in a stand alone document.
- Certify that the employer has given proper notice and will comply with FCRA requirements.

- Before taking “adverse action” based in whole or in part on the report, the employer must provide the applicant with a copy of the report, the name, address and number of the agency providing the report, any written description of his/her rights (wait five days until taking the adverse action).
- “Adverse action” includes the denial of employment.

Note: Under the Bankruptcy Act, an employer cannot take an adverse employment action because of a bankruptcy. See the FTC website at www.ftc.gov in the Business Guidance Section.

4. Criminal Background Checks

Some jobs require criminal background checks by statute. Where a background check is not required by statute, to obtain available criminal information on a prospective employee, an employer must first, after advising the prospective employee that it is seeking such information:

- Submit a written request to the Oregon State Police Identification Services Section. There is a \$15 fee for each request, but it is waived for requests on volunteers or prospective volunteers for non-profit organizations that are mentoring or tutoring programs.
- Provide the OSP with sufficient information to assist in the identification of the prospective employee.
- State that the prospective employee has been told of the employer’s request and the manner in which the prospective employee was told, e.g., in person or by phone or letter.
- In response to the employer’s request, OSP will send “prompt written notice” of the employer’s request to the prospective employee.

5. Driving Records

- If operating a company-owned vehicle