

Employment

Recruitment and Background Checks in the UK - What You Need to Know

Criminal records

While criminal records checks are not normally mandatory, pre-employment screening is mandatory for people to be employed in a 'regulated activity' – i.e. those involving work with children and provision of health and other care. Subject to certain exceptions (including individuals working in regulated positions, such as within financial services), a person who has been convicted of a criminal offence but does not re-offend during a 'rehabilitation period' (which depends on the offence and sentence imposed) is entitled to treat himself or herself as having a clean record.

Medical history

Under the Equality Act 2010, it is unlawful for employers to ask questions about health and disability before making a job offer – with some limited exceptions. Employers can ask candidates information about their health (e.g., to complete a pre-employment health questionnaire or to attend a medical examination) after a job offer has been made. However, employers should consider whether this medical information is necessary.

Drug screening

Drug screening (whether as part of the recruitment process or during employment) is permitted, but can be undertaken only with the individual's explicit consent. The use and application of drug tests should be justified, necessary and proportionate. Drug tests are therefore more common in safety-critical sectors such as transport or construction, or for roles where drug abuse risks compromising the integrity of the individual or position, or the recruiting organisation (e.g., public sector roles).

The Information Commissioner's Office (an independent body) makes a number of recommendations in relation to drug testing – including, given the intrusive nature of the tests, that employers undertake and document an impact assessment.

Credit checks

Credit checks should be carried out only where they are relevant to the position for which an applicant has applied (e.g., where the position involves giving financial advice) or where financial difficulties could expose the employee to risks of bribery or other security risk.

Immigration status

Prior to allowing a job applicant to start work, employers should require him/her to produce original documents proving their right to work in the UK (e.g. passport and (where required) their visa). The employer should take copies of the original documents and certify them as true copies of the originals.

Although it is not a legal requirement to check and retain copies of such documents, by doing so employers are provided with a statutory defence against liability for a civil penalty for illegally employing a migrant worker. Copies of such documents should be kept for the duration of the person's employment and for two years thereafter. However, an employer that checks and retains copies of documents confirming a worker's right to work will not have a statutory excuse if it nonetheless knowingly employs an illegal migrant worker or has reasonable cause to believe that an employee does not have the lawful right to work in the United Kingdom.

Social media

This is permitted, but only where the screening is for a specific and good reason. The extent of the screening must be necessary and proportionate to achieve that reason. Employers using social media sites as part of a recruitment process should let candidates know this, and should explain what form these checks will take and why they are considered necessary. Candidates should ideally also be given an opportunity to comment on any information obtained via such checks if it may negatively influence the decision to offer them a job.

Our Employment and HR teams can assist by providing advice on the recruitment process and conducting it if required. Please contact us for assistance.

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