

What four steps are necessary for an employer to comply with state and federal la...

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Various federal and laws govern how employers acquire and use applicants' and employees' background information. What four steps are necessary for an employer to comply with these laws? Corporate laws pertaining to usage of employee/candidate information have gotten stringent over the years. This is a positive development, for otherwise, important private information will be subject to misuse and exploitation. And, in the Information and Communications Technology (ICT) age, electronic communication between employees has thrown open many new ways of information leakage. As workplaces have become computerized, " questions have arisen as to an employer's right to monitor personal use of these devices in the workplace. Cases indicate that an employee uses e-mail and the Internet for personal purposes at his or her peril." (McEvoy, 2002, p. 69) Employers usually claim that since they own the communications infrastructure in the company, they can decide policies regarding its use. One way to resolve such conflict of interest situations is by applying National Labor Relations Act (NLRA) of 1935 and its amendments. " In addition to protecting workers' rights to organize into unions, the NLRA protects the right of workers to communicate freely with one another about such terms and conditions of employment as compensation, vacations, and job security." (McEvoy, 2002, p. 69) Hence, employers will have to be careful not to breach any provisions under this law. It is also common practice for employers to scrutinize past behavior of a potential employee and make sure that the latter is not prone to criminal or other disruptive behavior. (Connerley, et. al., 2001, p. 73) But conducting background checks on prospective employees is wrought with risk. Previous employers are also caught in a quagmire for the risk of eliciting a defamation

suit from disgruntled former employees. Hence, employers should make sure that they abstain from giving false or defamatory statement regarding their former employees. Other criteria that could lead to a defamation claim are: “ an unprivileged publication to a third party; fault amounting at least to negligence on the part of the publisher; and either action-ability of the statement irrespective of special harm or the existence of special harm caused by the publication.” (Long, 1997, p. 190) Hence, in order to comply with state and federal laws, careful avoidance of defamation of former employees is crucial. The Civil Rights Act of 1964 is the foundation for modern corporate defamation laws. It lays out the limits and expectations of the legal relationship between workers and their managers, especially Title VII of the Act. The courts and state legislatures, having identified that the employees are the ones holding upper hand in defamation suits have promulgated statutory reforms in recent years. It is perhaps a measure of these reforms that “ in an effort to increase the free exchange of references, at least twenty-six states now provide some type of statutory immunity for employers when they provide a reference. Prior to 1995, only five states had such laws.” (Long, 1997, p. 190) And finally, it is important for employers to ensure no discrimination exists, either in the form of racism, sexism or ageism in the hiring process. It is also important that the tests for selection and appraisal are standardized in order to prevent claims of arbitrary and / or discriminatory hiring practices. (Fuss & Snowden, 2004, p. 54) Works Cited Connerley, Mary L., Richard D. Arvey, and Charles J. Bernardy. " Criminal Background Checks for Prospective and Current Employees: Current Practices among Municipal Agencies." Public Personnel Management 30. 2

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