



Avoiding “The Predator” Controversy: Are Background Checks a Solution?

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As a preliminary matter, a studio can inquire, investigate and/or act on a potential employee’s criminal history *after* (not before) providing the actor or crew member with a conditional offer of employment. If the studio moves forward with a background check (after completing certain procedural requirements), it can generally consider a potential employee’s criminal conviction history in deciding whether to move forward with employment. If the background check reveals any of the disqualifying conduct before denying employment, the studio must conduct an individualized assessment as to whether the conviction has a “direct and adverse relationship” with the specific job duties (which assessment, under Los Angeles municipal law, must be documented in writing). Specifically, the studio must consider the nature and gravity of the offense, the time that has passed since the offense and completion of the sentence, and the nature of the job. If the studio plans to deny employment after conducting this assessment, it must provide the potential employee with its reasoning for denying employment and an opportunity to respond. After considering any response from the potential employee, if the studio decides not to hire them anyway, it must send them written notice of the studio’s adverse decision. Given statutorily mandated waiting periods, this process can take up to ten days.

In addition to these requirements, studios should be aware of other factors related to conducting background checks. For example, studios that do not consider background checks uniformly for all applicants—regardless of their stature—may face negative publicity. Studios may open themselves up to lawsuits for failing to follow the requisite procedural requirements noted above, or if their employment decisions have a disparate impact on a minority group. Performing background checks also involves administrative costs related to

(as well as the additional lead time associated with) conducting individualized written assessments and providing multiple notices to job applicants. For smaller-budget films, running background checks may not be worth these administrative burdens. On the other hand, Fox would likely have avoided the unbudgeted costs and negative publicity associated with cutting Striegel's scene if it had performed and acted on a background check on Striegel before he showed up on the film's set. Ultimately, given the hurdles imposed by California's background check laws, there is no one-size-fits-all approach, and studios must weigh these considerations in determining whether it makes sense for them to conduct background checks during the casting process.

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