



Screening Success

A COMPLETE EMPLOYER'S GUIDE TO BACKGROUND CHECKS



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Introduction

Finding the perfect employee is tough. You spend time crafting the perfect job ad, posting it on all the major job boards, engaging in phone screenings, bringing multiple people in for interviews, and then finally, you find someone who seems perfect. But what if they were not 100% honest on their resume or in the interview?

According to a 2025 Market Trend Report, around 65% of job seekers used Artificial Intelligence (AI) at some point in the application process. This does not necessarily mean that these individuals were dishonest; however, some elements can be presented in a way that exaggerates abilities or does not provide an accurate snapshot of the individual.



In 2025, the Society for Human Resource Management (SHRM) reported an average cost per hire of \$1,200 for nonexecutive positions and over \$10,000 for executive positions, with these figures being even higher for certain industries.

Additionally, the average time to fill a position is 44 days, with larger companies taking an average of 61 days to fill. If you're going to sink that much time and money into hiring, you might consider running a background check as part of your hiring process to help ensure you pick the right person. But delving into someone's past comes with certain rules and responsibilities. This guide is designed to inform employers of legal requirements and best practices associated with processing background checks.

What Are Background Checks?

When most people hear the term “background check,” they immediately think of criminal history reports. However, background checks can cover a broad spectrum of information, including:



Criminal history



Credit history



Employment verification



**Professional
license verification**



Education verification



**Social media
searches**



**Driving history or Motor
Vehicle Reports (MVR)**

Given the range of search options available, employers must exercise discretion. State and local regulations often restrict what information can be considered, and following best practices helps minimize exposure to discrimination claims. For example, running a credit check for a warehouse role may be unnecessary, while it could be highly relevant for a staff accountant who manages sensitive financial data.

Employers should always match the scope of their background checks to the position's responsibilities. For roles that involve driving on behalf of the company, conducting an MVR is strongly recommended, and, in some cases, legally or contractually required, to ensure the candidate's driving record meets company standards.

This protects the organization's interests and provides reassurance that those representing the company on the road do so safely. Accidents in the course of business can impact an employer's finances and reputation, making thorough and relevant background screenings a crucial step in the hiring process.

Why Should Employers Conduct Background Checks?

Employers conduct background checks for several important reasons, one of the most significant being compliance. Many industries are subject to regulations requiring verification of certain information, such as criminal records, professional licenses, or driving histories. Conducting proper background checks ensures you are meeting federal, state, and industry-specific requirements while reducing the risk of penalties. By consistently applying background screening practices, employers also create fair and defensible hiring processes that can withstand legal scrutiny if challenged.

Beyond compliance, background checks improve the overall quality of hires. By verifying qualifications, work history, and other aspects of an individual's past, employers can feel confident that they are selecting capable and trustworthy candidates. This helps reduce the risk of hiring individuals who may not be a good fit or who could pose risks to the workplace.

Additionally, background checks provide protection against negligent hiring claims. Negligent hiring occurs when an employer fails to exercise due diligence in screening candidates, which results in harm to others, such as coworkers, clients, or the public. If an employee were to cause harm on the job and it was later discovered that the employer failed to identify a relevant red flag, the organization could be held liable. For example, in 2019, a jury in Illinois awarded \$54 million to plaintiffs in a personal injury case involving negligent hiring and retention. The case centered on a truck driver who, three years before being hired by the defendant, had been involved in four accidents, received three moving violations, and had his license

suspended twice. Industry-wide, negligent hiring claims in the US have occasionally surpassed \$50 million, with an average lawsuit settlement approaching \$1.5 million. Conducting thorough checks before onboarding is an effective safeguard against these risks.

Finally, background checks offer cultural benefits beyond compliance and risk management. When employees see that their employer takes careful steps to ensure a safe and trustworthy workforce, it builds confidence and reinforces a work culture of integrity. Consistently applying background checks demonstrates fairness, showing that all employees are held to the same standards. Over time, this contributes to stronger workplace trust, improved morale, and greater employee engagement. In short, background checks protect your organization and help build the foundation for a safer, stronger, and more positive workplace.





When Should You Process A Background Check?

Employers should carefully consider the timing of when to process a background check to remain compliant with legal requirements and to ensure a smooth hiring process. Since you must first obtain written consent from the candidate before running any background check, as discussed in the following section, the appropriate point to move forward is after a conditional job offer has been made. This timing helps protect against potential discrimination claims, ensures consistency in your hiring practices, and demonstrates respect for the candidate's privacy.

Completing the background check before the employee's first day of work is best practice for risk management. It helps avoid situations where an individual starts working and later becomes ineligible due to information revealed in the screening process.

By clearly communicating this timeline to candidates, you set expectations upfront, maintain transparency, and reduce the likelihood of the employee "ghosting" you or unexpectedly withdrawing from the employment offer while waiting for the background check to complete.

Ultimately, waiting until after an offer is made but before the employee starts helps ensure compliance and fairness while protecting your organization.



Processing the background check after extending a conditional offer but before work starts also allows you to make informed decisions based on verified information. If issues arise in the report, such as discrepancies in work history or disqualifying criminal convictions, you'll still have the opportunity to follow the proper adverse action procedures without disrupting active employment.

In certain industries, the timing of background checks is even more critical due to the nature of the work and regulatory requirements. For example, in healthcare, employees often have direct access to vulnerable populations, sensitive health data, and controlled substances. Completing a background check after extending a conditional offer but before the employee begins working helps ensure patient safety and compliance with state and federal regulations. Similarly, pre-employment screening is essential in the financial services sector to verify trustworthiness, as employees may handle sensitive financial information or manage client accounts.



Timely background checks also benefit manufacturing and warehouse environments. These workplaces may involve the use of heavy equipment, hazardous materials, or secure facilities. By completing checks prior to an employee's first day, employers can confirm that new hires meet safety and compliance standards, reducing the risk of liability and workplace accidents.

In each of these examples, processing the background check at the right time helps maintain compliance and workplace safety while building trust with new hires through a clear, transparent hiring process.



Notice of Background Checks

Before running a background check for employment purposes, employers must be aware that the Fair Credit Reporting Act (FCRA) requires following specific notice and authorization procedures. Additionally, it is best practice to include notice of a requirement to complete a background check on the application, job posting, careers webpage, or on-site poster where applicants can see before applying.

Employers must provide job candidates (or employees, if the check is for a current worker) with a clear and conspicuous written disclosure stating that a background check may be obtained for employment purposes. This disclosure must be in a standalone document that is separate from the job application and does not include any unrelated information, so the individual can clearly understand what they're agreeing to.

Along with the disclosure, the employer must obtain the individual's written authorization before proceeding. While the authorization can be presented at the same time as the disclosure, best practices are to keep them on separate documents, simple, direct, and easy to read.

Employers should also be aware that some states and localities, such as Illinois and New York City, impose additional notice requirements, such as specifying what types of information will be checked or providing a copy of state-specific rights under consumer protection laws.

Failing to follow these rules can result in costly lawsuits and penalties. To stay compliant, employers should use updated, legally reviewed disclosures and authorization forms that reflect federal, state, and local law. It's also wise to explain the process to candidates, including who will perform the check and what types of information might be considered.

Maintaining a clear paper trail of when the notice was provided, when the authorization was signed, and when the check was ordered can help protect against legal challenges. Taking the time to follow these steps keeps employers compliant and demonstrates transparency and fairness to candidates.



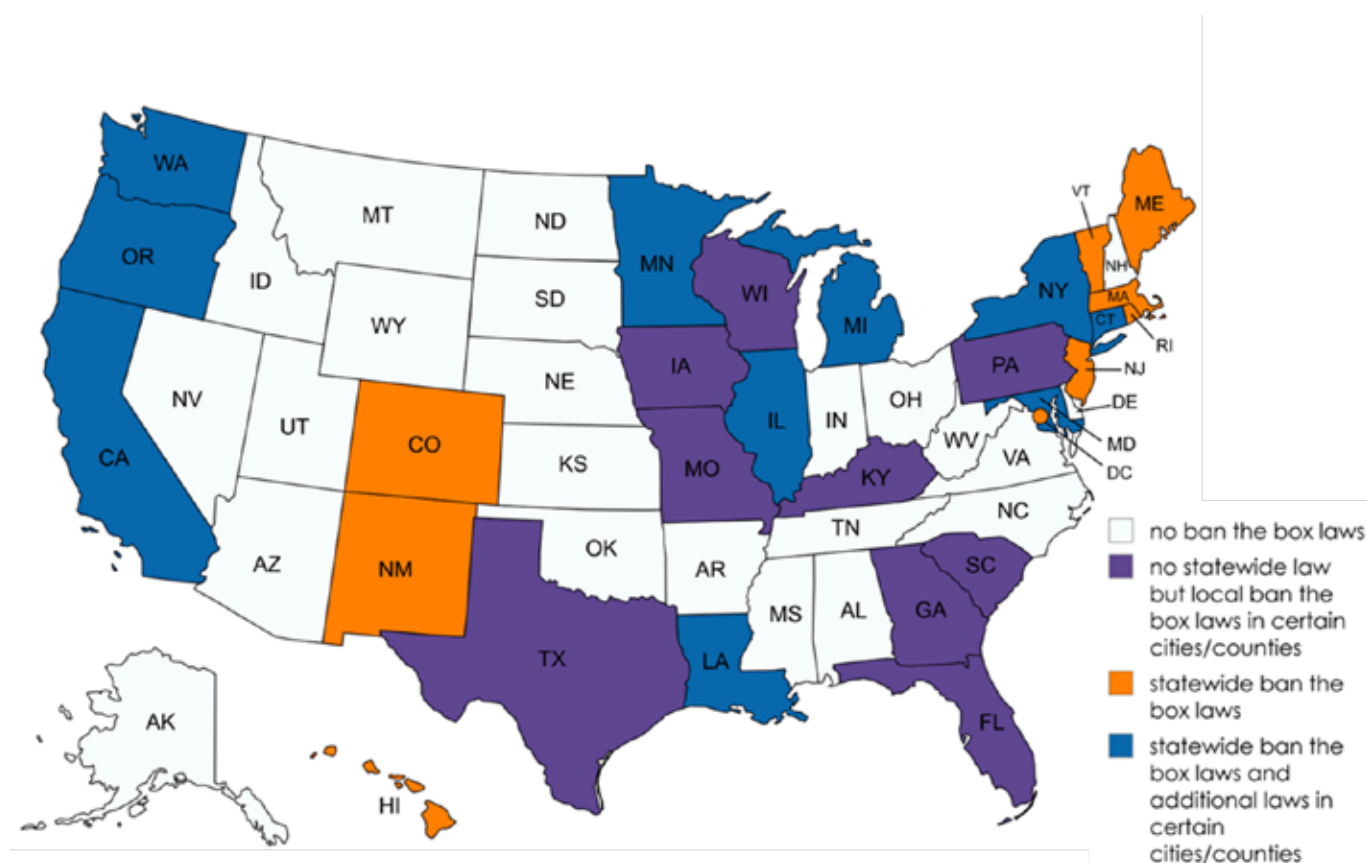
Ban The Box Laws

“Ban the Box” laws are designed to give job applicants with criminal histories a fairer chance in the hiring process by delaying when employers can ask about criminal records. These laws generally prohibit employers from requiring applicants to provide information about their criminal history during the application or interviewing process. This means criminal background checks cannot be performed until after a conditional offer is made.

The goal is to ensure candidates are first evaluated based on their skills and qualifications rather than being immediately screened out because of past arrests, charges, or convictions. While specifics vary by state and municipality, many “Ban the Box” laws apply to both public and private employers, and some include additional requirements such as providing job candidates with specific notice before taking adverse action based on background check results.

For employers, these laws don't prevent running background checks but dictate when and how criminal history can be considered. This means hiring processes must be carefully structured to comply with applicable laws. Employers should review job postings, application forms, and interview procedures to ensure they aren't prematurely asking about criminal records. Hiring managers should also be trained on compliant interview practices and have a consistent process for evaluating background check findings to avoid potential discrimination claims. While "Ban the Box" may lengthen parts of the hiring timeline, it can expand the applicant pool and demonstrate a commitment to fair-chance hiring, which can improve employer brand and community relations.

See the map below for states with active “Ban the Box” laws as of October 2025.





Interpreting Criminal Background Checks

Once a criminal background check is complete, the next critical step for employers is properly interpreting the results. This process requires careful consideration to ensure fair, consistent, and legally compliant hiring decisions. Employers should look beyond the simple presence of a record and evaluate the nature of the information in relation to the job being filled.

Review the Disposition of Charges:

Not all charges result in convictions. A criminal background report may include arrests, dismissed charges, pending cases, or charges that were reduced. It is essential to focus on each case's disposition, or final outcome. For example, a dismissed charge or one resulting in acquittal should not be treated the same as a conviction. In many jurisdictions, using non-conviction records in hiring decisions is limited or prohibited.

Determine the Relevance of Convictions to the Position:

A conviction in a criminal background check is not an automatic disqualifier. The key question is whether the offense is relevant to the specific duties of the role. For instance, a theft conviction may be more significant when hiring for a role that involves handling company finances than a position that does not involve monetary responsibilities.

Employers should consider:

- The nature and seriousness of the offense
- How long ago it occurred
- The job duties the candidate would be fulfilling

Evidence of rehabilitation or a positive work history since the conviction

The Equal Employment Opportunity Commission (EEOC) advises that blanket bans on hiring individuals with criminal records may be discriminatory. Instead, employers should conduct an individualized assessment to determine job-relatedness and business necessity.

Maintain Consistency and Documentation

Employers should apply the same standards to all candidates to avoid discrimination claims. Every decision based on background check results should be well-documented, including the rationale for how a particular conviction or disposition relates to the position. This supports compliance with federal and state law and strengthens the employer's position if hiring decisions are challenged.





Taking Adverse Action Based on Criminal Background Checks

After getting written consent to conduct a background check, reviewing the results, and considering the convictions that show up on the report, you determine that the candidate's background does not comply with your policy to move forward with employment. What should you do? Prior to rescinding an offer, the FCRA requires employers to provide a pre-adverse action notice, a copy of the criminal background check report, and a summary of rights.

During this step, in what is referred to as the adverse action process, a candidate will have five business days to review the findings and, if there are any issues, they will have the opportunity to challenge these findings directly with the background check vendor.

But what discrepancies could there possibly be on a criminal background check? These reports are not infallible and, on occasion, may not provide the whole story, or they can even provide an inaccurate one. There can be situations regarding stolen or mistaken identity, outdated data where records should have been expunged or sealed, data entry mistakes, and other reasons. While there are many possible reasons a candidate may take issue with a report, a challenge is not for situations where the candidate was found guilty and believes they were wrongfully convicted or "railroaded", only that the report itself is inaccurate.

If the candidate does not challenge the results once they receive the pre-adverse action notice or are unsuccessful in their challenge, an adverse action notice should be sent to the candidate notifying them that the job offer is being rescinded due to unsatisfactory information found on the background check.

Following the adverse action process not only provides transparency to candidates but also ensures you remain compliant with the law and limit liability exposure.

In June of 2020, a federal judge in New York ruled that a class action lawsuit could be brought against Amazon and its Whole Foods subsidiary for rescinding an offer without conducting the adverse action process.

In 2016, Express Employment Professionals settled a class action lawsuit for \$5.75 million for also failing to complete the adverse action process.

Criminal Background Checks and State/Local Laws

While the FCRA applies to the US as a whole, some states and localities have stricter requirements for conducting criminal background checks.

Several states impose a seven-year lookback period, which means criminal background checks run through a third-party vendor are not permitted to report on convictions older than seven years. This includes states such as Montana and New York. Some states with these lookback period restrictions may have exceptions based on salary, such as Texas and Colorado, where backgrounds can only look further than seven years in the past if the position will earn more than a certain salary threshold. Additionally, there could be limitations on information being reported based on the type of incident; Massachusetts imposes a seven-year lookback period for felonies, but does not allow misdemeanors older than five years to be reported, while California does not allow for arrests or charges not resulting in a conviction to be reported at all.

Many states, including California, New York, and Illinois, have enacted “fair chance” laws that go beyond the FCRA’s adverse action process, which sets out specific steps employers must follow after receiving criminal history information that may lead to an offer being rescinded. In California, for example, an employer planning to withdraw an offer must conduct an individualized assessment, provide written notice of a preliminary decision including the specific conviction(s) being considered, provide five business days to the candidate for a response, and provide a final written notice on the decision.





Top Mistakes When Conducting Background Checks

Conducting criminal background checks or credit checks without written consent

When conducting background checks using a third-party consumer report, the Federal Trade Commission (FTC) requires that certain notices be provided to the individual and that written consent be obtained.

Denying employment for arrests or charges

Except under rare circumstances, employers should not hold arrests or charges that were dismissed and did not result in a conviction against a candidate. An arrest or charge that was dismissed is not proof of guilt.

Running background checks in an inconsistent manner

It is ok to conduct background checks on specific positions or departments, such as only running credit checks for candidates going into the finance department, but background checks should not be run in an inconsistent manner that could give the impression of discriminatory practices.

Rejecting a candidate/employee without going through the adverse action process

Criminal background checks are not perfect, and occasionally, the data returned may not give the entire story, whether there is a case of mistaken identity, incomplete court records returned, or other reasons.

Ultimately, navigating the complexities of background checks demands careful attention to both federal and state regulations, a commitment to fair and consistent practices, and respect for the rights of every candidate. By prioritizing compliance, transparency, and individualized consideration, employers not only foster trust but also protect their organizations from costly legal risks. Thoughtful background screening, approached with diligence and equity, can strengthen your hiring process and help ensure a safer, more inclusive workplace for all.

If you would like information on how FrankCrum can help with your background check needs, please contact BackgroundChecks@frankcrum.com.

Why FrankCrum

Although FrankCrum clients appreciate our long and successful track record, financial stability, technology capabilities, and the wide range of services we offer, what we hear most often is that they appreciate being able to speak with a live person who gives them straight answers to what may sometimes be difficult questions.

That's the way we do business - one person at a time, one client at a time. It's literally part of our DNA as the FrankCrum family of businesses: what we call "A Family of Employer Solutions."

Our company history began in 1981, when Frank W. Crum, Jr. and his father started offering temporary staffing services, with a deep commitment to the success of business owners. Because of that commitment, we have expanded our professional offerings over time as clients partnered with us to help them grow.

Today, that family of businesses - still owned and operated by Frank Crum, Jr. and now his son, Matt and daughter, Haley - offer HR services through FrankCrum PEO, workers' compensation and general liability insurance through Frank Winston Crum Insurance and staffing services through FrankCrum Staffing. You'll find the same operational philosophy in all three companies; Frank refers to it as "doing the right things for the right reasons."

It boils down to this: Running a business can be hard. Managing your human resources program shouldn't be. Let us know how we can help.

**To learn how FrankCrum can help your business,
call 800-277-1620 to schedule a consultation.**

