



Background Check Laws: Pennsylvania

*Scott Wenner and S. Elaine Diedrich,
Schnader Harrison Segal & Lewis LLP*

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A Q&A guide to background check and employment reference law for private employers in Pennsylvania. This Q&A addresses employers' obligations when conducting criminal and non-criminal background checks and penalties for violating these laws. Federal, local or municipal law may impose additional or different requirements.

OVERVIEW OF STATE BACKGROUND CHECK LAW

1. Please list each state statute or regulation governing background checks (for example, state equivalents of the federal Fair Credit Reporting Act and state law governing criminal background checks or driving records). Include law governing both criminal background checks and non-criminal background checks. For each, please:

- Provide a brief description of the statute or regulation.
- Identify which employers are covered.
- Identify which employees are covered (for example, all employees or only those in specific job functions, such as commercial driving).
- Describe whether it provides for a private right of action.
- Identify the state agency or entity that administers the statute.

MOTOR VEHICLE TRANSPORTATION, 52 PA. CODE §§ 29.504 AND 29.505

Description

This statute governs requirements for driver history records and criminal background checks for drivers of vehicles by common carriers or contract carriers to transport passengers. (For definitions of common or contract carriers, see *Question 6*.)

Common or contract carriers must maintain driver history records for at least two years. Common or contract carriers must maintain criminal history records for at least three years.

Covered Employers

This statute covers Pennsylvania common or contract carriers, governed by the Public Utility Commission (PUC), which transport passengers with vehicles having a designed seating capacity of 15 passengers or less, including the driver.

Covered Employees

This statute covers drivers of vehicles having a designed seating capacity of 15 passengers or less, including the driver, which are used by common carriers or contract carriers (that are governed by the PUC) to transport passengers.

Private Right of Action

There is no private right of action under this statute.

State Agency

The PUC administers and enforces this statute.

CRIMINAL HISTORY RECORD INFORMATION ACT, 18 PA. CONS. STAT. §§ 9101 TO 9183

Description

The Criminal History Record Information Act governs:

- Procedures to obtain criminal record information.
- Dissemination of the information.
- Employer use of the information.

Covered Employers

This statute covers all employers within Pennsylvania.

Covered Employees

This statute covers all employees within Pennsylvania.

Private Right of Action

There is a private right of action under this statute.

State Agency

For this statute:

- The District Attorney's office enforces violations.
- The Pennsylvania State Police handles the dissemination of criminal record information.
- The Pennsylvania Human Relations Commission enforces discrimination claims.

PRIVATE DETECTIVE ACT, 22 PA. STAT. ANN. § 23

Description

This statute governs requirements for mandatory criminal background checks for certain investigatory employees.

Covered Employers

This statute covers employers who must be licensed under the Private Detective Act, including:

- Security companies.
- Private detective agencies.
- Employees of employers who provide investigatory services.

Covered Employees

This statute covers all employees of covered employers.

Private Right of Action

There is no private right of action under this statute.

State Agency

The Pennsylvania District Attorney's office administers and enforces this statute.

PROSPECTIVE CHILDCARE PERSONNEL, 23 PA. CONS. STAT. § 6344

Description

This statute governs requirements for mandatory criminal background checks for childcare providers.

Covered Employers

This statute covers all childcare providers in Pennsylvania.

Covered Employees

This statute covers all employees who provide child care.

Private Right of Action

There is no private right of action under this statute.

State Agency

The Pennsylvania District Attorney's office administers and enforces this statute.

PROSPECTIVE EMPLOYEES OF PUBLIC AND PRIVATE SCHOOLS, 24 PA. STAT. ANN. §§ 1-111 AND 5-527

Description

Public and private schools, the schools' contractors, and student teachers must obtain both state and federal background checks for prospective employees if those employees will have direct contact with children.

Covered Employers

This statute covers public and private schools, intermediate units and area vocational-technical schools.

Covered Employees

This statute covers all employees of covered employers, including independent contractors and their employees, but not employees who do not have direct contact with children.

Private Right of Action

There is no private right of action under this statute.

State Agency

The Pennsylvania District Attorney's office administers and enforces this statute.

PROSPECTIVE EMPLOYEES WITH A SIGNIFICANT LIKELIHOOD OF REGULAR CONTACT WITH CHILDREN, 23 PA. CONS. STAT. § 6344.1

Description

Employers must obtain background checks for all prospective employees with a significant likelihood of regular contact with children.

Covered Employers

This statute covers employers of social service workers, hospital personnel, mental health professionals, members of the clergy, counselors, librarians and doctors.

Covered Employees

This statute covers all employees of covered employers with a significant likelihood of regular contact with children, in the form of care, guidance, supervision or training.

Private Right of Action

There is no private right of action under this statute.

State Agency

The Pennsylvania District Attorney's office administers and enforces this statute.

NON-CRIMINAL BACKGROUND CHECK LAW

2. For any law identified in *Question 1* addressing non-criminal background checks, list the key terms of art used and the definition of each.

MOTOR VEHICLE TRANSPORTATION, 52 PA. CODE §§ 29.504 AND 29.505

Common Carrier By Motor Vehicle

Any common carrier who transports passengers or property, or both, by motor vehicle for compensation. This includes common carriers by rail, water or air, and express or forwarding public utilities if those common carriers or public utilities operate motor vehicles, but does not include:

- A lessor under a lease given on a bona fide sale of a motor vehicle where the lessor retains or assumes no responsibility for motor vehicle:
 - maintenance;
 - supervision; or
 - control.
- Transportation of schoolchildren for school purposes or to and from school-related activities in any motor vehicle owned by the school district, private school or parochial school, or transportation of schoolchildren between their homes and school or to and from school-related activities if:

- the person performing the school-related transportation has a contract for the transportation of schoolchildren between their homes and school; and
- if the person maintains a copy of all contracts in the vehicle at all times.
- Any farm owner or operator, independent contractor or cooperative agricultural association transporting agricultural products from, or farm supplies to, a farm.
- Any person or corporation using or providing dump trucks (not including five-axle tractor trailers) for the transportation of ashes, waste, excavated and road construction materials.
- Transportation of property by the owner to himself, or to purchasers directly from him, in the owner's vehicles and not otherwise used in transportation of property for compensation for others.
- Transportation of voting machines to and from polling places for use in any primary, general, municipal or special election in Pennsylvania.
- Transportation of pulpwood, chemical wood, saw logs or veneer logs from woodlots.
- Towing of wrecked or non-functioning motor vehicles.
- Any person who, or corporation that, furnishes transportation for any injured, ill or dead person.

(66 Pa. Cons. Stat. § 102 (2000).)

Contract Carrier by Motor Vehicle

Any person who, or corporation that, provides transportation of passengers or property, or both, by motor vehicle for compensation, other than as a common carrier by motor vehicle.

The term does not include:

- A lessor under a lease given on a bona fide sale of a motor vehicle where the lessor retains or assumes no responsibility for the motor vehicle's:
 - maintenance;
 - supervision; or
 - control.
- Any bona fide agricultural cooperative association or independent contractor transporting property exclusively for the members of the association on a nonprofit basis.
- Any farm owner or operator, or independent contractor, transporting agricultural products from or farm supplies to a farm.
- Transportation of schoolchildren for school purposes or to and from school-related activities, or the transportation of schoolchildren between their homes and school or to and from school-related activities, if:
 - the person performing the school-related transportation has a contract for the transportation of schoolchildren; and
 - the person maintains a copy of all contracts in the vehicle at all times.

- Any person or corporation using or providing dump trucks for the transportation of ashes, waste, excavated or road construction materials.
- Transportation of voting machines to and from polling places for use in any primary, general or special election in Pennsylvania.
- Transportation of pulpwood, chemical wood, saw logs or veneer logs from woodlots.
- Towing of wrecked or non-functioning motor vehicles.
- Any person or corporation that provides transportation for any injured, ill or dead person.

(66 Pa. Cons. Stat. § 102 (2000).)

3. For any law identified in *Question 1* addressing non-criminal background checks, please describe potential penalties for violations of the law.

MOTOR VEHICLE TRANSPORTATION, 52 PA. CODE §§ 29.504 AND 29.505

A complaint against a carrier may be initiated with the Pennsylvania Public Utility Commission for any violation of these regulations.

Penalties for violation of these statutes may include:

- Criminal charges (66 Pa. Cons. Stat. § 3302).
- Fines of up to \$1000, with each violation treated as a separate offense (66 Pa. Cons. Stat. § 3301).
- Suspension or revocation of rights and privileges of the common or contract carrier (52 Pa. Code § 29.12).

4. For any law identified in *Question 1* addressing non-criminal background checks, please describe the employers' legal obligations.

There are no legal obligations for employers for non-criminal background checks.

5. For any law identified in *Question 1* that functions as the state equivalent of the federal Fair Credit Reporting Act, please describe any significant differences between the state and federal law.

There is no Pennsylvania equivalent of the federal Fair Credit Reporting Act (FCRA). However, the Criminal History Record Information Act governs what criminal records information an employer can obtain and how the information can be used in employment decisions. For more information on the Criminal History Record Information Act, see *Question 1*.

The Pennsylvania statute differs from FCRA in that:

- A Pennsylvania employer does not need an employee's consent or signature to do the criminal records search.
- A Pennsylvania employer does not need to provide an applicant with a copy of the criminal records report if the applicant is denied a job. However, the employer does have to notify an applicant in writing if the denial of employment is based in whole or in part on the criminal record information.
- The Pennsylvania statute allows employers to obtain information regarding arrests that have occurred in the last three years.

CRIMINAL BACKGROUND CHECK LAW

6. For any law identified in *Question 1* addressing criminal background checks, please identify the law and describe:

- The key terms of art.
- The potential penalties for violations.

CRIMINAL HISTORY RECORD INFORMATION ACT, 18 PA. CONS. STAT. §§ 9101 TO 9183

Terms of Art

Key terms of art include:

- **Criminal history record information.** Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of:
 - identifiable descriptions;
 - dates and notations of arrests;
 - indictments;
 - informations (or criminal charges); and
 - other formal criminal charges and any resultant dispositions.

The term does not include:

- intelligence information;
 - investigative information;
 - treatment information, including medical and psychological information; or
 - information and public records specified in 18 Pa. Cons. Stat. 9104.
- **Intelligence information.** Information compiled to anticipate, prevent, monitor, investigate or prosecute criminal activity about an individual's:
 - habits;
 - practices;
 - characteristics;
 - possessions;
 - associations; or



- financial status. Intelligence information also includes information on prescribing, dispensing, selling, obtaining or using a controlled substance as defined in the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act.
- **Investigative information.** Information assembled from any inquiry into a criminal incident or an allegation of criminal wrongdoing. This may include modus operandi (a manner of operating) information.
- **Treatment information.** Information concerning medical, psychiatric, psychological or other rehabilitative treatment provided, suggested or prescribed for any individual charged with or convicted of a crime.
- **Criminal justice agency.** Any federal or state court with criminal jurisdiction or any other governmental agency, principally administering criminal justice. The criminal justice agency must allocate a substantial portion of its annual budget to that function. Criminal justice agencies include, but are not limited to:
 - organized state and municipal police departments;
 - local detention facilities;
 - county, regional and state correctional facilities;
 - probation agencies;
 - district or prosecuting attorneys;
 - parole boards;
 - pardon boards;
 - the facilities and administrative offices of the Department of Public Welfare that provide care, guidance and control to adjudicated delinquents; and
 - those agencies determined by the Pennsylvania Attorney General to be criminal justice agencies.
- **Disposition.** Dispositions of criminal proceedings in Pennsylvania include:
 - acquittal;
 - acquittal by reason of insanity;
 - pretrial probation or diversion;
 - charge dismissed;
 - guilty plea;
 - *nolle prosequi* (police are unwilling to prosecute);
 - no information filed;
 - *nolo contendere* (I do not wish to contend) plea;
 - conviction;
 - abatement;
 - discharge under rules of the Pennsylvania Rules of Criminal Procedure;
 - sustained demurrer;
 - pardon;
 - commuted sentence;
 - mistrial; and
 - discharge from probation, parole or correctional supervision.

Penalties

Employers that unlawfully use criminal records can be denied access to the central repository and sued for damages. Courts can order employers to pay at least \$100 in actual damages, along with litigation costs and attorneys' fees. For willful violations of the criminal records law, courts may order employers to pay punitive and exemplary damages of up to \$10,000.

PRIVATE DETECTIVE ACT, 22 PA. STAT. ANN. § 23

Terms of Art

There are no key terms of art in this statute.

Penalties

A licensed private detective who knowingly employs a person convicted of a felony or certain other offenses specified in this section may be fined up to \$5,000, imprisoned for up to one year, or both.

A first conviction may subject the license holder to revocation of his license by the issuing authority. On the second conviction, the license will be revoked.

PROSPECTIVE CHILDCARE PERSONNEL, 23 PA. CONS. STAT. § 6344

Terms of Art

Key terms of art include:

- **Founded report.** A child abuse report after any judicial adjudication based on a finding that a child has been abused, including either:
 - the entry of a plea of guilty or *nolo contendere*; or
 - a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegation of child abuse.
- **Founded report for school employee.** A report made after any judicial adjudication based on a finding that the victim has suffered serious bodily injury, or sexual abuse or exploitation, including either:
 - the entry of a plea of guilty or *nolo contendere*; or
 - a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegations of the report.
- **Indicated report.** A child abuse report made if an investigation by the appropriate county agency or the Department of Public Welfare determines that substantial evidence of the alleged abuse exists based on:
 - available medical evidence;
 - the child protective service investigation; or
 - an admission of the acts of abuse by the perpetrator.
- **Indicated report for school employee.** An indicated report relating to students in public and private schools.

Penalties

An administrator (or other person responsible for hiring decisions) who willfully fails to comply with the law may be fined up to \$2,500.

PROSPECTIVE EMPLOYEES OF PUBLIC AND PRIVATE SCHOOLS, 24 PA. STAT. ANN. §§ 1-111 AND 5-527

Terms of Art

Key terms of art include:

- **Administrator.** The person responsible for the administration of a public or private school, intermediate unit or area vocational-technical school. The term includes both:
 - a person responsible for employment decisions in a school; and
 - an independent contractor.
- *Founded report, founded report for school employee, indicated report and indicated report for school employee.* See *Prospective Childcare Personnel, 23 Pa. Cons. Stat. § 6344: Terms of Art.*

Penalties

An administrator (or other person responsible for hiring decisions) who willfully fails to comply with the law may be fined up to \$2,500.

PROSPECTIVE EMPLOYEES WITH A SIGNIFICANT LIKELIHOOD OF REGULAR CONTACT WITH CHILDREN, 23 PA. CONS. STAT. § 6344.1

Key Terms of Art

Key terms of art include:

- **Founded report, founded report for school employee, indicated report and indicated report for school employee.** See *Prospective Childcare Personnel, 23 Pa. Cons. Stat. § 6344: Terms of Art.*

Penalties

Employers who willfully violate this statute will be charged with a third-degree misdemeanor.

MOTOR VEHICLE TRANSPORTATION, 52 PA. CODE §§ 29.504 AND 29.505

Terms of Art

For key terms of art under this statute, see *Question 2.*

Penalties

For penalties under this statute, see *Question 3.*

7. For any law identified in *Question 1* addressing criminal background checks, please describe:

- The kind of criminal background information into which an employer may inquire.
- The kind of criminal background information into which an employer may not inquire (for example, expunged or juvenile records).
- Any other circumstances under which a criminal background inquiry may be limited (for example, where there is no business necessity).

CRIMINAL HISTORY RECORD INFORMATION ACT, 18 PA. CONS. STAT. §§ 9101 TO 9183

Authorized Inquiry

A report received under the Criminal History Record Information Act consists of identifiable descriptions, dates, notations of arrests and convictions. The record does not contain notations of arrests, indictments or other information relating to the initiation of criminal proceedings where:

- Three years have elapsed from the date of arrest.
- No conviction has occurred.
- No proceedings are pending seeking a conviction.

(18 Pa. Cons. Stat. § 9121(b)(2).)

Generally, an employer can inquire into any criminal background information. However, because Pennsylvania allows employers to only consider felony and misdemeanor convictions for hiring decisions, it is best to only inquire on an application or in an interview about felony or misdemeanor convictions.

Although beyond the scope of this Q&A, Philadelphia employers may not include check boxes in employment applications asking whether an applicant has ever been convicted of a felony (see Philadelphia Fair Criminal Record Screening Standards Ordinance, Bill No. 110111-A).

Unauthorized Inquiry

This statute does not include unauthorized inquiry provisions.

Other Limitations

This statute does not include any other limitations relating to background checks.

PROSPECTIVE CHILDCARE PERSONNEL, 23 PA. CONS. STAT. § 6344

Authorized Inquiry

An employer must require an applicant to provide:

- A report of criminal history record information from the Pennsylvania State Police or a statement from the Pennsylvania



State Police that the State Police Central Repository contains no information for that person (*18 Pa. Cons. Stat. ch. 91*). A report may only include the information allowed by the Criminal History Record Information Act (see *Criminal History Record Information Act, 18 Pa. Cons. Stat. §§ 9101 to 9183: Authorized Inquiry*).

- A certification from the Department of Public Welfare stating whether the applicant is named in the central register as the perpetrator of:
 - a founded report of child abuse;
 - an indicated report of child abuse;
 - a founded report for school employee; or
 - an indicated report for school employee.
- A report of federal criminal history record information obtained from the Federal Bureau of Investigations using fingerprints.

(*23 Pa. Cons. Stat. § 6344(b)*.)

Unauthorized Inquiry

This statute does not include unauthorized inquiry provisions.

Other Limitations

This statute does not include any other limitations relating to background checks.

PROSPECTIVE EMPLOYEES OF PUBLIC AND PRIVATE SCHOOLS, 24 PA. STAT. ANN. §§ 1-111 AND 5-527

Authorized Inquiry

An employer can require an applicant to provide an official clearance statement obtained from the Department of Public Welfare within the immediately preceding year stating whether the applicant is named as:

- The perpetrator of an indicated or a founded report.
- The individual responsible for injury or abuse in an indicated report for school employee or a founded report for school employee.

The official clearance statement shall not be required for an applicant who both:

- Transfers from one position as a school employee to another position as a school employee in the same school district or in the same organization.
- Has, before the transfer, already obtained the official clearance statement.

Unauthorized Inquiry

This statute does not include unauthorized inquiry provisions.

Other Limitations

This statute does not include any other limitations relating to background checks.

PROSPECTIVE EMPLOYEES WITH A SIGNIFICANT LIKELIHOOD OF REGULAR CONTACT WITH CHILDREN, 23 PA. CONS. STAT. § 6344.1

Authorized Inquiry

For authorized inquiries under this statute, see *Prospective Childcare Personnel, 23 Pa. Cons. Stat. § 6344: Authorized Inquiry*.

Unauthorized Inquiry

This statute does not include unauthorized inquiry provisions.

Other Limitations

This statute does not include any other limitations relating to background checks.

MOTOR VEHICLE TRANSPORTATION, 52 PA. CODE §§ 29.504 AND 29.505

Authorized Inquiry

A common or charter carrier must:

- Perform a criminal history record for all employees operating vehicles. The criminal history must be obtained from the Pennsylvania State Police and every other state in which the person resided during the last 12 months.
- Obtain and review a criminal history record for each driver operating under its authority from the Pennsylvania State Police every two years from the date of the last criminal history check.

Unauthorized Inquiry

This statute does not include unauthorized inquiry provisions.

Other Limitations

This statute does not include any other limitations relating to background checks.

8. For any law identified in *Question 1* addressing criminal background checks, please describe how an employer can collect criminal background information and what an employer can do with criminal background information, including:

- Whether and under what circumstances an application for employment in your state can include a question about convictions or arrests.
- Whether and under what circumstances criminal convictions or arrests can be used as a bar to employment generally.
- Whether and under what circumstances criminal convictions or arrests can be used as a bar to employment in specific jobs (such as child care).

QUESTIONS IN APPLICATION

None of the laws prohibit inquiring into convictions or arrests. However, it is considered best practice in Pennsylvania to not ask about arrests, as this information should not be used in employment decisions (see *Question 9*).

Although beyond the scope of this Q&A, Philadelphia employers may not include check boxes in employment applications asking whether an applicant has ever been convicted of a felony (see Philadelphia Fair Criminal Record Screening Standards Ordinance, *Bill No. 110111-A*).

BAR TO EMPLOYMENT

Criminal History Record Information Act, 18 Pa. Cons. Stat. §§ 9101 to 9183

Employers can only consider felony and misdemeanor convictions that relate to suitability for employment in the particular position for which the employee is being hired.

To request state criminal background checks, employers must contact the Pennsylvania State Police's Central Repository. Employers seeking criminal history record checks must submit payment for required fees with formal requests that give the subject's:

- Name.
- Social Security number.
- Date of birth.
- Sex.
- Race.

Employers can submit requests by mail or through the web-based Pennsylvania Access to Criminal History (PATCH) system.

The Pennsylvania Human Relations Commission (PHRC) published an interview information sheet that only allows the use of arrests for employment decisions where a strong business necessity exists. However, where arrest information was

permissibly used, it was used for currently employed individuals, not new hires, and was fact-specific (see, for example, *Cisco v. United Parcel Servs., Inc.*, 476 A.2d 1340 (Pa. 1984)).

Further, it has been argued that using arrest information disparately affects minorities. Because the law on whether or not the arrest information may be used is unclear, it is best not to use arrest information in employment decisions.

BAR TO EMPLOYMENT IN SPECIFIC JOBS

Private Detective Act, 22 Pa. Stat. Ann. § 23

An employer cannot knowingly employ a person who has been convicted of a felony, or any of the following offenses (unless pardoned):

- Illegally using, carrying or possessing a pistol or other dangerous weapon.
- Making or possessing burglar's instruments.
- Buying or receiving stolen property.
- Unlawful entry.
- Aiding escape from prison.
- Unlawfully possessing or distributing narcotics.
- Picking pockets.
- Solicitation for sodomy or other lewd acts.
- Revocation of or denial of application for private detective or investigator's license by the Pennsylvania Court of Common Pleas or another state court because of criminal conviction.
- Reckless endangerment.
- Terroristic threats.
- Simple assault.

Prospective Childcare Personnel, 23 Pa. Cons. Stat. § 6344

An administrator may not hire an applicant named in the central register as the perpetrator of a founded report of child abuse. When hiring school employees, abuse must have been committed within the five years before verification.

Administrators may not hire an applicant whose background check reveals conviction of certain crimes, or an equivalent federal or out-of-state crime, within the five years before the background check. Disqualifying convictions include:

- Criminal homicide.
- Aggravated assault.
- Unlawful restraint.
- Indecent exposure.
- Harassment and stalking.
- Child endangerment.
- Corruption of minors.

Prospective Employees of Public and Private Schools, 24 Pa. Stat. Ann. §§ 1-111 and 5-527

A school may not employ an applicant, or use a contractor, who would have direct contact with children, if a background check reveals, in the previous five years:

- Conviction of a specified crime.
- Conviction of an equivalent federal or out-of-state crime.

For disqualifying convictions, see *Bars to Employment in Specific Jobs: Prospective Childcare Personnel*, 23 Pa. Cons. Stat. § 6344.

Prospective Employees with a Significant Likelihood of Regular Contact with Children, 23 Pa. Cons. Stat. § 6344.1

For bars to employment under this statute, see *Bars to Employment in Specific Jobs: Prospective Childcare Personnel*, 23 Pa. Cons. Stat. § 6344.

Motor Vehicle Transportation, 52 Pa. Code §§ 29.504 and 29.505

A common or contract carrier may not permit a person to operate a vehicle in its authorized service if convicted of a felony or a misdemeanor in any jurisdiction, if the conviction relates adversely to that person's suitability to provide service safely and legally.

9. If your state has a statute or regulation protecting the employment rights of persons with criminal records, please identify the statute or regulation and briefly describe the rights it confers.

Felony and misdemeanor convictions may be considered by the employer only to evaluate the applicant's suitability for employment in the desired position. Employers must give written notice to any applicants rejected based wholly or partially on criminal records. (18 Pa. Cons. Stat. § 9125.)

EMPLOYER LIABILITY

10. Have courts in your jurisdiction recognized privacy claims brought by applicants or employees as a result of an employer's conducting a background check? If so, please name any relevant cases and briefly describe their holdings.

There are no Pennsylvania cases recognizing privacy claims resulting from an employer-conducted background check.

11. Have courts in your jurisdiction recognized negligent hiring, negligent supervising or negligent retention claims brought by employees, customers or others associated with the employer as a result of allegedly flawed background checks? If so, please name any relevant cases and briefly describe their holdings.

There are no Pennsylvania cases recognizing negligent hiring, negligent supervision or negligent retention claims resulting from allegedly flawed background checks.

STATE LAW REGARDING REFERENCES

12. If your state has any law governing employment references, please identify that law and:

- Describe any requirements for obtaining references for employees or applicants.
- Describe any requirements for giving references for employees or former employees (including any provision insulating employers from or exposing employers to liability because of references given).

OBTAINING REFERENCES

There are no requirements for obtaining references for employees or applicants in Pennsylvania.

GIVING REFERENCES

An employer disclosing information about an employee's performance to a prospective employer, at the request of the employee or prospective employer, is presumed to be acting in good faith. Unless lack of good faith is demonstrated by clear and convincing evidence, the employer cannot be held liable for the disclosure. To show a lack of good faith, the complaining employee must establish that the employer disclosed information that:

- It knew was false or in the exercise of due diligence should have known was false.
- It knew was materially misleading.
- Was false and given with reckless disregard of the truth or falsity of the information.
- Was prohibited by a:
 - contract; or
 - civil, common law or statutory right of the employee.

(42 Pa. Cons. Stat. § 8340.1.)

SOCIAL NETWORKING IN BACKGROUND CHECKS

There are no laws relating to social networking in Pennsylvania.

13. Are there statutes, regulations, cases or any other guidance in your state on an employer's use of social networking or other online searches of applicants or employees for employment background check purposes? If so, please briefly characterize them.

ADDITIONAL RESOURCES

14. If the state agency charged with oversight of background check or references laws in your state has useful on-line guidance or forms, please provide the link for those resources and a brief description of them.

The Pennsylvania Human Rights Commission has prepared an information fact sheet to aid job applicants, called *Pre-employment Inquiries: What May I Ask? What Must I Answer?*

15. Please describe any other significant background check or reference laws, cases or requirements specific to your state not otherwise addressed in this survey.

There are no additional significant background check or reference laws, cases or requirements in Pennsylvania.

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PRACTICAL LAW COMPANY®



Practical Law Company
747 Third Avenue, 36th Floor
New York, NY 10017
646.562.3405
plcinfo@practicallaw.com
www.practicallaw.com