

# Allow applicants to answer negative background-check results

It's true that your company could be held liable if it rejects an applicant based on inaccurate data in his background check. But don't stop doing background checks simply because you fear "getting it wrong."

If a discrepancy arises between an applicant's response on the job application and the background report, address it with the applicant. Give him a chance to challenge the finding. The Fair Credit Reporting Act (FCRA) says you must notify applicants in writing if they've been fired or denied a job because of background-check information.

**Recent case:** A Hilton hotel in Illinois conducted a background check on Edward Socorro, an employee who applied for a sales director job. On his application, Socorro truthfully answered that he'd never been convicted of a felony or a misdemeanor. But the background check conducted by an outside investigation company showed he had served six months in jail.

Without disclosing the results, Hilton asked him about his criminal history, and he repeated that he had no criminal record. The hotel promptly fired him, saying he lied on his application. To make matters worse, the hotel then told others that he was fired because he was a convict.

He sued, alleging defamation and false light invasion of privacy. A district court gave the green light to Socorro's suit. And the hotel's loose lips were enough for the court to find reckless disregard to support the employee's privacy claim. (Socorro v. IMI Data Search, Inc., No. 02 C 8120, N.D. Ill., 2003)

**Bottom line:** Don't act until the worker provides his side of the story. Also, remind managers that any pre-hire checks are strictly confidential.

? Resources: Background checks

- The Federal Trade Commission (FTC) offers a free online booklet, Using Consumer Reports: What Employers Need to Know. Go to [www.ftc.gov/bcp/online/pubs/buspubs/credempl.htm](http://www.ftc.gov/bcp/online/pubs/buspubs/credempl.htm) or call (877) 382-4357.
- The FTC's Fair Credit Reporting Act site: [www.ftc.gov/os/statutes/fcrajump.htm](http://www.ftc.gov/os/statutes/fcrajump.htm).