

# BACKGROUND CHECK POLICIES



## THE COMMAND POST

SERIES - 3 / ARTICLE - 10  
MAY 17, 2023

By **Jeffrey Brochin, Esq.**

**GreenPoint**>  
Law & Compliance

[william.anderson@greenpointglobal.com](mailto:william.anderson@greenpointglobal.com) | [pranav.menon@greenpointglobal.com](mailto:pranav.menon@greenpointglobal.com)

International Corporate Center, 555 Theodore Fremd Avenue, Suite A102 Rye, NY 10580

[www.greenpointlegal.com](http://www.greenpointlegal.com)

**How would you feel about being considered as a candidate for a job in a law firm before you ever even applied? Worse still, how would you feel about being rejected for that job before you even got to the interview?** Today, law firms are checking out candidates on social media before the candidate has even approached the firm. In fact, 91% of firms will research you online as part of their vetting process. What happens when a candidate ‘fails’ a background check? Various circumstances dictate whether the adverse ‘hits’ can be resolved or whether they will doom the candidacy. We will examine background check policies and their ramifications.

## Recruitment Via Social Media

A survey conducted by The Society for Human Resource Management disclosed that 77% of respondent companies use social networking sites to recruit candidates, and even upon receiving a referral for a candidate from a current employee, 91% of firms will still conduct an online background check. In an effort to reach as many potential candidates as possible, firms now regard the harnessing of social media as an essential part of their recruitment strategy and use it as a mainstream tool and not just as a cutting-edge add-on, as it was viewed just a few years ago. The reason why social media plays such an important role in recruitment? The answer is that millennials now make up 90% of the workforce and 88% of that demographic use social media. It is, therefore, the foremost tool for casting the net of recruitment and then conducting background checks.

## Which Platforms to Check?

Experts note that LinkedIn is not the right place for searching out law students because those with little work experience will not yet have built up a work history to display there. Rather, the social media sites of choice for the target demographic are platforms like Twitter, Snapchat, and Instagram, and it is there that employers can both publicize job openings

as well as conduct their online background checks. And after learning more about a candidate—perhaps after an initial interview—the employer can then refer to social media for verification of a candidate’s representations.

Critics of such widespread use of social media to vet job candidates claim that the practice can have an adverse impact on economically disadvantaged persons who may not have a significant social media presence. Therefore, employers should not rely so much on social media for recruitment, rather only use it to supplement more traditional recruitment methods. That argument is countered, however, by those who say that today job candidates across all ethnic and economic sectors are fully immersed in social media and that to claim otherwise is in itself a racist or discriminatory viewpoint.

## What Gets Checked

Law firms typically look at an applicant’s employment history, education, criminal record, and credit history, as well as social media content. Any of those categories might raise a red flag leading to the candidate being disqualified from consideration. Among concerns that might arise regarding employment history are time gaps between jobs, short-term periods of employment, and discrepancies between the salary represented and the compensation that typically goes with the position. Credit check

**“IMPORTANTLY, CONDUCTING BACKGROUND CHECKS APPROPRIATELY AND FOLLOWING ALL APPLICABLE LAWS, RULES, AND GUIDELINES IS IMPORTANT FOR ALL EMPLOYERS. IT DOESN’T MATTER IF YOU HAVE 5 OR 500,000 EMPLOYEES. THE RULES — AND THE RISKS — ARE RELEVANT TO YOU!”**

**—Linda Pophal,  
SHRM-SCP, SPHR, HR  
Professional**

information may only be relevant to concerns about a new hire handling client finances, and similarly, a negative criminal conviction report might merely reveal some rather commonplace occurrences or disclose matters that are of real significance.

## Impact of a 'Failed' Background Check

Given the rather pejorative context of the term 'failed', most background check services shy away from using that terminology when discovering adverse 'hits' in the course of conducting a background check, and your own organization should probably follow that lead. What a 'hit' means is that the screening returned unexpected results, which may either result in halting the process of going further with the candidate's application or requiring a deeper examination. This is where a written policy on background checks is important because not only does it provide guidance to HR and others involved in hiring the lawyer, but it also lends uniformity and consistency, which can be referenced in the event a rejected candidate seeks to challenge a declination legally.

## Developing a Background Check Policy

Not all adverse reports necessarily automatically disqualify the candidate from the position, and, depending upon the severity of the adverse reporting event, or its relevance to the position being recruited for, it might be advisable to give the candidate an opportunity to explain the adverse reporting and address the employer's concerns. Among the

steps to be included in developing a sound background check policy and procedure are the following:

- › A compliant disclosure to the candidate as to how your background check procedure works, along with a clear, concise authorization and release form to be signed by the candidate;
- › A stated hierarchy as to who the decision-makers will be in deciding upon the hiring of a candidate and who has veto power over a hiring decision;
- › A policy as to adverse report notification to the candidate, the time for the candidate to have an opportunity to respond, and under what circumstances an offer can be retracted;
- › Compliance with the Fair Credit Reporting Act (FCRA) requirements and compliance with state requirements.

It should be noted, however, that a candidate who refuses to grant authorization for a background check to be performed, or for past employers to be contacted, or who dismisses background check issues without responding, or who has blatantly falsified representations on his or her resume or application, are probably candidates the firm would be wise not to continue with.

The bottom line for any background check policy considerations is that they should provide the firm with accurate data for making an informed decision one way or another regarding the prospective hire.

## Executive Summary

### 1. The Issue

How to develop a sound background check policy for your firm?

### 2. The Gravamen

A written policy that applies equally to all candidates and which can be clearly disclosed to the candidate upfront is the most prudent step to take regarding the rather touchy issue of background checks.

### 3. The Path Forward

Remember that not all adverse reporting necessarily spells doom for the hiring of an otherwise qualified candidate.

## Action Items:

### 1 Know Your Compliance Requirements:

Besides FCRA, various other privacy laws might apply to your firm's conduct of a background check, and it is important to know what such compliance entails.

### 2 Use of Social Media:

Virtually no recruitment campaign can be effective today without reaching out via social media, and therefore, this first step in the process must speak to the candidate market you wish to address.

### 3 When to Request A Response:

Oftentimes, an adverse reporting event may have a credible explanation, which, if the candidate is given the opportunity to respond, may clear up an otherwise problematic 'hit'.

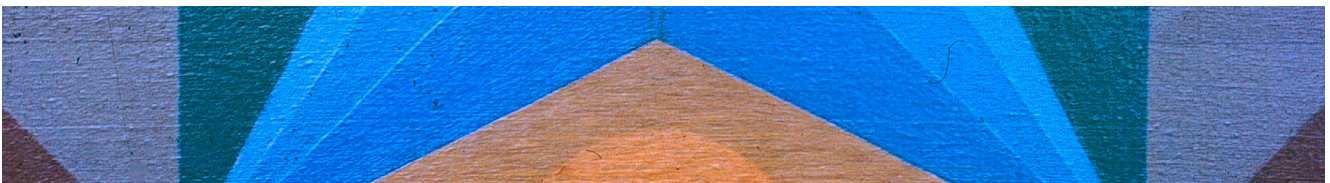
### 4 A Hiring Hierarchy:

It is advisable that your hiring process be multi-layered (but without becoming bureaucratic) so as to give the various hiring stakeholders a say as to whether to proceed with a candidate.

---

## Further Readings

1. <https://www.linkedin.com/pulse/how-hiring-decision-makers-vet-you-online-before-after-paul-sims/>
2. <https://www.legalmatch.com/law-library/article/employee-background-check-lawyers.html>
3. <https://www.techtarget.com/searchhrsoftware/feature/Employee-background-check-errors-harm-thousands-of-workers>
4. <https://www.betterteam.com/disqualify-background-check>
5. <https://www.shrm.org/hr-today/news/hr-magazine/pages/0914-social-media-hiring.aspx>







## Jeffrey Brochin, Esq.

GREENPOINT STAFF COUNSEL  
AND CONTENT EDITOR

After receiving his Juris Doctor degree from The John Marshall Law School in Chicago, Mr. Brochin served as an Administrative Law Judge with the Illinois Department of Labor for six years where he presided over cases dealing with job separation issues and matters pertaining to contested Unemployment Insurance claims. He also co-wrote the agency's administrative rules, and periodically served as a 'ghost writer' for Board of Review decisions. Following that position, he was Director of Development for a Chicago-area non-profit college where he was responsible for High Net Worth donations to the institution. For the next eighteen years he practiced as a solo practitioner attorney with an emphasis in the fields of Real Estate law and Commercial Contracts transactions, and was an agent for several national title insurance agencies.

In 2003 he was recruited to head up a U.S. title insurance research office in Israel, a position he held for four years, and between 2007-2017 he participated in litigation support for several high-profile cases. He has taught Business Law as a faculty member of the Jerusalem College of Technology, and has authored a wide variety of legal White Papers and timely legal articles as a professional legal content writer for GPL clients. Separate from his legal writing, he has co-authored academic articles on Middle East security topics that have been published in peer-reviewed publications.



## William H. Anderson, Esq.

MANAGING DIRECTOR AND HEAD OF  
FINANCIAL PRODUCTS AND SERVICES

William Anderson is Managing Director and Head of Law & Compliance. He leads the GreenPoint practice in providing regulatory, legal, and technology solutions to law firms, legal publishers, and in-house law departments around the world, overseeing our team of experienced US attorneys and data and technology experts. Will has over 25 years' experience working with corporations to improve the management of their legal and corporate compliance functions. Will began his legal career as a litigator with a predecessor firm to Drinker, Biddle LLP. He then served as in-house counsel to Andersen Consulting LLP, managing risk and working with outside counsel on active litigation involving the firm.

Will has leveraged his legal experience interpreting regulations and appearing before federal (DOJ, SEC, FTC) and state agencies (NYAG) to oversee research and other areas at Bear Stearns. In this capacity, he counseled analysts on regulatory risk and evolving compliance requirements. Will also consulted on the development of a proprietary tool to ensure effective documentation of compliance clearance of research reports. Will then went on to work in product development and content creation for a global online compliance development firm pioneering the dynamic updating of regulated firms' policies and procedures from online updates and resources. Will holds a Juris Doctorate with High Honors from the Washington University School of Law in Saint Louis and is admitted to state and federal bars. He lives in Pawling, NY, with his wife and daughter.



## Sanjay Sharma, PhD

FOUNDER AND CHAIRMAN



## Pranav Menon, Esq.

LEGAL RECRUITMENT  
MANAGER AND DATA  
PRIVACY SPECIALIST – LAW  
& COMPLIANCE | GPESR

# GreenPoint>

## Law & Compliance

### About GreenPoint Law & Compliance

- ▶ GreenPoint Global was founded in 2001 and since that time has faithfully served an expanding roster of clients. GreenPoint leverages a unique combination of US-trained attorneys and proprietary technology to deliver a unique offering of skill and flexibility to meet client needs.
- ▶ Our core team of experienced US attorneys is based in Israel and works US hours. The breadth of experience of our attorneys ensures high-quality, cost-effective results across a wide range of legal, compliance, and regulatory matters.
- ▶ GreenPoint's methodology and proven track record of achieving client objectives has resulted in a broad base of clients in the United States, ranging from Fortune 500 insurance companies to solo practitioners, law firms, in-house law departments, and legal publishers. GreenPoint attorneys are selectively recruited and deployed based on possessing demonstrable subject matter expertise covering a broad spectrum of substantive US laws and regulations. The work product of our attorneys is thoroughly vetted internally before delivery to client. Adherence to quality, value and flexibility is at the core of our foundation.

# GreenPoint>

## Global

### About GreenPoint Global

- ▶ GreenPoint Global provides litigation support, finance and technology solutions to insurers, law firms, banks, and in-house law departments through our subject matter experts and process specialists.
- ▶ Founded in 2001 and headquartered in Rye, New York, GreenPoint has grown to over 500 employees with a global footprint. We have a stable and growing client base that ranges from small and medium-sized organizations to Fortune 1000 companies worldwide. Our production and management teams are located in the US, India, and Israel with access to deep pools of subject matter experts. Our greatest strength is our employee-base of experienced lawyers, paralegals, process specialists, financial analysts, and software developers. We have leading edge software development capabilities with over 50 professionals on staff, working on internal and client projects.
- ▶ GreenPoint is certified by the TÜV SÜD (South Asia) for the highest standards of Quality Management (ISO 9001:2015) and Information Security Management (ISO 27001:2013). GreenPoint is certified as a Minority and Woman Owned Business Enterprise (MWBE) by New York City and a Minority Owned Business Enterprise (MBE) by the State of New York. GreenPoint complies with all federal and state contracting requirements. GreenPoint is owned by its founders and principals and is debt free. For comprehensive information on our services and products under Law & Compliance and Finance, please visit our subsidiary websites through the division's menu.

