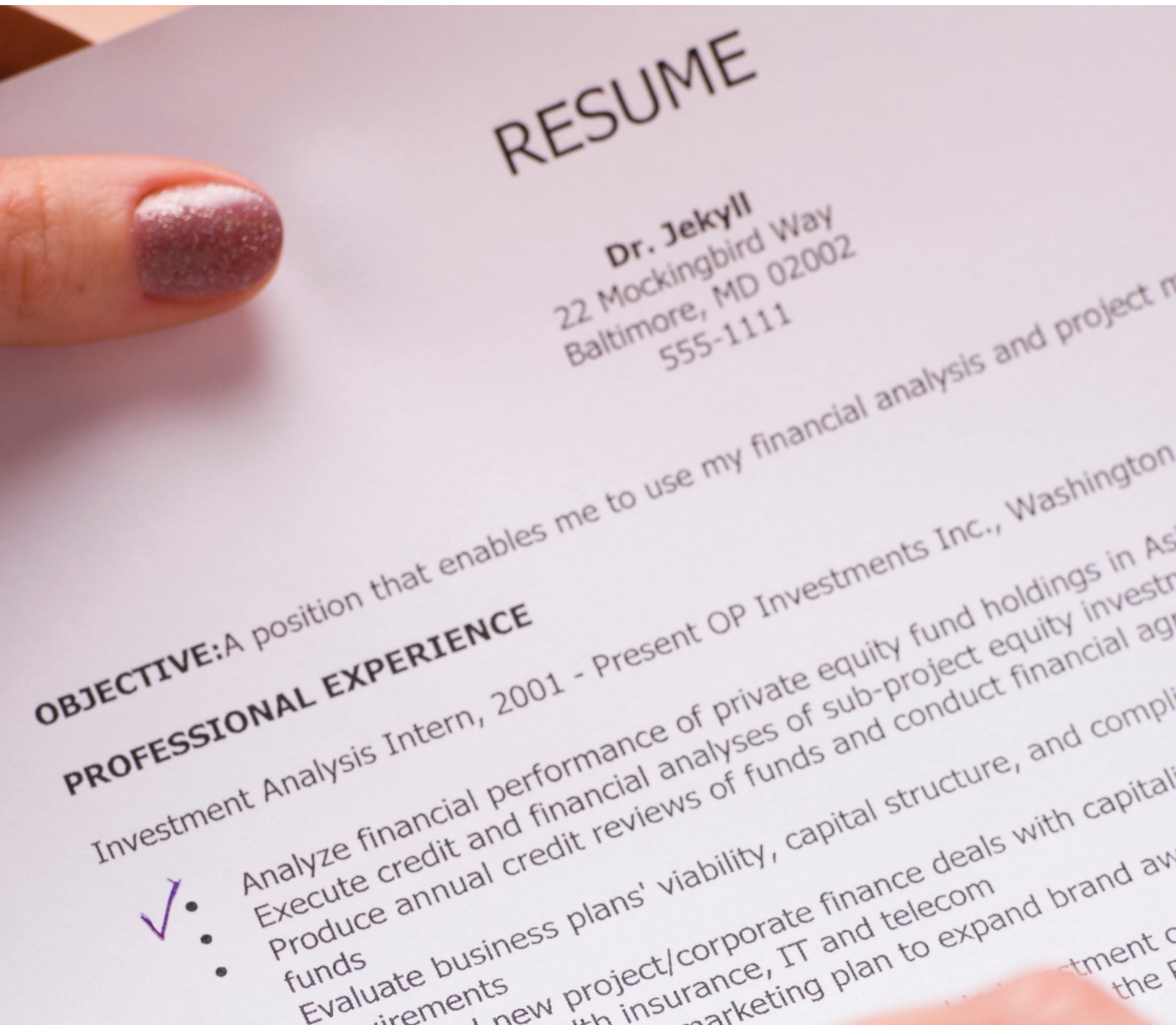


# Who Are You Hiring?

*Reduce Uncertainty with Background Checks*

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An interview can reveal a lot about a person. During a short conversation, an employer can learn about an applicant's educational background, work history, family life and hobbies. However, employers should be aware that not everyone who has impressive interview skills is a good hiring risk. While the vast majority will be truthful about their work history, there may be individuals who try to cover-up questionable employment records. Some applicants rely on the hope that an employer won't perform a background check, and instead use their wit, charm or even a false resumé to land a job that, based on their work history, should be far out of their reach.

### Benefits of background checks

Some industries (i.e., the healthcare field and daycare facilities) are required by state law to perform background checks, but for many employers, background checks have become an essential part of the hiring process. These investigative reports create an invaluable opportunity for employers to hire and retain reliable and trustworthy employees. Furthermore, background checks are a good risk management technique and provide evidence of an employer's commitment to hire quality employees. Such information gathering is also beneficial when used by non-profits who are considering volunteers for their organization. The following are primary reasons pre-employment background screenings are performed:

- To comply with state and federal hiring standards
- To demonstrate an employer's commitment to hire applicants who do not pose a liability
- To discourage applicants from hiding a criminal background or falsifying their credentials
- To increase an employer's profitability and productivity through better hiring decisions, ultimately lowering the high cost of turnover
- To enhance an employer's culture and reputation by hiring quality employees

Another significant reason employers choose to utilize background checks is to avoid legal exposure due to negligent hiring practices. Since the late 1970s (when negligent hiring claims became a common cause of action), courts have expanded the tort of negligent hiring to cover a broad range of scenarios involving employee-caused injuries. Today, an employer can be found liable if a court proves that they failed to select and retain competent and safe employees. It is estimated that 10% of all job applicants possess a criminal record that would compromise their job placement. Therefore, the need to hire the most qualified person in order to avoid costly legal repercussions has never been of greater importance for employers.

### Use diligently

Due to heightened unemployment rates, the number of applicants per available position has substantially increased. Although employment background checks can be quite helpful, they can also be expensive and time consuming. Employers must be prudent when using them in order to avoid excessive costs and wasted time. To assist in conducting such checks, many employers have begun using the services of third-party providers known as Consumer Reporting Agencies (CRAs). These providers conduct screenings for employers and then compile that information into a consumer report. The Fair Credit Reporting Act (FCRA) has instituted standards of privacy and consumer protection in response to these reports, while also providing detailed procedures on how information can be gathered by the CRAs for both credit and background checks.

Because employers are the recipients of these consumer reports, they are also subject to the FCRA compliance requirements. This includes providing notice to prospective employees that they will be subjected to a background check and obtaining their authorization to conduct the screening. If an employer should decide to conduct their own pre-screening investigation without the use of a CRA, the FCRA guidelines do not apply.

A background check can include a variety of information, including both criminal and financial reports. The availability of criminal records varies by jurisdiction, and different databases contain different "identifiers" that compile the correct background data on an individual. The applicant's full name and date of birth are the most common identifiers, but a social security number and driver's license are often used as well. It is important to provide maiden names or additional names used in the past, and it is also helpful to obtain home addresses used during the years that will be searched. The more identifiers that are used, the greater the chances are that the correct information for the individual is retrieved. Several sources are available to obtain criminal records, including state repositories and the Federal Records Center, but the county courthouse usually has the most complete criminal history information.

If any adverse action is taken based upon information received in a consumer report (such as failure to hire or the dismissal of an employee), FCRA compliance guidelines state that the employer must provide the individual with a copy of the report, as well as the name of the CRA that produced it. The individual must also be given a sufficient amount of time to dispute the negative findings declared against them.



CRA's may report a variety of negative information; however, employers are restricted by state law regarding the type of criminal information that can be used to make employment decisions. One notable restriction enforced by a number of states prohibits employment decisions based on a person's arrest record. An arrest does not equal a conviction; employers should only consider convictions when making employment decisions.

Some information may not be retrieved, including school records (which are confidential and cannot be released without the consent of the applicant) and medical records (which cannot be requested). An employer may not make hiring decisions based on an applicant's disability, and is only allowed to ask whether a potential employee has the ability to perform a certain job.

Employers need to carefully evaluate each applicant on a case-by-case basis. If criminal checks are used, the Equal Employment Opportunity (EEOC) requires employers to consider the timeliness of the crime and the type of conviction. Some convictions may not be relevant to the job being applied for. For example, a DUI (Driving Under the Influence) conviction would be a reasonable offense for a trucking company to deny or revoke employment for an individual. Employers should also evaluate the timing and relevance of the findings on a credit check. It is a smart idea to develop hiring criteria for a specific job function. For example, if a position requires the management of money, an employer should state specifically in the criteria that applicants with a history of financial fraud are not eligible. It may also be helpful if the hiring criteria include reasons for conducting the background check, as well as an example of a loss that the background check would prevent.

Information for this article was accessed from the following sources:

- [www.faegre.com](http://www.faegre.com) "Employer Considerations in Using Background Checks in Hiring" Faegre & Benson Law Firm, November 2, 2010, accessed November 18, 2010 at <http://www.faegre.com/12288>
- [www.about.com](http://www.about.com) "Employment Background Checks, Credit Checks and Employment Verification" Doyle, Allison, accessed November 18, 2010 at <http://jobsearch.about.com/cs/backgroundcheck/a/background.htm>

### Structuring your hiring methods

Following are some helpful practices to incorporate into your hiring process:

- Have an attorney review your background check procedures to make sure that you are in compliance with FCRA and EEOC requirements.
- If an applicant has a criminal background, review the crime. A victimless crime (such as possession of marijuana) may not create the same risk in the workplace that a crime against individuals or the community (such as theft or selling drugs) would.
- References are very important and should be contacted. If an applicant cannot provide recent references, you should be cautious and give preference to another applicant.
- If an applicant is not truthful on the written application, move on to the next applicant.
- Be consistent in the applicant selection process and the enforcement of your hiring policies.
- Choose your Consumer Reporting Agency carefully.

Employee background checks or pre-employment screenings have become a useful, and sometimes necessary, part of the hiring process. As an employer, you should be aware that technological advances or new resources can affect your hiring practices. It's a good idea to periodically review your procedures with an attorney to be certain you are up-to-date and in compliance with all applicable laws or regulations. Employees are one of your greatest assets; implementing the aforementioned practices into your hiring process could greatly impact the success of your business.