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EEOC AND FTC OFFER JOINT TIPS ON THE USE OF EMPLOYMENT BACKGROUND CHECKS

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Many companies and government organizations conduct background checks on top job applicants prior to offering them employment. In some cases such as in law enforcement or occupations with high security clearances a clean background check is simply critical to determining who can be hired. At other times, such checks may be more of a policy-related matter.

Because of the sensitivity involved in prying into the details of a person's background, employer practices surrounding background checks can open the employer to accusations of discrimination based on factors that are not related to the applicant's actual ability to successfully perform the job.

Recently the US Equal Employment Opportunity Commission (EEOC) and the US Federal Trade Commission (FTC) co-published two technical assistance documents that explain how the agencies' respective laws apply to the practice of conducting applicant background checks.

Available on the EEOC's website, the two documents include a) [Background Checks: What Employers Need to Know](#) and b) [Background Checks: What Job Applicants and Employees Need to Know](#).

Among the salient points made by the collaboration are the following:

- Employers must apply the identical standard to everyone with respect to a position where a background check is required.
- Special care must be taken when basing hiring decisions on background problems that may be more common among people of a certain race, color, national origin, sex, or religion as well as among people with a disability or those above 40 years of age.
- Be prepared to make exceptions where background issues were caused by an applicant's disability.
- Before taking any adverse action based on findings of a credit report (such as not hiring or firing a person), the employer must provide the employee with a) notice that includes a copy of the consumer report you relied upon to make your decision and b) a copy of the "A summary of Your Rights Under the Fair Credit Reporting Act". The employee must have the opportunity to review the report in advance of the adverse action and have the opportunity to explain any negative information.
- After taking adverse action, the employer must give notice to the applicant or employee (orally, in writing, or electronically) that they were rejected because of the report, the name, address and phone number

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of the company that sold the report, express that the company that sold the report did not make the hiring decision, and that he or she has a right to dispute the accuracy or completeness of the report, and get an additional free report from the reporting company within 60 days..

- With respect to disposing of background information that was collected, the EEOC requires that all records must be preserved for one year after the records were made, or after a personnel action was taken based on the information--whichever was later. This time period is extended to 2 years for government agencies and educational institutions. In addition, the Department of Labor (DOL) extends the time period to 2 years for federal contractors that have at least 150 employees and a government contract of at least \$150,000.
- When finally disposed of, all information must be disposed of properly in a secure manner.

For more information, visit: <http://www1.eeoc.gov/eeoc/newsroom/release3-10-14.cfm>

HOW TO USE JOB SIMULATIONS TO IMPROVE HIRING

A Job Simulation is a technique that can be applied to assess an applicant's skill or ability to perform difficult or complex tasks. It is one of the most powerful ways to identify the best applicant(s) because rather than rely on what the candidate says he or she can do or what it appears that they can do based on a set of test questions that only allow inferences about an applicant's abilities. They allow an employer to actually "see" if they can perform the work.

Whereas most hiring assessments require the employer to make an inference or assumption that the applicant will be successful or not based on various information, a job simulation requires very little guesswork. The applicant can either perform the work at the required level or they cannot.

Another useful aspect of job simulations is that, in addition to allowing an employer to assess and applicant, it also allows the applicant to assess him or herself with respect to the job. Because the simulation should replicate, inasmuch as possible, critical aspects of the job, the applicant can determine if they even like performing the work or setting in which they would find themselves. Research has consistently shown that providing applicants with these kinds of "realistic job previews" helps to screen out those who would not thrive in particular jobs.

So, if job simulations are so effective, why are they not used more often? Aside from law enforcement, fire protection, or certain production jobs, many employers tend to rely on interviews of other kinds of assessments. Why is that?

The reason has to do with the fact that job simulations have both advantages and disadvantages. We have highlighted some of these below:

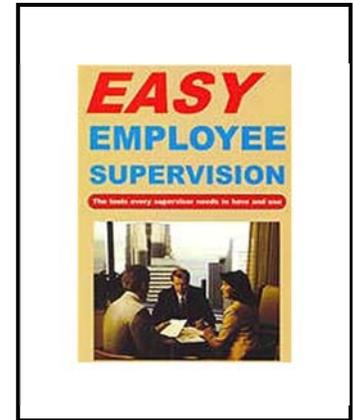
- **Higher Validity.** Job simulation assessments tend to have higher predictive validity than many other types of assessments, meaning they should be better at predicting future job performance.
- **Better Job Fit.** By exposing applicants to the types of events, scenarios, and challenges confronted on the job, job simulations help applicants determine if the job is well suited to their knowledge, skills, abilities, and interests.
- **Positive Applicant Perceptions.** Because job simulations replicate the types of tasks performed in the actual job, studies have found that applicants are more likely to view them as being fair and job-related.
- **Greater Degree of Fairness.** Research generally supports that job simulation assessments have lower rates of adverse impact as well as a lower degree of exposure to discrimination lawsuits based on the selection procedure.

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EASY Employee Supervision

If you are new to supervision or management and wonder how you will cope with the new demands of your job, here is the reference you need. Keep it on top of your desk and refer to it often. You will find it is invaluable and will help you build the successful performance you want.

http://www.management-advantage.com/products/easy_book.htm



POTPOURRI

■ US Secretary of Labor Thomas E. Perez announces new appointments, leadership for 2014 ERISA Advisory Council

The U.S. Secretary of Labor Thomas E. Perez announced the appointment of five new members, including the Chair and Vice Chair, of the 2014 Advisory Council on Employee Welfare and Pension Benefits Plans (ERISA) council. This body of volunteer experts provides advice on policies and regulations affecting employee benefit plans covered by ERISA.

Source*:

<http://www.dol.gov/opa/media/press/ebsa/ebsa20140394.htm>

■ Final checks go out under \$8 million decree in EEOC Sexual harassment case against telemarketer

The first week of March saw the issuance of the final checks to 82 women whom the US Equal Employment Opportunity (EEOC) said were victims of egregious sexual harassment at International Services, Inc. (ISI) which was formerly known as International Profit Associates, Inc. The payments were in accordance with the penalties established in EEOC v. International Profit Associates, N.D. Ill No. 01-cv-4427.

Source*: <http://www1.eeoc.gov/eeoc/newsroom/release/3-12-14c.cfm>

■ Social media in the workplace may raise employment discrimination concerns

The use of social media is having an effect on the enforcement of federal laws according to a panel of experts convened by the EEOC. The use of such sites as LinkedIn and Facebook can provide a valuable tool for identifying good candidates for jobs but the availability of gender, race or other characteristics introduce the potential of discrimination. ([More...](#))

Source*: <http://www1.eeoc.gov/eeoc/newsroom/release/3-12-14.cfm>

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In spite of their predictive power, there are also disadvantages to using job simulations.

- **Cost and Complexity.** Job simulations are sometimes more costly because of the resources necessary to develop and administer the tests. The more advanced simulations require greater expertise to develop than other, less complicated assessments, and this expertise results in higher developmental costs. Plus, these advanced assessments can require more staff and training to administer and assess the results.
- **Limited Scope.** While job simulations can be used to assess multiple competencies, a single simulation exercise will often focus on a limited number of tasks or duties performed on the job. Therefore, job simulations are best used as one assessment in a series of valid selection tools.
- **Not Suited to All Jobs.** Many job simulations require the applicant to already have a certain level of knowledge, skills, or abilities (KSAs) to complete the assessment. Therefore, they may not be appropriate for some entry-level or generalist occupations.

There are many factors an employer should consider when deciding whether or not to use a job simulation as a component in their selection process. The use of job simulations may or may not be appropriate. If a job simulation is being considered, it absolutely **MUST** be linked to the requirements of the job. This means that it must be based on a thorough job analysis and, ideally, mimic (i.e., simulate) the actual duties of the job.

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