

Background Checks on Minor Individuals

Question:

Can an employer run background checks on minors?

Response & Analysis:

Yes, employers may request a background check on a minor applicant and, at times, may be required to conduct such background checks, by law. However, employers must be aware that certain requirements and restrictions exist for background checks on minors.

Who is a minor?

The United States generally considers a minor as any individual under the age of 18. In Alabama, Delaware, and Nebraska, a minor is anyone under the age of 19 and in Mississippi, a minor is under the age of 21. In states such as Arkansas, Nevada, Ohio, Tennessee and Utah, a minor is a “child under the age of 18 or until the child completes high school, whichever is earlier.”

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Outside of the U.S., most countries consider minors between the ages of 14 and 21. A detailed chart of minority ages in other countries can be accessed here: <http://chartsbin.com/view/545>

Required Consent

Under most state laws, a minor does not have authority to enter into an agreement or give consent in his or her own capacity. A parent or legal guardian possesses full legal authority over the minor, with respect to any legally binding decision. Therefore, when running a criminal background check on a minor, an employer must obtain parental consent to authorize the background check.

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We recommend, as a matter of best practice, for employers to obtain consent from any minor, along with the minor's parent or legal guardian, before conducting a background check. Employers may wish to seek counsel to draft a consent form applicable to minors. If a minor cannot provide consent from a parent or legal guardian, we recommend for employers to consult their counsel for an alternative practice.

Availability of Records

Most states and countries outside the U.S. have laws that restrict employers from using juvenile records for employment purposes. For example, California and Massachusetts have laws that prohibit employers from inquiring about any juvenile records for employment purposes. (See California Labor Code, Section 432.7) (See 804 CMR 3.01). Even though a minor's parent or legal guardian may consent to a background check, an employer may not be able to obtain all records requested due to regulatory restrictions.

Unavailable Records

Employers will not be able to access a minor's sealed criminal record. It is worth noting that majority of states seal juvenile criminal records unless the minor was criminally convicted as an adult. Additionally, employers cannot access credit information for minor because most individuals under the age of 18 cannot obtain credit.

Available Records

Once obtaining parental consent, employers will likely have access to a minor's past employment and education records. Employers may also obtain any personal reference checks, if available.

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