LABOUR & EMPLOYMENT

NEWSLETTER
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EMPLOYEE BACKGROUND CHECKS AND REFERENCES

Background checks help assess the suitability of a prospective employee. They come in a variety of forms: criminal record checks, credit and consumer reporting checks, motor vehicle record checks, educational background checks, etc. There are, however, some restrictions.

Human rights legislation prohibits employers from discriminating on the basis of criminal convictions that are unrelated to the job.

B.C. private sector privacy legislation restricts the collection of personal information to what a reasonable person would consider appropriate in the circumstances. The "appropriate" inquiry will vary depending on the job. If the job requires driving, a motor vehicle record check will be relevant and appropriate. If no driving is required, a motor vehicle record check would not be proper.

> *the criminal record will only be disclosed if the person being checked has provided his or her fingerprints*

B.C. private sector privacy legislation does not require consent where the collection of personal information is reasonable for establishing an employment relationship. Notice to the prospective employee is sufficient. The notice must be provided before the information is collected and should specify the type of information the employer intends to collect as well as the purpose for collection. The notice can be on the employment application form.

The Canadian Police Information Centre (CPIC) recently changed its policy on providing criminal record checks. If a criminal record check shows that there is a record, the details of the criminal record will only be disclosed if the person being checked has provided his or her fingerprints. This could cause delays in cases where there is a criminal record.

There are other forms of background checks. A Google search or a check of social networking sites can provide information about a prospective employee. No consent is required to access information that is publicly posted.

Consent is required to contact references. Applicants who provide references have impliedly consented to contacting those people. If there is a list of former employers (which may appear on a resume but not be listed as references), the employer must obtain the applicant's consent before contacting the previous employers.

Requests for references usually come to employers in two ways: a departing employee requests a reference letter or a prospective new employer requests a reference for a former employee.

In British Columbia, employers are not legally required to provide reference letters unless they have agree to do so. Reference letters can, however, assist former employees in finding a new job (thereby mitigating potential severance claims). Employers should not provide references without first obtaining the former employee's consent. If the former employee has not consented, then the employer should not provide a reference or any other information about the employee.

Employers should not provide references that misrepresent the former employee. An employer can be sued for misrepresentation in a reference. For example, if an employee is terminated for dishonesty, but the employer provides a glowing reference, the new employer could sue for damages for misrepresentation if its business suffers loss or damage caused by dishonest acts of the employee.

The content of this Newsletter is intended to provide information on Bull, Housser & Tupper LLP, our lawyers and recent developments in the law. The information contained herein is summary in nature, and does not constitute legal advice. For additional details or advice concerning specific situations please contact any member of our Labour & Employment Group.

Bull, Housser & Tupper LLP
3000 ROYAL CENTRE . 1055 WEST GEORGIA STREET . VANCOUVER . BC . CANADA . V6E 3R3
PHONE 604.687.6575 . FAX 604.641.4949 . WWW.BHT.COM

If you have any questions, please contact any member of our Labour & Employment Group.

LABOUR & EMPLOYMENT GROUP

Larry Page
604.641.4902
dlp@bht.com

Howard Ehrlich
604.641.4901
hle@bht.com

Simon Margolis
604.641.4871
sbm@bht.com

Herb Isherwood
604.641.4818
hji@bht.com

Judith Macfarlane
604.641.4910
jam@bht.com

Ryan Berger
604.641.4956
rpb@bht.com

Christian Petersen
604.641.4903
cjp@bht.com

Taryn Mackie
604.641.4877
tlm@bht.com

Holman Wang
604.641.4997
how@bht.com

Andrew Schafer
604.641.4858
ans@bht.com