

Tread carefully when screening potential hires, experts say, *Newsday*, ft. Keith Gutstein

Keith Gutstein, Esq., Co-managing Partner in the Long Island office of Kaufman Dolowich & Voluck, LLP, was quoted in an article written by Jamie Herzlich for Newsday (September 11, 2017) on prospective employee criminal conviction questioning.

Don't ask prospective employees about criminal convictions until after a conditional offer of employment is made, experts say.

Many employers use background screening to vet prospective employees.

In fact, 89 percent of companies conduct employment background checks, and 80 percent of the time these checks uncover issues and information they otherwise wouldn't have found, according to a recent report on background screening trends and best practices by Sterling Talent Solutions.

Still, background screening laws can be complex, which is why 25 percent of survey respondents cited ensuring they are complying with ever-changing screening laws as their second biggest screening challenge.

All employees have the right to be given the results of their background check as well, she says, noting there is a specific process an employer must follow if a background check results in not hiring the candidate.

For one, an employer must provide the applicant notice of the adverse action (ie. the decision to not hire the person) and other information that allows the applicant to see the basis of that decision, says Keith Gutstein, a partner at the Woodbury law firm of Kaufman Dolowich & Voluck.

The applicant also has the right to contact the agency that did the report, and the employer must provide the name and phone number of the agency to the applicant, he says. The applicant then has the right to dispute the agency's finding with the agency, he says.

Be careful not to deny employment based solely on a criminal conviction, he says. The New York Correction Law requires a further analysis to be done before making an adverse employment decision, says Gutstein.

"You have to figure out, Would hiring this applicant pose an unreasonable risk to property or people?" he says. "Does the conviction bear a direct relationship to the job?"