



HIRING TOOLKIT: Reference Checks, Background Checks and Pre-employment Testing



HIRING TOOLKIT

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The information contained in this document is intended for general information purposes only and does not constitute legal or coverage advice on any specific matter.

TODAY'S TOPICS



- Importance of conducting reference checks
- How to avoid discriminatory or incomplete reference checks
- Pitfalls of using social media for reference or background checks
- Tips on how lawfully to conduct and use criminal background and credit history checks and pre-employment physical or mental examinations in a hiring decision

WHY DO WE DO THIS?



- May yield additional insight on the top candidate
- Part of due diligence in the hiring process
- Avoid claims of negligent hiring



BEST PRACTICES

SLIDE 5



- Develop a plan at the beginning of your hiring process
 - What is the goal?
- Follow all entity policies and procedures
 - Types of checks done for each position
 - Who is responsible for conducting the checks
 - Timeline for completion
- Communicating with the candidate

CONTINGENT JOB OFFERS

SLIDE 6



- Assist in securing a candidate before all due diligence completed
- May be legally required in certain circumstances
- Provide a method to collect additional permissions

REFERENCE CHECKS

HIRING TOOLKIT

PLANNING

- Who will be conducting the reference checks?
- What is the goal?
 - Who will be contacted?
 - What information will be collected?
- Review position description and interview notes





REQUESTING
REFERENCES
BEST
PRACTICES

SLIDE 9



- 3-5 professional references
- Worked directly with candidate within past 5-7 years
- Supervisors are preferred
- If go beyond references candidate submits, let candidate know
- Be cautious if contacting current employer
 - Get express written permission

AUTHORIZATION
AND
RELEASE

SLIDE 10

**EMPLOYMENT AND APPLICANT RECORDS
AND RELEASE OF LIABILITY**

In connection with this application I hereby authorize any and all current and former employers, organizations where I have volunteered ("volunteer organizations") and references named in this application, or any agent of such a former employer or volunteer organizations, to release to the [County] and its agents any and all information regarding my job performance and fitness/qualifications to perform the position I am presently seeking and any other employment or related information, both public and private, other than "consumer reports," as that term is defined in the United States Fair Credit Reporting Act, in their possession. I understand that the [County] will use this information to determine my fitness/qualifications for the position I am seeking. This authorization expires one year from the date of my signature, below.

I hereby release the [County] and all former employers, volunteer organizations and references listed herein and any and all agents acting on behalf of said [County], former employers, volunteer organizations or references, for any and all liability of whatever nature by reason of requesting or providing such information.

Date: _____
Signature _____

- Provides authorization to gather employment and related information
- Liability release



DEVELOPING QUESTIONS BEST PRACTICES

SLIDE 11



- Ask the same questions to all references
- Draft questions prior to contacting references
- Questions should be job related and consistent with business necessity
- Questions should solicit critical but legal information

TOPICS TO COVER

SLIDE 12

- Relationship with the candidate
- Confirm information supplied by candidate
- Behavioral-based, open-ended questions related to job being applied for
- Can be based upon information received in the interview



SAMPLE
QUESTIONS

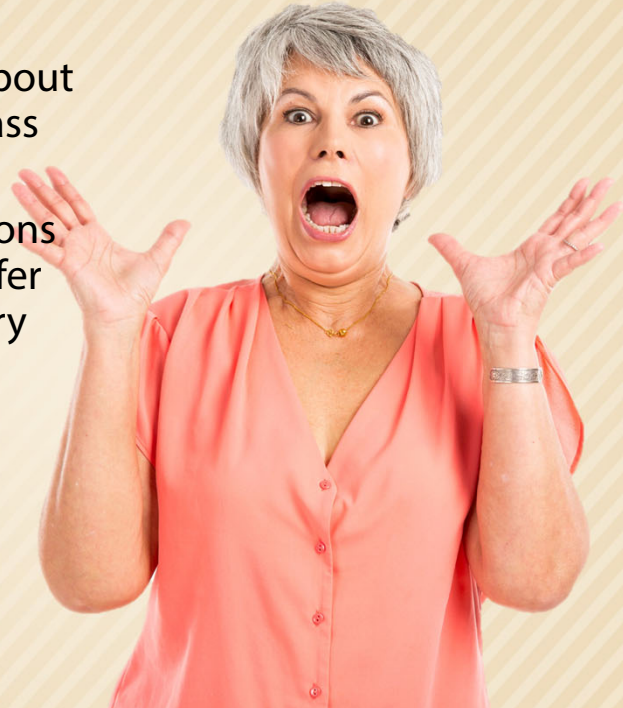
- How long have you known the candidate? When did the candidate work with you?
- What is your business relationship with the candidate?
- What were the candidate's job responsibilities?
- What are the candidate's professional strengths?
- Are there areas in which the candidate could improve?
- Please describe the candidate's performance in terms of attitude, dependability and trustworthiness.
- What unique skills did the candidate bring to your organization?
- Can you describe or rate the candidate's technical skills in _____?
- Do you think the candidate is suitable for the job being applied for?
- Was the candidate ever disciplined, and what were the circumstances?
- Why did the candidate leave your organization?
- What comments or suggestions would you have to assist us in helping the candidate succeed?

SLIDE 13



CAUTION!

- Do not ask about protected class status
- Avoid questions that could infer discriminatory purpose



SLIDE 14

STATE AND FEDERAL LAWS

SLIDE 15

- Minnesota Human Rights Act
(Min. Stat. Ch. 363A)
- Federal laws, including:
 - Americans with Disabilities Act
 - Title VII of the Civil Rights Act of 1964
 - Age Discrimination in Employment Act
 - Genetic Information Nondiscrimination Act
 - Uniformed Services Employment and Reemployment Rights Act
 - Immigration Reform and Control Act



PROTECTED CLASSES

SLIDE 16

- Race (including traits associated with race)
- Color
- Creed
- Religion
- National origin
- Sex
- Marital status
- Public assistance
- Disability
- Familial status
- Sexual orientation
- Gender identity
- Age
- Local human rights commission activity
- Pregnancy



FURTHER PROTECTIONS

SLIDE 17



- Genetic information
- Military service
- Citizenship or immigration status
- Pay history
- Criminal record or history
- Past workers' compensation claims
- Sick leave use (eg., FMLA)

SALARY HISTORY

SLIDE 18

Avoid

- What is candidate's current salary?
- What was candidate's starting and ending salary?

Reason/Alternative

- Violation of the MHRA (pay history)
- There is no alternative



ATTENDANCE

SLIDE 19

Avoid

- How was the candidate's attendance?

Reason/Alternative

- Could be viewed as disability, WC or FMLA discrimination
- Can ask about unexcused absences or unexcused tardiness



DOCUMENTING THE PROCESS

SLIDE 20



- Document:
 - Who was contacted
 - Date of contact
 - Questions asked and responses given
- Avoid documenting protected information
- Keep indefinitely for hired candidate

SOCIAL MEDIA & INTERNET

SLIDE 21

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POLICY DECISION



- Will a social media or Internet search tell you anything about how this individual will perform in the job?
- How relevant is information that may be found to the job?
- Do the benefits outweigh the risks?
 - How can the risks be reduced?

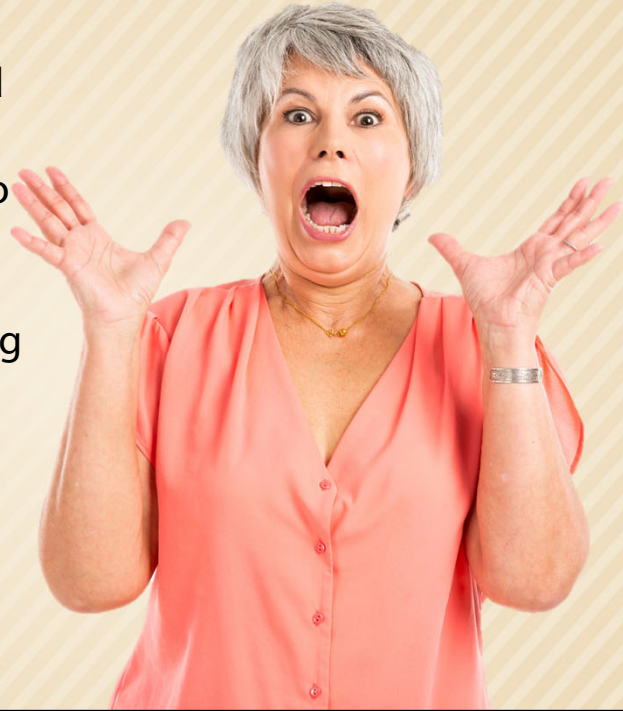
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CONCERNS

SLIDE 23

- Accuracy and context
- Obtaining too much information
- Circumventing privacy controls



DEVELOP
POLICIES
AND
PROCEDURES

SLIDE 24



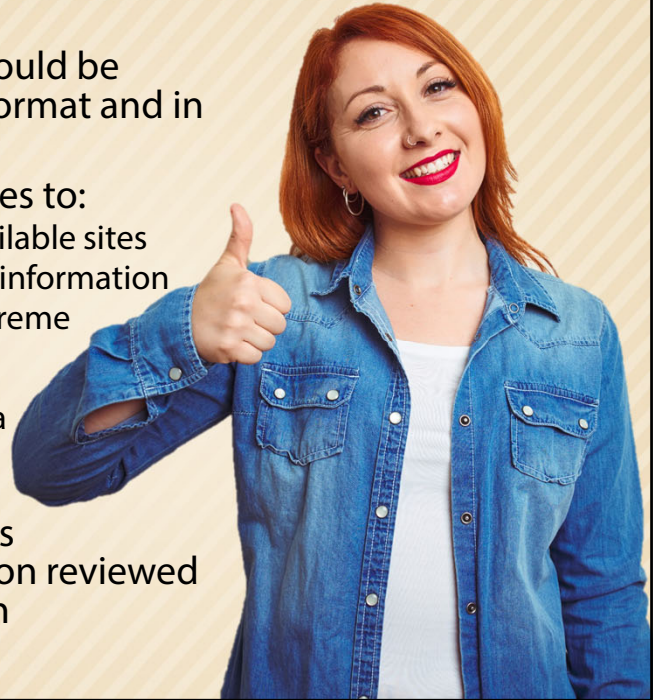
- Prohibit conducting searches outside of established procedures
- Conduct search only in conjunction with official background check
- Shield the hiring authority from any protected information discovered



MANAGE THE RISK

SLIDE 25

- Searches should be uniform in format and in application
- Limit searches to:
 - Publicly available sites
 - Job-related information
 - Exercise extreme caution if private social media sites are involved
- Keep records of information reviewed in the search



USING THE INFORMATION

SLIDE 26



- Consult with legal counsel before using any information received from searches
- Be able to articulate a nondiscriminatory, job-related reason before disqualifying a candidate based on information found in the search

PRE-EMPLOYMENT TESTS

SLIDE 27

HIRING TOOLKIT

MEDICAL INFORMATION OR EXAMINATIONS

- Conditional offer of employment required
- MHRA permits medical examination/history permitted if:
 - Tests only for essential job-related abilities
 - Required of all people conditionally offered employment for same position regardless of disability
 - Information obtained is treated as a confidential medical record



- If adversely affects hiring decision, must notify candidate within 10 days of final decision

SLIDE 28

OTHER
PHYSICAL &
SKILLS
TESTS



- Measure only essential job-related abilities
- Be required of all applicants for same position regardless of disability
- Accurately measure the applicant's aptitude, achievement level or other relevant factors and not applicant's impaired sensory, manual or speaking skills, except when those skills are what the test purports to measure

SLIDE 29

PERSONALITY ,
EMOTIONAL
INTELLIGENCE ,
LEADERSHIP
TESTS



- Be aware of potential discrimination risks
- Be cautious about the test used
 - Job-related and appropriate for the purpose
- Contingent job offer recommended
- Equally applied to all candidates for that job

SLIDE 30

DRUG AND ALCOHOL AND CANNABIS TESTING



- Must have a written policy
- Must have contingent job offer
- Equally applied to all candidates for that job
- Limited ability to test for cannabis
- Comply with all notice and follow up requirements

SLIDE 31

CRIMINAL BACKGROUND CHECKS

SLIDE 32

HIRING TOOLKIT

MINNESOTA STATUTORY REQUIREMENTS: CRIMINAL HISTORY USE

SLIDE 33



- May only disqualify on the basis of a past conviction if the crime(s) is directly related to position
- Required to consider evidence of rehabilitation and present fitness

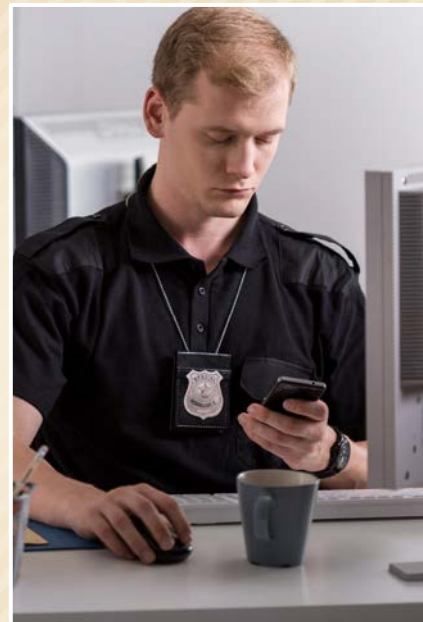
HIRING TOOLKIT



CONDUCTING CRIMINAL BACKGROUND CHECKS

SLIDE 34

- Contingent offer recommended
- Obtain signed informed consent
 - If using Minn. BCA website, must inform candidate of search
 - Required for checks under Minn. Stat. § 299C.72 (cities and counties)

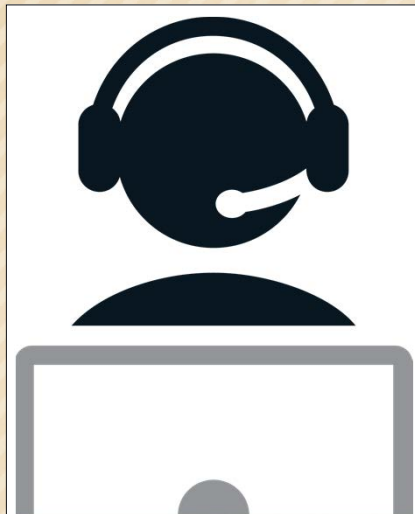


USING A THIRD-PARTY FOR BACKGROUND CHECKS

SLIDE 35

HIRING TOOLKIT

WHAT IS A CONSUMER REPORT?



Any written, oral or other communication of any information by a consumer-reporting agency bearing on a consumer's

- Credit worthiness
- Credit standing
- Credit capacity
- Character
- General reputation
- Personal characteristics
- Mode of living

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CONSUMER REPORTS IN THE EMPLOYMENT CONTEXT

SLIDE 37

- Criminal history reports
- Credit reports
- Driving records
- Education history
- Employment history
- Reference checks
- Civil court records
- Bankruptcy court records



USING A CONSUMER REPORTING AGENCY

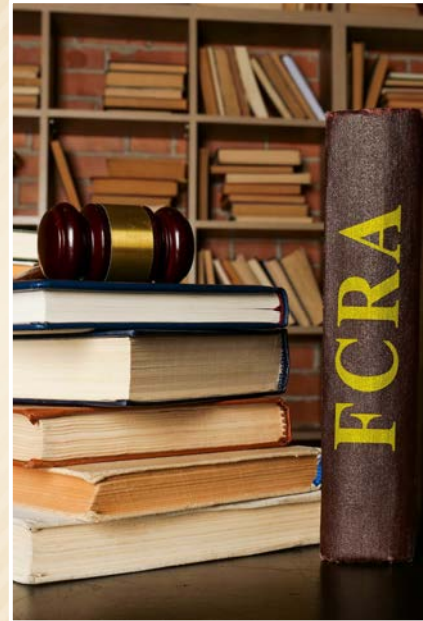
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- State, federal law notice, disclosure requirements for using consumer reporting agency to conduct background checks
 - Minnesota: Must include disclosure in or accompany any written job application if employee has one
 - Federal: Must be a standalone document

FAIR
CREDIT
REPORTING
ACT

- Must have written permission to conduct
- If used for adverse decision:
 - Must provide copy of report and notice of rights
 - Provide candidate opportunity to review and explain
- Adverse action notice required if final decision is not to hire



SLIDE 39

WRAPPING UP THE
PROCESS

SLIDE 40

USING THE RESULTS



- Consult with legal counsel prior to withdrawing a conditional job offer
- Maintain pre-employment documents:
 - At least 18 months, or
 - According to records retention policy

SLIDE 41

RECAP

- Create (and follow) policies and procedures
- Develop a plan in advance
- Make a contingent job offer when needed
- Be aware of requirements for specific types of pre-employment or background checks
- Be aware of requirements when using consumer reporting agencies
- Do not collect information that is not job-related and consistent with business necessity
- Consult with legal counsel as needed

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DISCUSSION

Ask Questions, Share Experiences