

# WHAT TO CONSIDER WHEN YOU DECIDE NOT TO HIRE

When a background check returns criminal records, how will you decide what's right for your business?



When the results of a background check prompt a decision to turn down an applicant, you have important responsibilities as a hiring manager and employer to not only ensure a fair and respectful process for the candidate, but also to comply with the law.

## **BEFORE YOU MAKE A FINAL DECISION ABOUT WHETHER TO HIRE A CANDIDATE WITH A CRIMINAL RECORD, YOU MUST CONSIDER:**

- Your company's employment screening policy**
- Guidelines put forth by the Equal Employment Opportunity Commission (EEOC) to conduct individualized assessments**
- The adverse action steps you must follow to comply with the federal Fair Credit Reporting Act (FCRA) and any applicable fair chance hiring laws (i.e. "ban the box")**

# Your Company's Employment Screening Policy

If your business is conducting background checks, your hiring and screening policies should be consistent and compliant to prevent discrimination and avoid litigation and enforcement from federal agencies. Candidates with criminal records should not be automatically disqualified from the job.

In fact, companies that use bright-line screening or blanket policies—policies that generally result in the rejection of any and all candidates with criminal backgrounds—can land your company in serious legal trouble.

## CONSIDER USING A HIRING MATRIX

Employment screening policies that incorporate a hiring matrix, or decision matrix, can help you determine which criminal convictions your company considers relevant to the roles you're looking to fill, while also keeping you compliant as you build a team with diverse and qualified employees. When applied consistently, and in combination with individual assessments, it creates a clear standard against which every applicant for a particular role is assessed.

Having a documented process and policy in place to make decisions about criminal record disqualifications will help your organization remain consistent, fair and compliant as you evaluate prospective employees.

When it comes to background screening, the EEOC has alleged disparate impact discrimination against employers whose screening policies result in disproportionate adverse treatment toward a protected group.

Since members of minority groups are statistically more likely to have a criminal record, this unintended discrimination violates Title VII of the Civil Rights Act of 1964, which prohibits employer discrimination based on race, color, religion, sex, or national origin.

It's important to review your screening program regularly to ensure policies and processes are in place and consistent with current statutory law, case law, guidance, and best practices.

## FOR EXAMPLE,

positions involving driving might take a candidate's DUI convictions into account. Theft convictions may be considered for jobs involving access to money, and violent crimes for jobs involving access to vulnerable populations.

## CONSIDER INDIVIDUAL CIRCUMSTANCES AND CONTEXT

When a background check reveals that a candidate has a record, you should follow the EEOC's guidance to ensure that the nature and gravity of the offense are taken into account, along with the time that has passed since the conviction, and the nature of the job held or sought.

To give candidates with criminal records a fair chance, the EEOC recommends considering individual circumstances and context around a candidate's criminal record and perform individualized assessments.

Even if you determine the applicant is not a good fit, documenting this process can help protect you from a Title VII suit.

### Follow the Nature-Time-Nature Factors

- The nature and gravity of the offense
- The time that has passed since the offense or completion of the sentence
- The nature of the job sought and the offense's relevance to the position

### Conduct Individualized Assessments

- Ask for more information about the offense to get context
- Give applicants the opportunity to explain any mitigating circumstances

GoodHire is the only employment screening solution with a built-in way for candidates to provide context around alerts on their background check results, making it easier for you to make individualized assessments.

**BACKGROUND SCREENING POLICIES THAT RESULT IN ADVERSE ACTION CAN BE COMPLIANT AS LONG AS YOU CAN DEMONSTRATE BUSINESS NECESSITY AND RELEVANCE TO THE JOB.**

Background Check Run by WeddingWire on 1/28/2016

**Jaclyn Smith** Background Check Results

Overview

- National Criminal Records Search !
- Traffic Violations Search ✓
- SSN Trace & Address History ✓
- Sex Offender List Search ✓
- Domestic Terrorist Watch List Search ✓
- 7 Year County Court Search
  - San Mateo, CA ✓
  - Marion, FL ✓
  - Jackson, TX ✓
- Employment Verification ✓

**Records from San Mateo County**

**Criminal Record #1**

[+ Add comments for context](#) This record is not accurate

**Record Source**

Record Source	General Criminal Data
State of Jurisdiction	93202442332
County	San Mateo County

**Offender Details**

Name	Jaclyn Smith
Date of Birth	4/11/1963
SSN	XXX-XX-7890
Sex	Female
Status	Married

[Show more](#)

## Follow The Adverse Action Process

If you still decide not to hire, you must follow the FCRA's adverse action process. Neglecting this process could put your company at risk for class-action lawsuits for FCRA violations. Here's a checklist of mandated steps and suggested waiting periods.

**1**

### WHEN YOU THINK YOU MIGHT NOT HIRE

- Send the job candidate a letter (the pre-adverse notice) that explains the background check results are under review and a decision is pending.
- Include a copy of the candidate's background check results.
- Include a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act," which you can [download here](#).
- Keep a copy of the letter and attachments, and document the date sent.
- Consider sending by certified mail if you're sending the notices yourself (rather than having your background check provider send them).
- Wait at least five business days before taking any additional action so the candidate has time to dispute any inaccuracies.

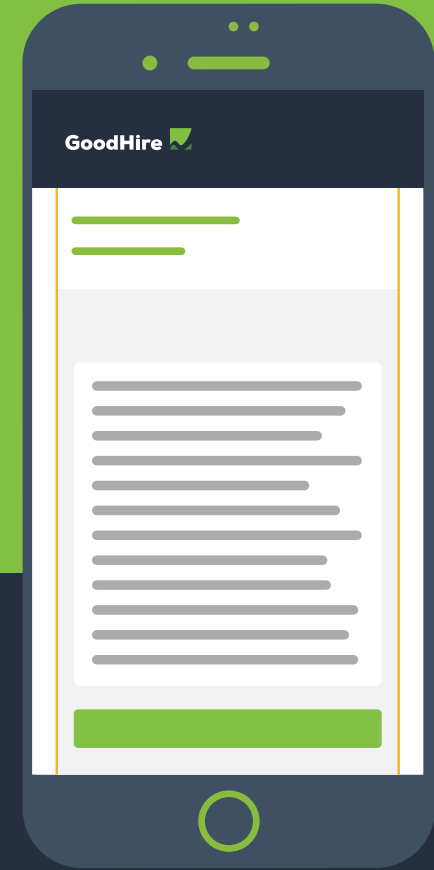
**2**

### IF YOU STILL WANT TO REJECT THE CANDIDATE

- Send a letter informing the applicant in writing of the adverse action (denial of employment) and that the decision was based, at least in part, on the background check results.
- Include the name, address, and phone number for the CRA that performed the background check and a statement explaining the CRA wasn't the decision maker and can't explain why adverse action was taken.
- Inform the job candidate of the right to request a free copy of the background check within 60 days and of the right to dispute inaccurate information.
- Keep a copy of the letter and attachments, and document the date sent.
- Consider sending by certified mail if you're sending the notices yourself (rather than having your background check provider send them).

# GoodHire's Integrated Adverse Action

When you consider denying employment based on information in a background check, you must follow the adverse action processes mandated by the FCRA, EEOC guidance, and any state and local laws that apply. It can get complicated, but GoodHire can help. Each background check includes our integrated adverse action solution, which untangles the overlapping fair hiring laws for you.



GoodHire's in-house compliance expertise is unparalleled. Find out what we can do for your business.

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