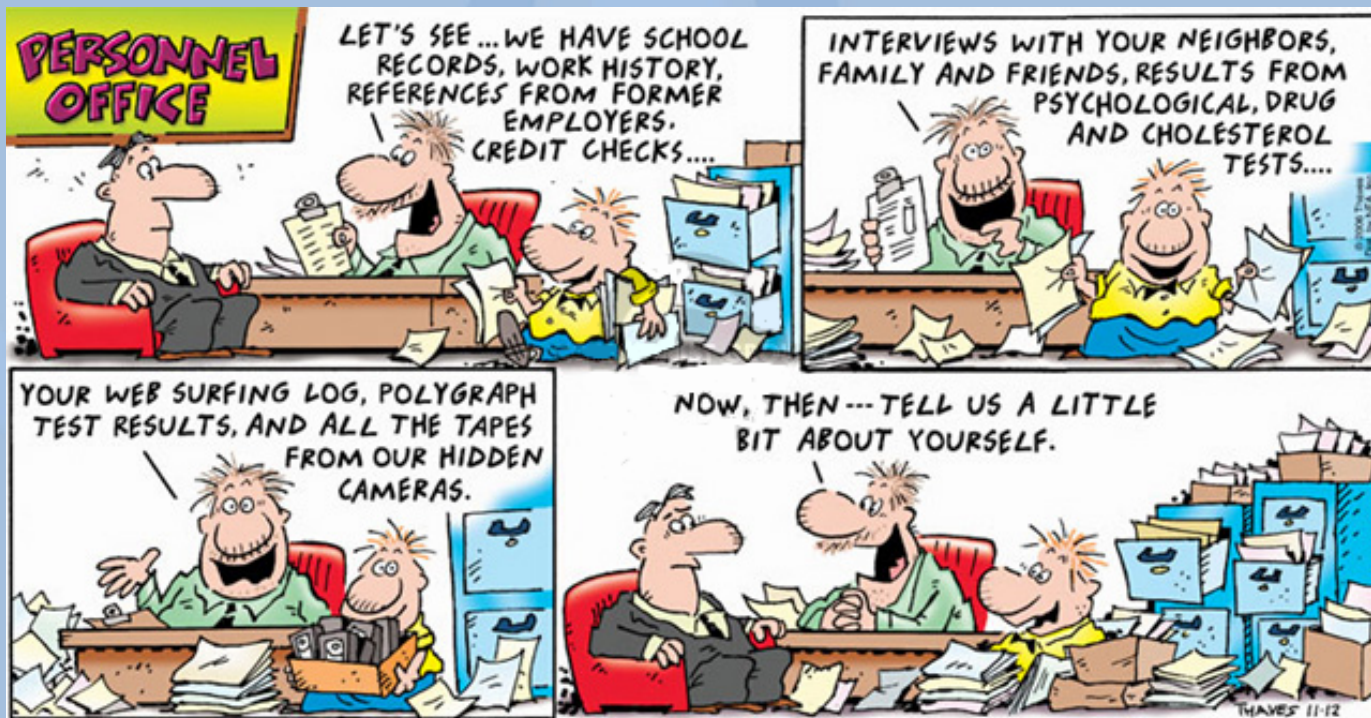


Background Checks and Due Diligence Pertaining to Applicants

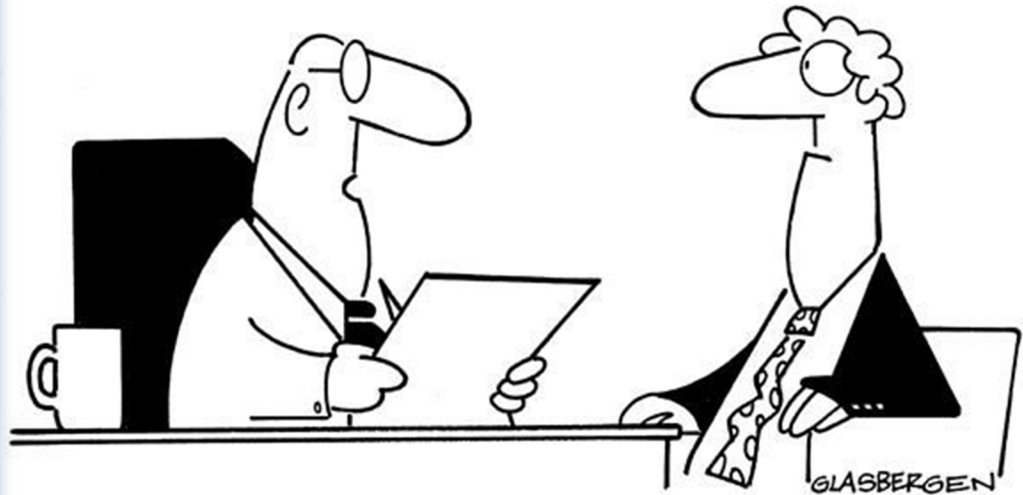
Emily Brown



What do we mean by “background check”?

- Work history
- Education
- Criminal record
- Financial history
- Medical history
- Social media

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“All applicants get a thorough background check. We found some apps on your phone that make you look like an idiot.”

Scope

- General Overview of EEOC/TWC and FTC regulations for each step of the application process
 - Before the Background Check (i.e. Interview Process)
 - Appropriate Use of Background Check Information
 - Disposal of Applicant Background Information
- Specific Issues Related to:
 - Medical Inquiries
 - Genetic Information
 - Arrest and Conviction Records



"We were going to hire you, but a background check showed you pulled a girl's ponytail in the 2nd grade. We don't need abusive people working here."

Before the Background Check



- EEOC
 - Key: treat everyone equally
- FTC
 - Key: communicate intentions and obtain written permission from applicant to conduct a background check

Using Background Information

– EEOC

- Apply same standards to everyone
- Take care with employment decisions based on background problems more common among certain races, colors, national origin, sex, religion, age, or disability
- Make exceptions for problems revealed caused by disability

– FTC – adverse actions

- Before Taking the Adverse Action
- After Taking the Adverse Action



Disposing of Background Information

- EEOC retention requirements
 - Generally, one year after records were made or after a personnel action was taken, whichever comes later
 - For educational institutions and state and local governments, two years
- FTC
 - Must be disposed “securely”



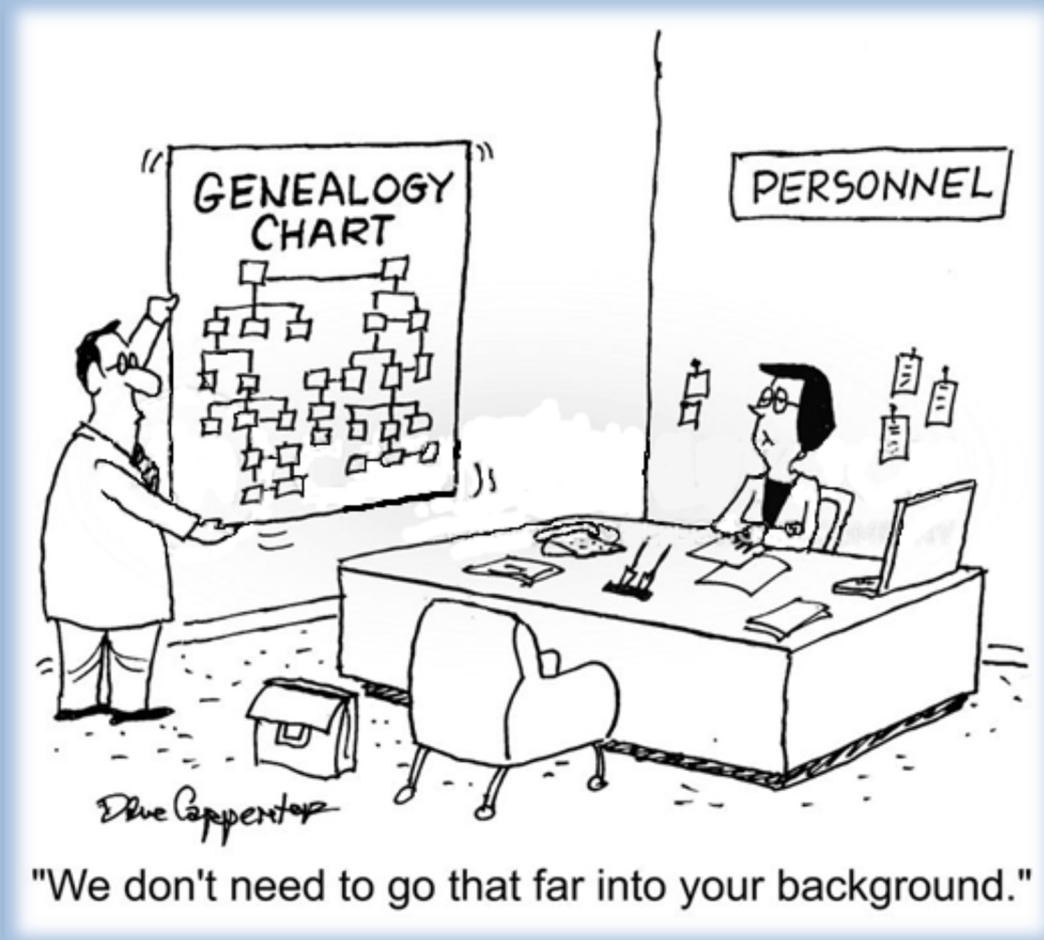
Medical Inquiries

- Preemployment:
 - Cannot ask disability related questions
 - What can you ask?
- During Employment
 - an employer may make disability-related inquiries and require medical examinations only if they are job-related and consistent with business necessity



Use of Genetic Information

- Title II of The Genetic Information Nondiscrimination Act (GINA)
- Why is it needed?
- What does it prohibit?



Arrest and Conviction Records

- How far back can you go?
 - 7 years
 - Exception – the annual salary exceeds \$75,000
 - Applies when employers hire a consumer reporting agency
- Arrests Without Conviction
 - Innocent until proven guilty
- EEOC limitations
 - Discrimination restrictions



Additional Resources

- EEOC – <https://www.eeoc.gov/background-checks>
- FTC - <https://www.ftc.gov/tips-advice/business-center/guidance/background-checks-what-employers-need-know>
- TWC - <https://www.twc.texas.gov/>