

Compliance Today – November 2022



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Common mistakes when conducting background checks

By Patrick Wellens, CCEP-I, CIA, CFE, CRMA, MBA

The expectations by regulators, consumers, nongovernmental organizations, and patients on companies have never been that high. Companies are expected to comply with an ever-increasing list of laws and regulations, act ethically, and take the lead on environmental, social, and corporate governance (diversity and inclusion, board compensation, human rights, environmental footprint) topics. At the same time, *any mistakes a company makes* are *essentially* shown real-time in the media and communicated to a global audience of consumers worldwide.

As such, it becomes increasingly important for companies and boards to discuss internally the above-mentioned societal expectations, have strong company values, and, when recruiting new employees, ensure *they* are aligned with these values. One way companies can do this is to conduct background checks on future or existing employees.

In most jurisdictions, background checks must be conducted in line with local labor law and data privacy. In the United States, attention must additionally be paid to the Fair Credit Reporting Act (FCRA),^[1] U.S. Equal Employment Opportunity Commission (EEOC) guidelines on background checks,^[2] and “Ban the Box” laws that in various U.S. states only allow conducting criminal background checks after an initial job offer has been made. Not conducting compliance checks or doing them in a noncompliant way can be very expensive, as some of the following examples show:

- IKEA France was found guilty in 2021 of spying on some of its workers and improperly gathering information on employees. The company was given a \$1.2 million fine, and IKEA fired several managers.^[3]
- After one day in office, the CFO of Moderna departed immediately after his previous employer reported an investigation into financial misreporting. Cost to Moderna equals the \$700,000 severance package plus the cost of finding a new hire.^[4]
- The CEO of Yahoo had to leave the company after it was discovered that he had padded his educational credentials.^[5]
- Dollar General^[6] agreed to pay \$6 million to close a lawsuit in which the EEOC alleged that the company’s criminal background check policy discriminated against a nationwide class of Black job applicants.

This article aims to provide an update on what background checks are, listing common mistakes in conducting background checks, and highlighting laws that restrict conducting full-blown background checks.

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