

# Legal Issues

## Background Checks



Evangelical Lutheran Church in America  
God's work. Our hands.

### A Hiring Q and A

You will know you are on the right track when it comes to the complicated world of background checks if you can answer “Yes” to the following questions:

\_\_\_\_\_ 1. Did I set up a process for background checks before I had a vacancy to fill and, as part of that process, did I identify each position in the organization to determine what kind of information is needed from a background check?

While you will want to do a criminal check on all applicants, you may want to add a credit report if the person will be handling money, a sex offender report if the person will be working with children and other youth, and a motor vehicle check if the person will be driving for work.

\_\_\_\_\_ 2. Have I taken good care in choosing a company to serve as my background check vendor?

Ask for references and check them before you contract with anyone. The synod or other local congregations are good sources of a referral. Your organization's general liability insurance carrier can typically provide a referral to a vendor.

\_\_\_\_\_ 3. Do I have a signed authorization from the applicant granting permission to conduct a check?

It is best practice to obtain authorization and you should keep that authorization on file. It is required in some instances (see #4 below) including for a credit check. Best practices say that you should obtain this authorization early in the hiring process – preferably before you interview.

\_\_\_\_\_ 4. Do I know the rules governing credit reports?

For example, you must give each person a Fair Credit Reporting Act disclosure form if you are doing a credit check. There are also very strict guidelines about adverse results. Work with your vendor on the procedures you will need to follow.

\_\_\_\_\_ 5. I have the results. Do I know what they mean?

Background checks can be difficult to interpret. Work with your vendor to decide if the results give you a green light (go ahead), a yellow light (there are some concerns and you need more information) or a red light (stop the process).

\_\_\_\_\_ 6. Do I understand what I have to do if I decide not to hire a candidate because of a background check result?

If a person is denied a job because of a criminal conviction or a bad credit report, the applicant must be informed and given an opportunity to challenge the accuracy of the report.

\_\_\_\_\_ 7. Do I understand that this information is confidential and should be shared only with those who have a direct need to know?

While it can be tempting to want to share information with many people – your church council for example – resist that temptation. Keep the information confidential and as closely held as possible, with the written reports in a locked file.

\_\_\_\_\_ 8. Have I checked with a reliable authority when I have questions?

For good, reliable information, check with your vendor or an attorney who specializes in employment law.

\_\_\_\_\_ 9. Have I kept the background check results?

Yes, it is important to preserve those records in a private manner while the person is employed and for a reasonable period of time after the person leaves employment. If the person is dealing with children, a retention period of 50 years is recommended.

When conducting background checks, it is important to check with knowledgeable, reliable sources whenever you are unsure of what to do or have questions. Knowing what to do before you act will help make background checks a useful tool, not something that will cause you even more work.

Background checks are one part of the screening process for new hires. It is extremely important to have a job application for each applicant and ask for references and the names and contact information for previous employers. All references should be checked and information records kept. Previous employers should be contacted and a record of that information kept as well.

#### **Legal Disclaimer**

Information on this document does not constitute legal advice to anyone. In addition, the use of this document, and the sending or receipt of information through [elca.org](http://elca.org) does not create attorney-client relationship of any sort. Visitors to [elca.org](http://elca.org) should be aware that communication in this manner may not be considered as privileged or confidential. Individuals requiring legal assistance should engage a qualified attorney, licensed to practice law in the particular state or jurisdiction where the legal issues have arisen. Members of the ELCA, pastors, congregations, synods, and others affiliated with this church should always consult their own attorneys, accountants, or similar professionals whenever legal issues or problems arise. Neither the churchwide organization nor the general counsel is responsible for any loss, injury, liability, or damage related to your use of this document, whether from errors or omissions in the content of this document or any linked sites, from the site being down, or from any other use.