



## TenStep Supplemental Paper

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### Outsourcing Background Checks

Most organizations today do not have the means to conduct pre-employment checks. There is no doubt that in-house sleuthing saves money, but hiring an expert often helps. This is especially true for potential employees who are from out of state or have had multiple states of residence.

HR professionals commonly hire outsiders for pre-employment checks to avoid complications at the workplace in the future. Outsourcing background checks has several advantages. It buys the hiring organization much needed legal protection. Besides, it also provides legal immunity to the investigators and information providers themselves. This legal immunity applies to suits alleging defamation, invasion of privacy or negligence in investigation.

In addition, outsourcing background checks gives applicants a greater sense of privacy and dispels the impression that future co-workers are prying.

HR, for its part, should take all the necessary precautions to minimize legal snags. Employers are morally and legally obligated to notify applicants and employees before conducting background checks. This needs to be done in writing, and HR must acquire consent from the applicant.

What can HR professionals do when background checks uncover negative information? They need to comply with the law of the land to minimize legal risks when acting on such information. Employers must review the information carefully and ensure authenticity of the data. 'Pre-historic' information can thus be excluded.

It is advisable to provide applicants a copy of the negative report. Some organizations even give a letter explaining that based on the report, they may decide not to hire the applicant. Further, a reasonable period of time to contest the information must be allowed (ideally, 3-5 days).

Giving applicants time to contest provides employers powerful protection against being sued. Employers also need to state that if applicants do not contact them within the specified timeframe, it would be presumed that the information is uncontested. It is advisable to schedule a meeting so that the applicant gets an opportunity to tell his or her side of the story. This is imperative, considering the fact that most checks are done late in the interviewing process.

After having given the applicant a reasonable opportunity to respond, the employer is free to take adverse action. The applicant should be given notice of this adverse action. It is advisable to convey the information in writing as well as in other means such as oral and electronic communication.

Information provided by the investigators needs to be used astutely and in a non-discriminatory fashion. If misused, employers are risking for libel and defamation suits.