

Albany SHRM

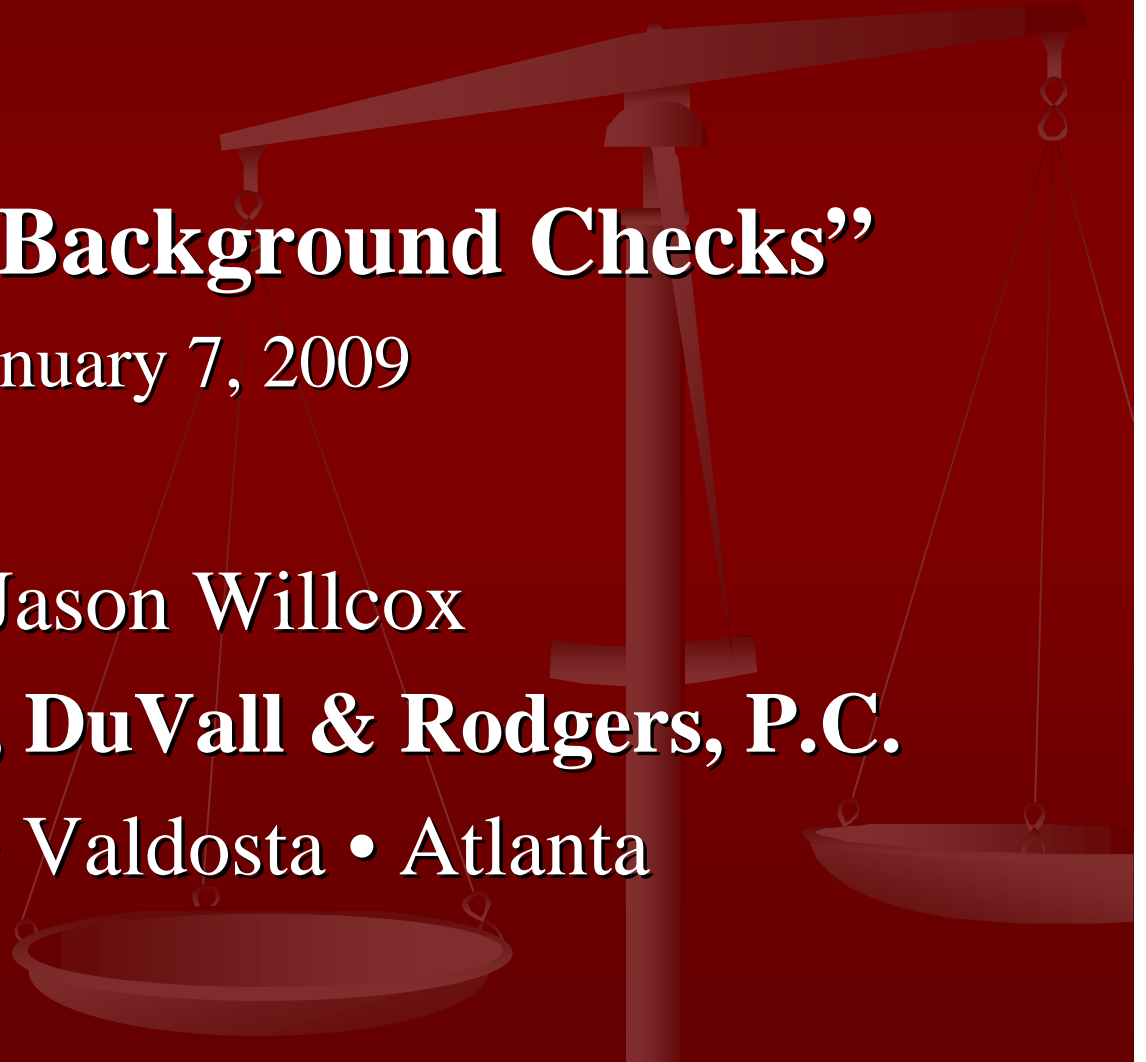
“Hiring and Background Checks”

January 7, 2009

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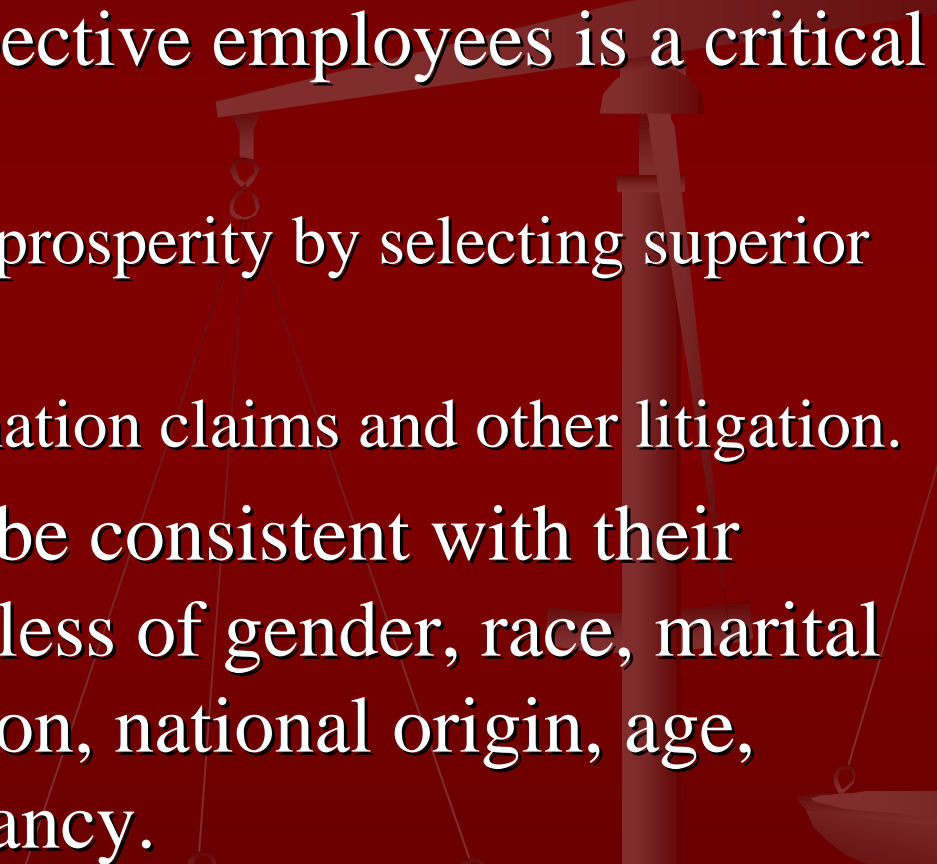
Specific Topics:

■ Hiring

- Interviewing
- Background checks
- General Employment Application Checklist

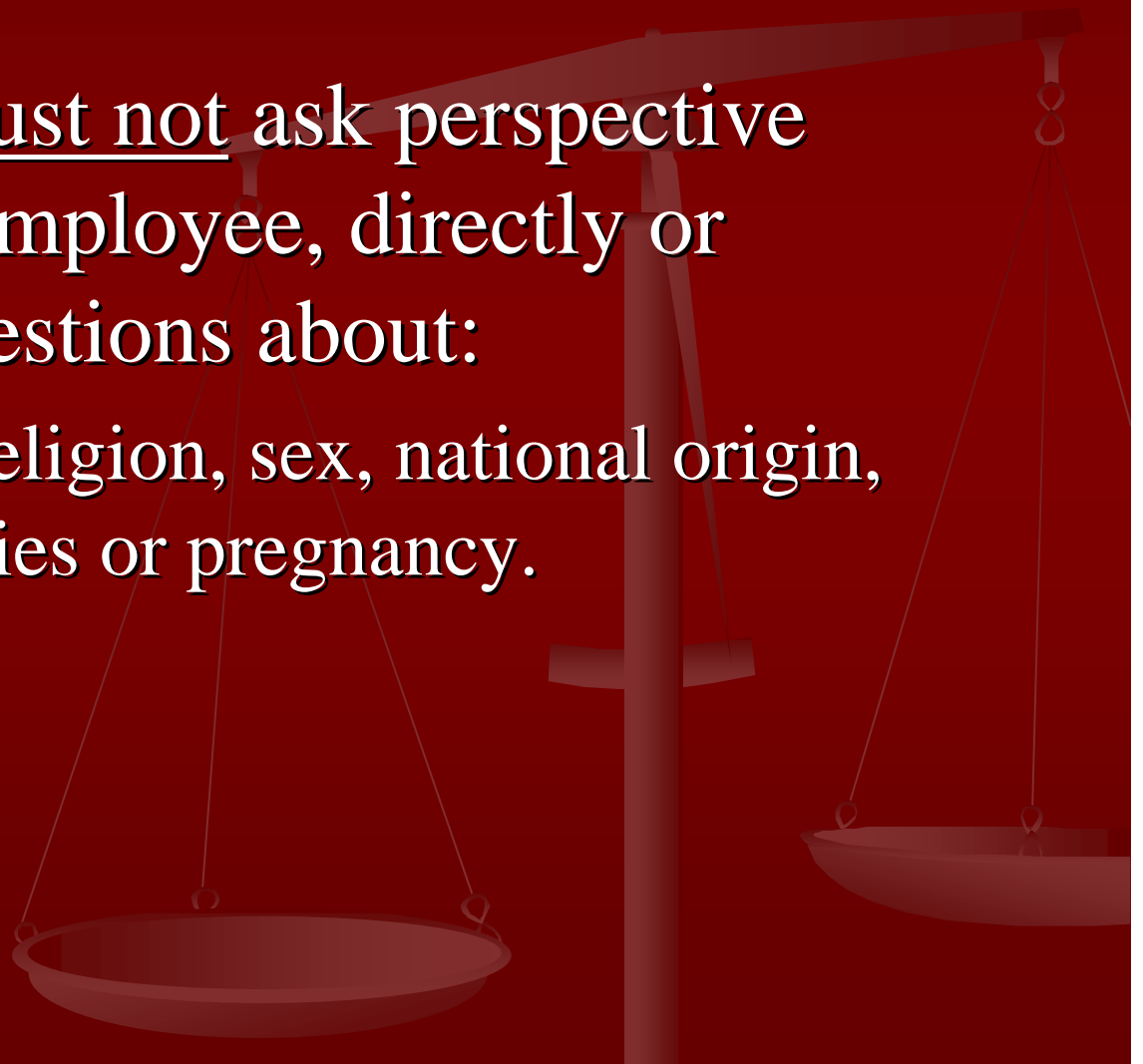


Interviewing

- Interviewing perspective employees is a critical task.
 - employer's future prosperity by selecting superior employees
 - avoiding discrimination claims and other litigation.
 - Interviewers must be consistent with their questioning regardless of gender, race, marital status, color, religion, national origin, age, disability or pregnancy.
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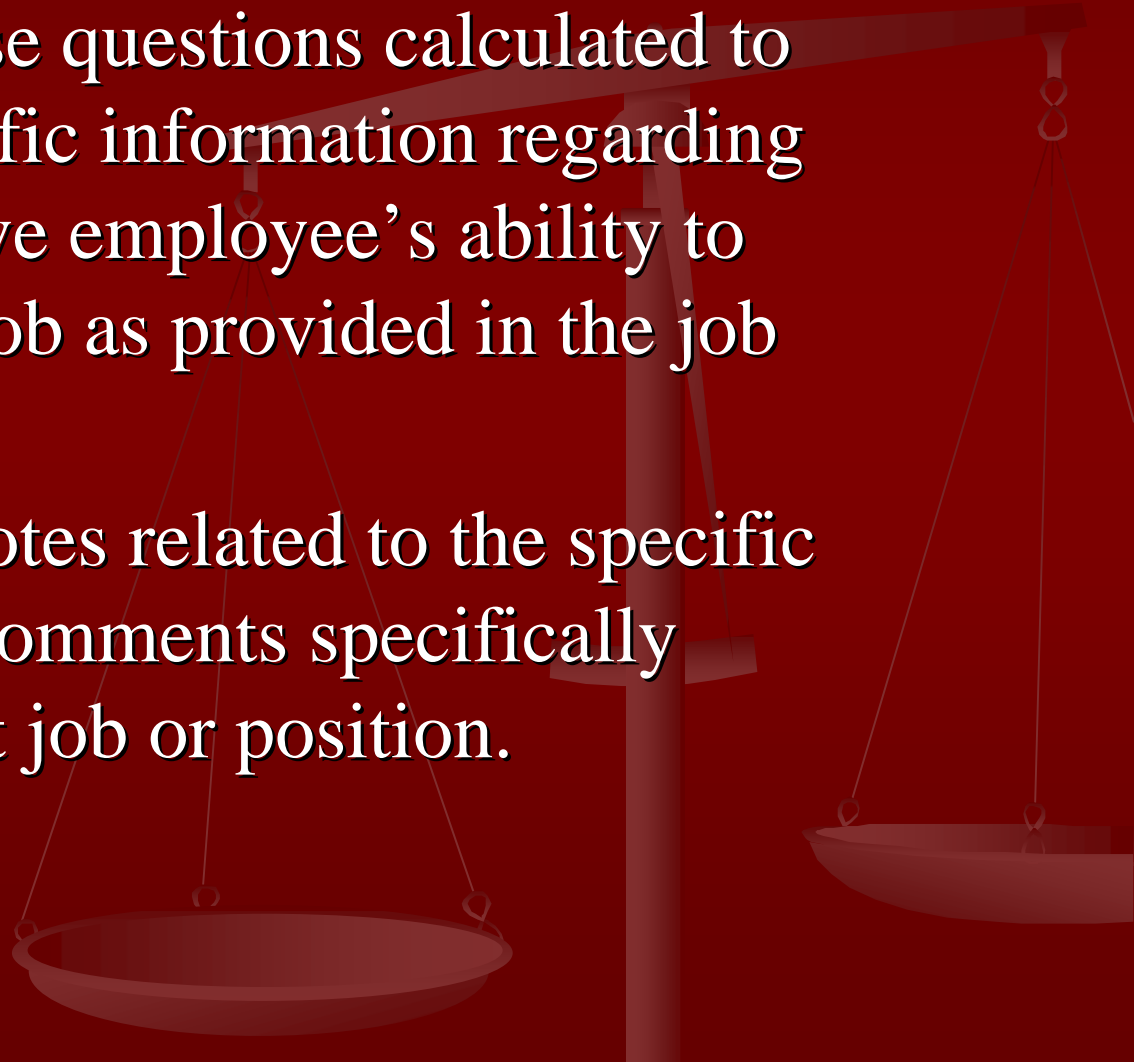
Interviewing

- Employers must not ask perspective applicant or employee, directly or indirectly, questions about:
 - race, color, religion, sex, national origin, age, disabilities or pregnancy.

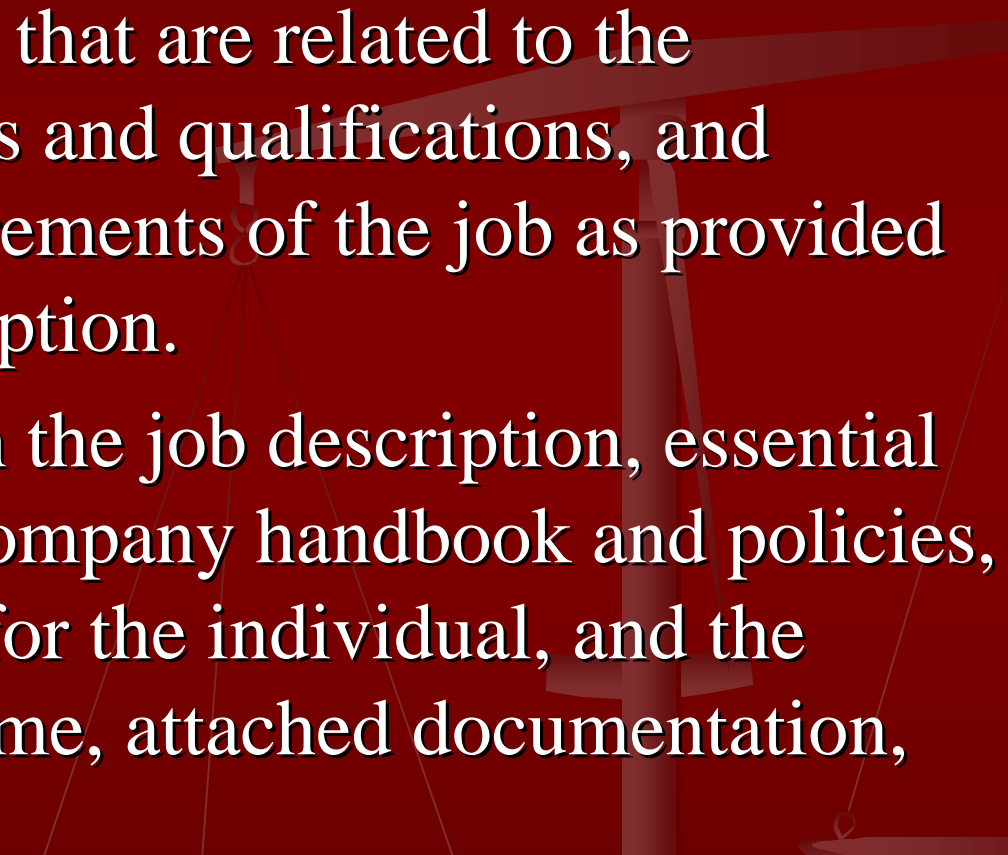


Interviewing

- Only ask those questions calculated to provide specific information regarding the prospective employee's ability to perform the job as provided in the job description.
- Only make notes related to the specific job and any comments specifically related to that job or position.



Interviewing

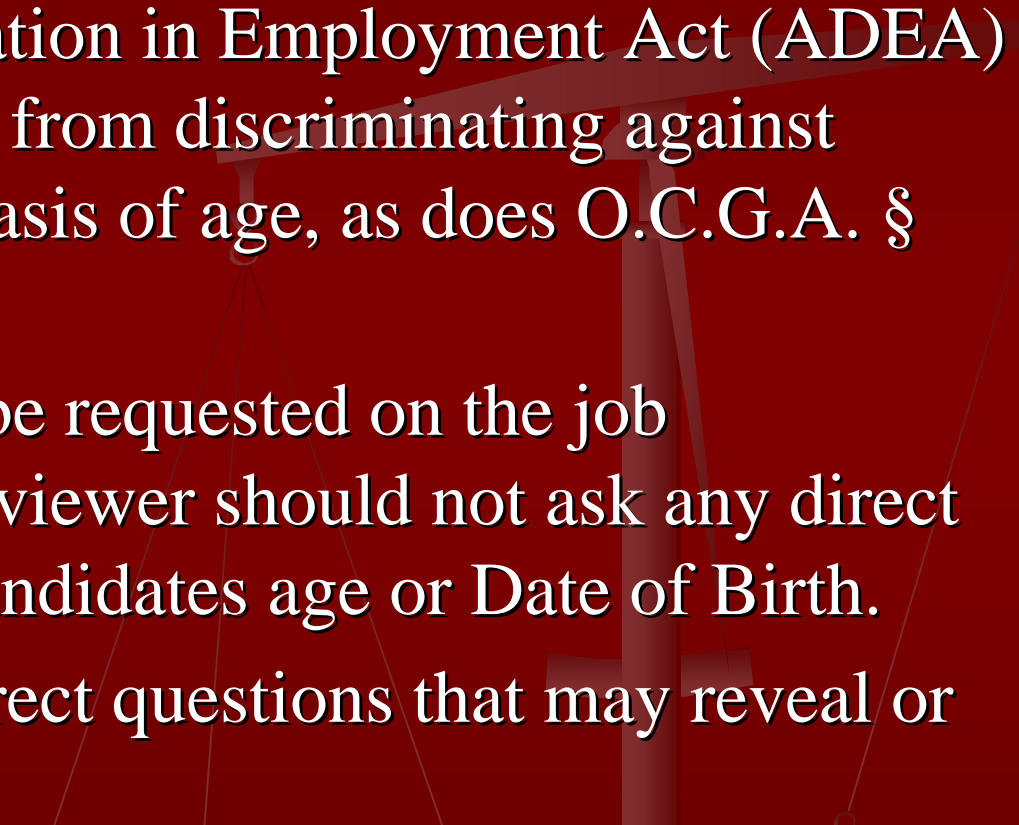
- Focus questions that are related to the applicant's skills and qualifications, and regarding requirements of the job as provided in the job description.
 - Be familiar with the job description, essential job functions, company handbook and policies, the application for the individual, and the applicant's resume, attached documentation, and references.
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Interviewing



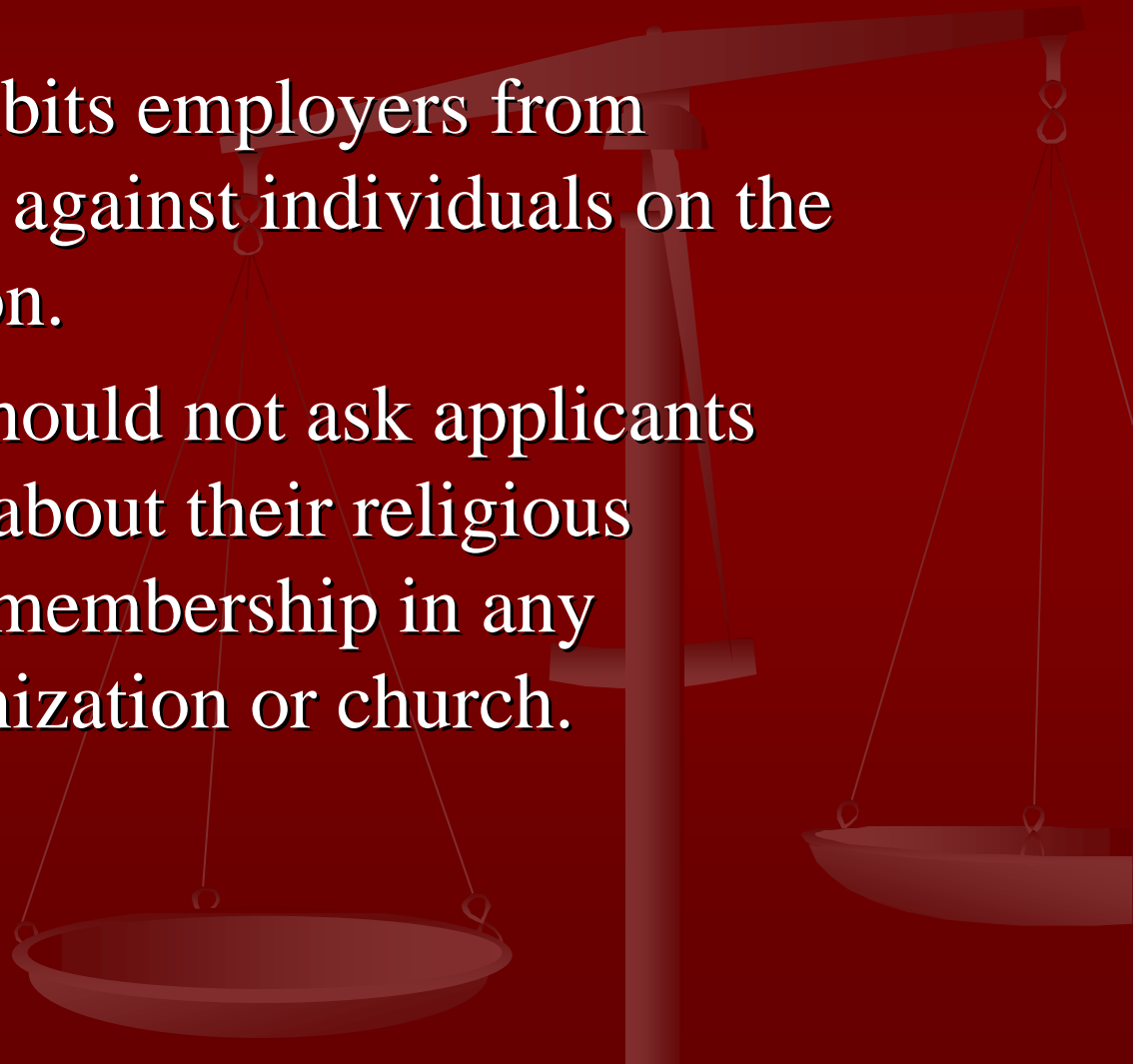
- Courts and the EEOC will presume that any inquiry, directly or indirectly, concerning an applicant's gender, race, marital status, color, religion, national origin, age, disability or pregnancy and the information provided was the basis for any hiring decision.
- Avoid asking any questions regarding these topics, directly or indirectly.

Age

- The Age Discrimination in Employment Act (ADEA) prohibits employers from discriminating against individuals on the basis of age, as does O.C.G.A. § 34-1-2.
 - Date of Birth may be requested on the job application, an interviewer should not ask any direct questions about a candidates age or Date of Birth.
 - Do not ask any indirect questions that may reveal or indicates age.
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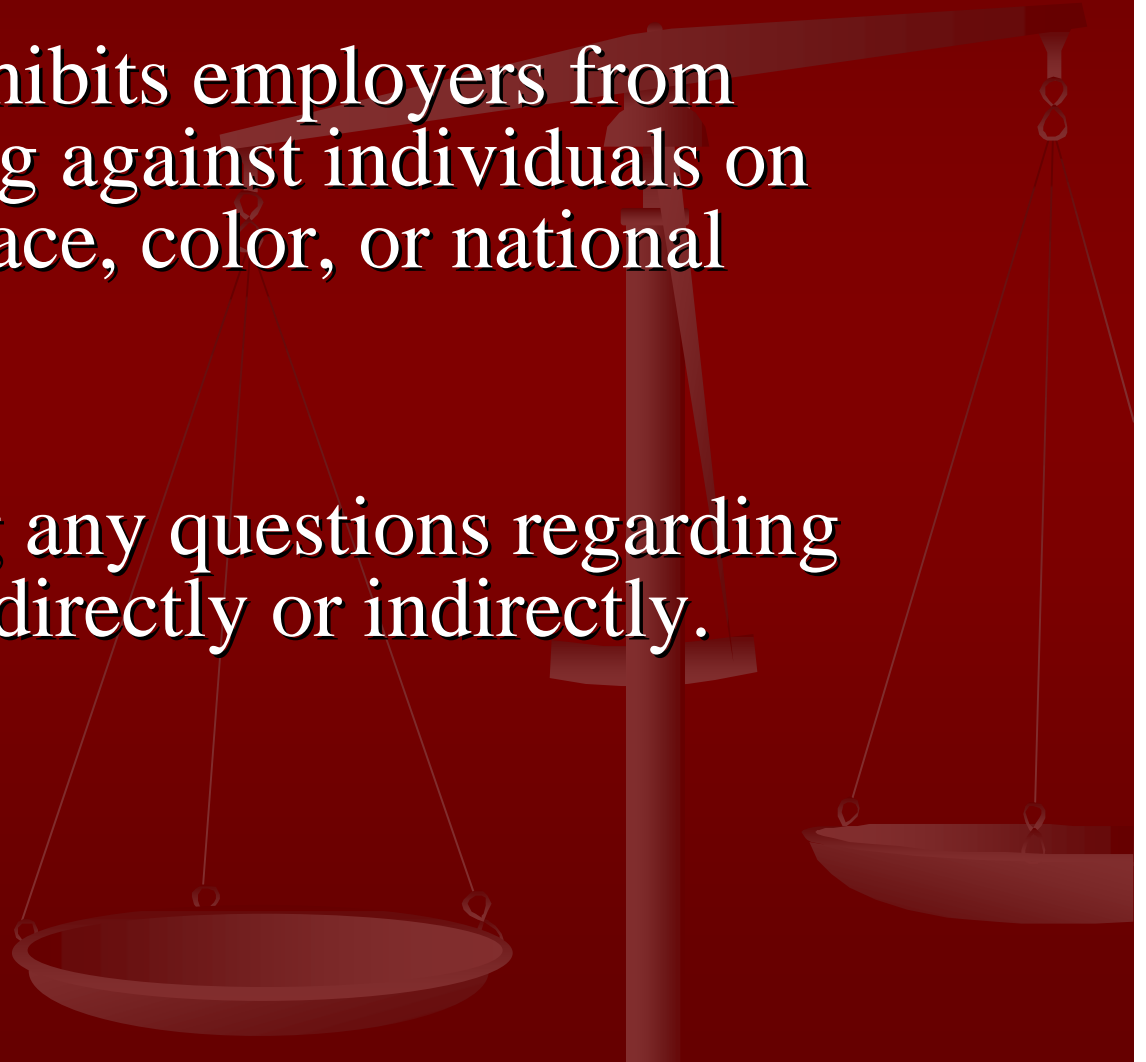
Religion

- Title VII prohibits employers from discriminating against individuals on the basis of religion.
- Interviewers should not ask applicants any questions about their religious affiliations or membership in any religious organization or church.



National Origin

- Title VII prohibits employers from discriminating against individuals on the basis of race, color, or national origin.
- Avoid asking any questions regarding these topics, directly or indirectly.



Citizenship

- The Immigration Reform and Control Act of 1986 (IRCA) prohibits an employer with four or more employees from discriminating on the basis of an applicant's national origin or citizenship.
- However, IRCA requires an employer verify an employee's eligibility to legally work in this country in order to prohibit illegal aliens.

Criminal Background Checks



- Employers may wish to research an applicant's criminal history prior to or after an interview.
- It is permissible for a prospective employer to inquire about convictions.
- An employer can be held responsible for negligent hiring and negligent retention under O.C.G.A. § 34-7-20.
 - provides an employer is bound to exercise ordinary care in the selection of employees and not to retain them after knowledge of incompetency.

Criminal Background Checks

- The Georgia Legislature established a Georgia Crime Information Center (www.statega.us/gbi/gci.html) in order to allow employers to obtain criminal history information with the written consent of the applicant being investigated.
- Generally, an employer wishing to utilize the Georgia Crime Information Center must provide a signed Consent Form, as prescribed by the center, or provide finger prints of the individual.
- The employer may obtain an employee's criminal record without the employee's consent pursuant to O.C.G.A. § 35-3-34(d)(2).
- Local law enforcement agencies may provide this information for a fee not to exceed \$20.00.

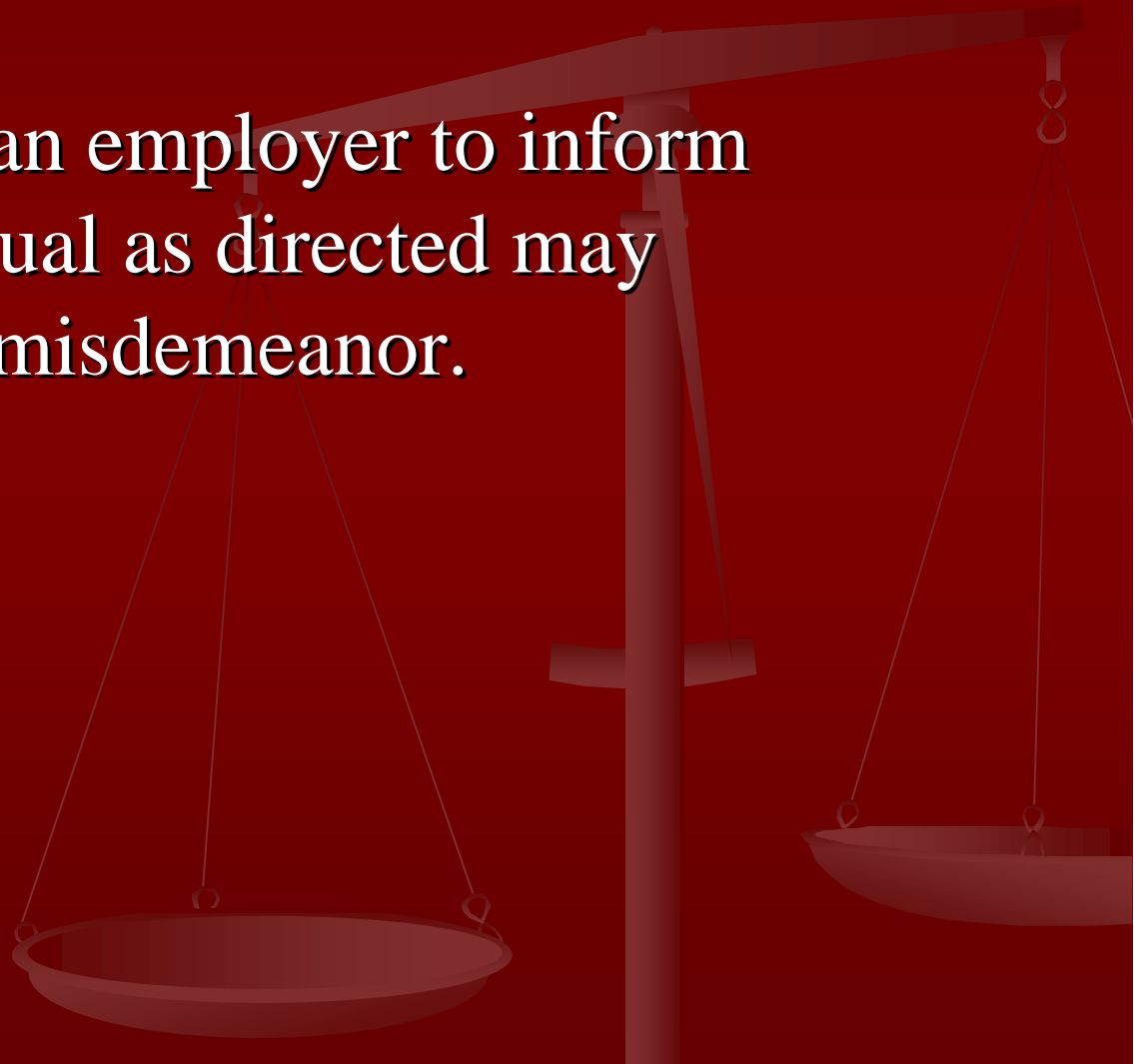
Criminal Background Checks



- If an employer makes an adverse employment decision based on the information provided in the records, the employer must:
 - Inform the individual that a record was obtained from the Georgia Crime Information Center,
 - Identify the specific contents of the record,
 - The effect the record had upon the decision and/or the effect the record had on the decision.

Criminal Background Checks

- Failure of an employer to inform the individual as directed may result in a misdemeanor.

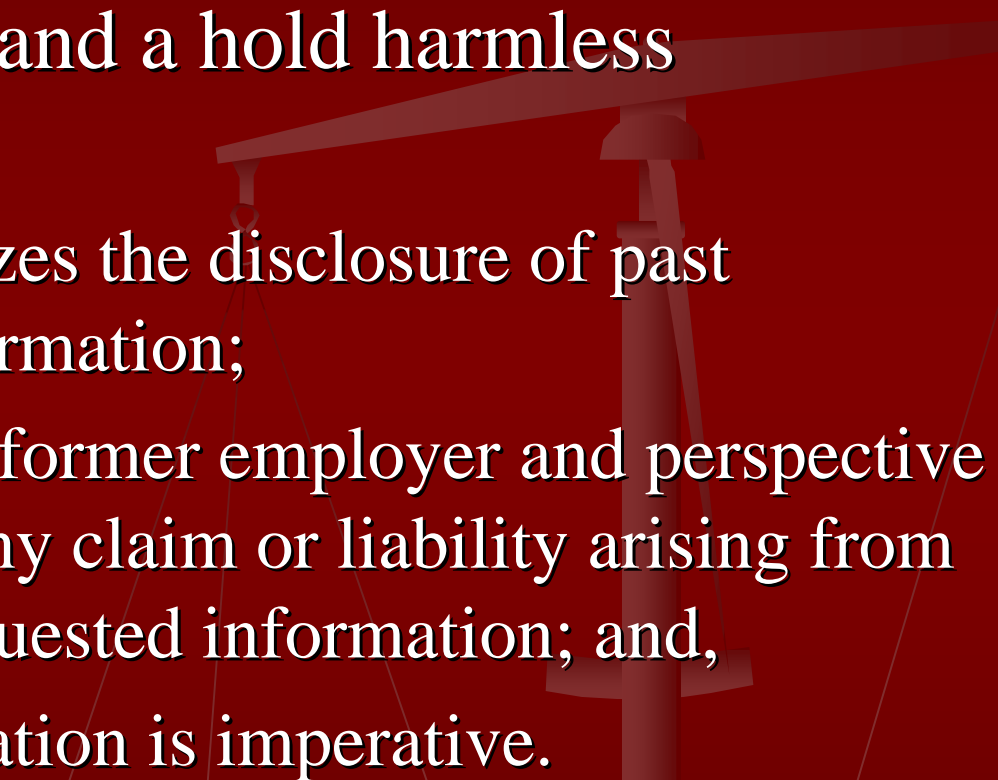


Background Checks



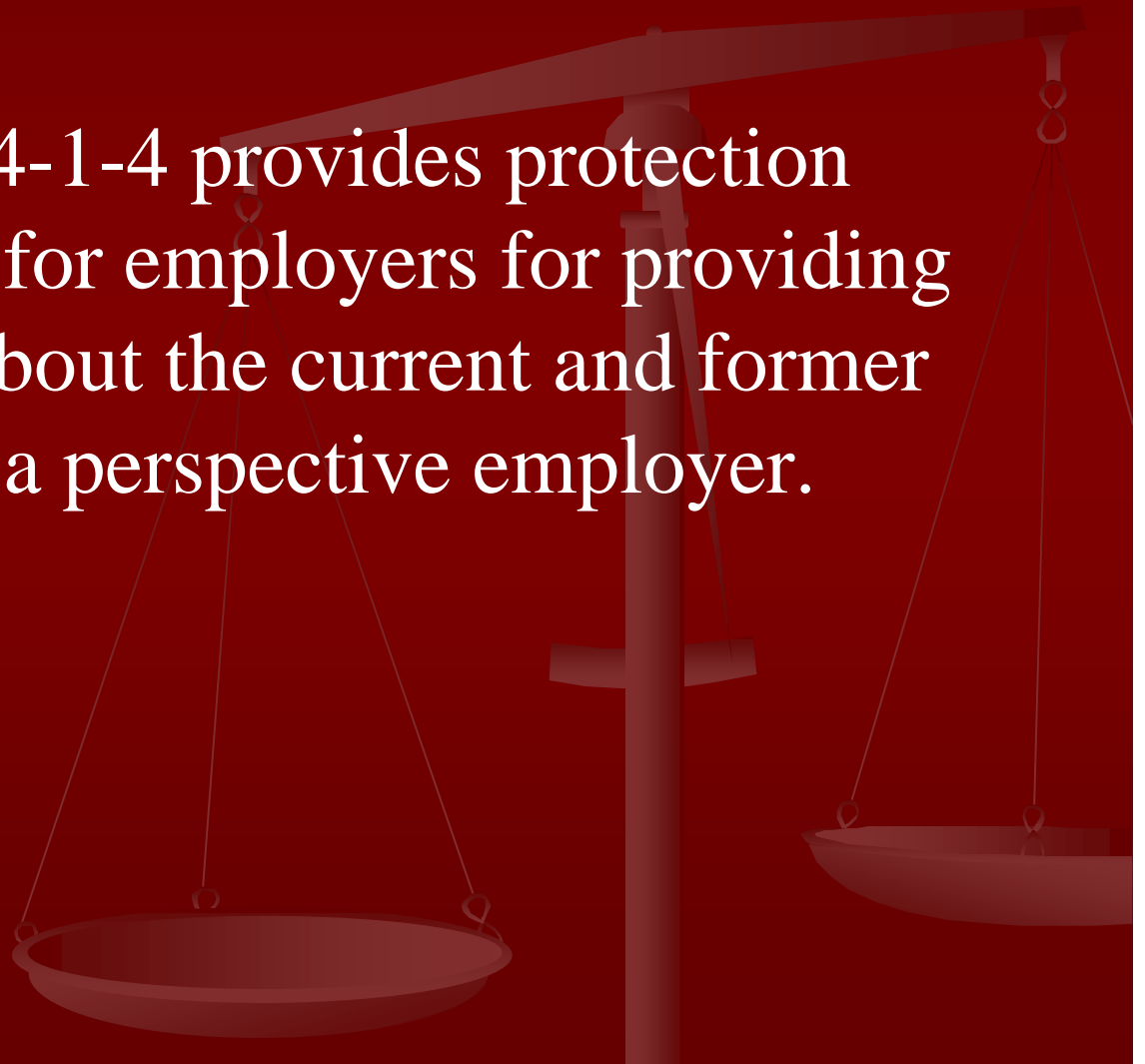
- Employers should attempt to discover as much relevant information about potential employees as is possible.
- Practice is often made difficult for a prospective employer due to hesitancy of former employers in disclosing information about a former employee for fear of expensive litigation and defamation lawsuits.
- Full investigation of the applicant's background can provide additional protection to an employer from prudential liability by co-employees or third parties associated with negligent hiring and negligent retention claims.

Background Checks

- An authorization and a hold harmless agreement
 - applicant authorizes the disclosure of past employment information;
 - releases both the former employer and perspective employer from any claim or liability arising from the release of requested information; and,
 - consistent application is imperative.
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Background Checks

- O.C.G.A. § 34-1-4 provides protection from liability for employers for providing information about the current and former employees to a perspective employer.

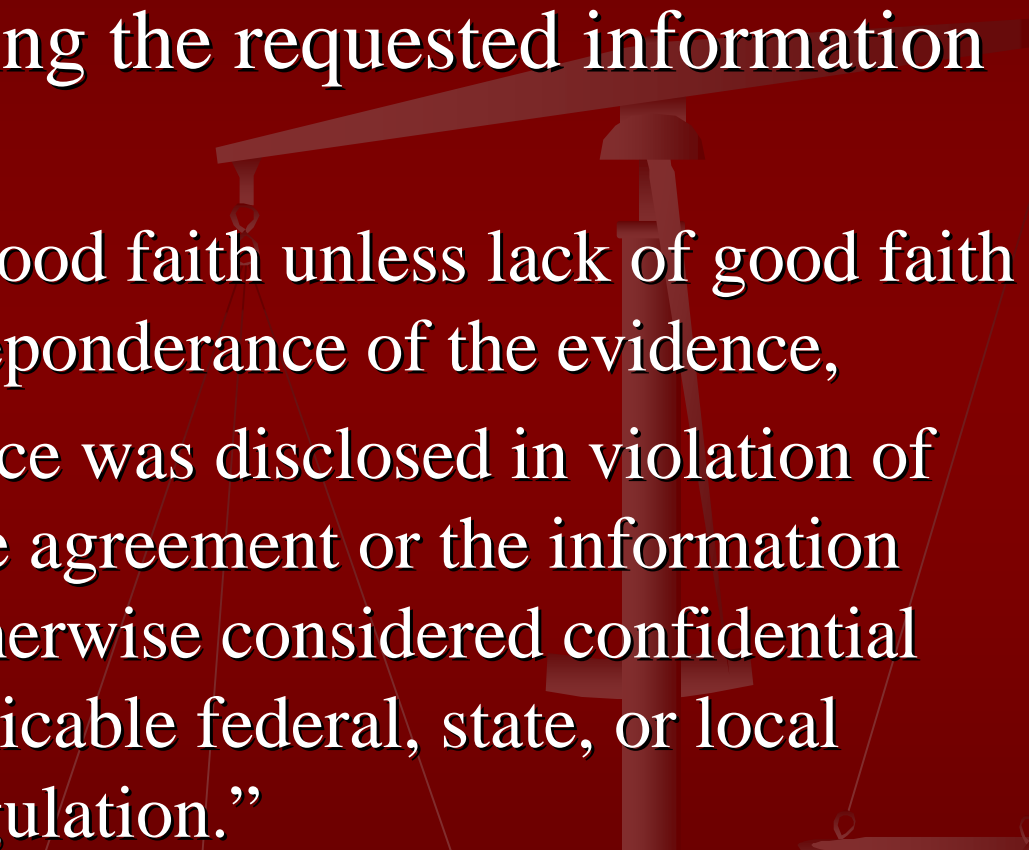


Background Checks



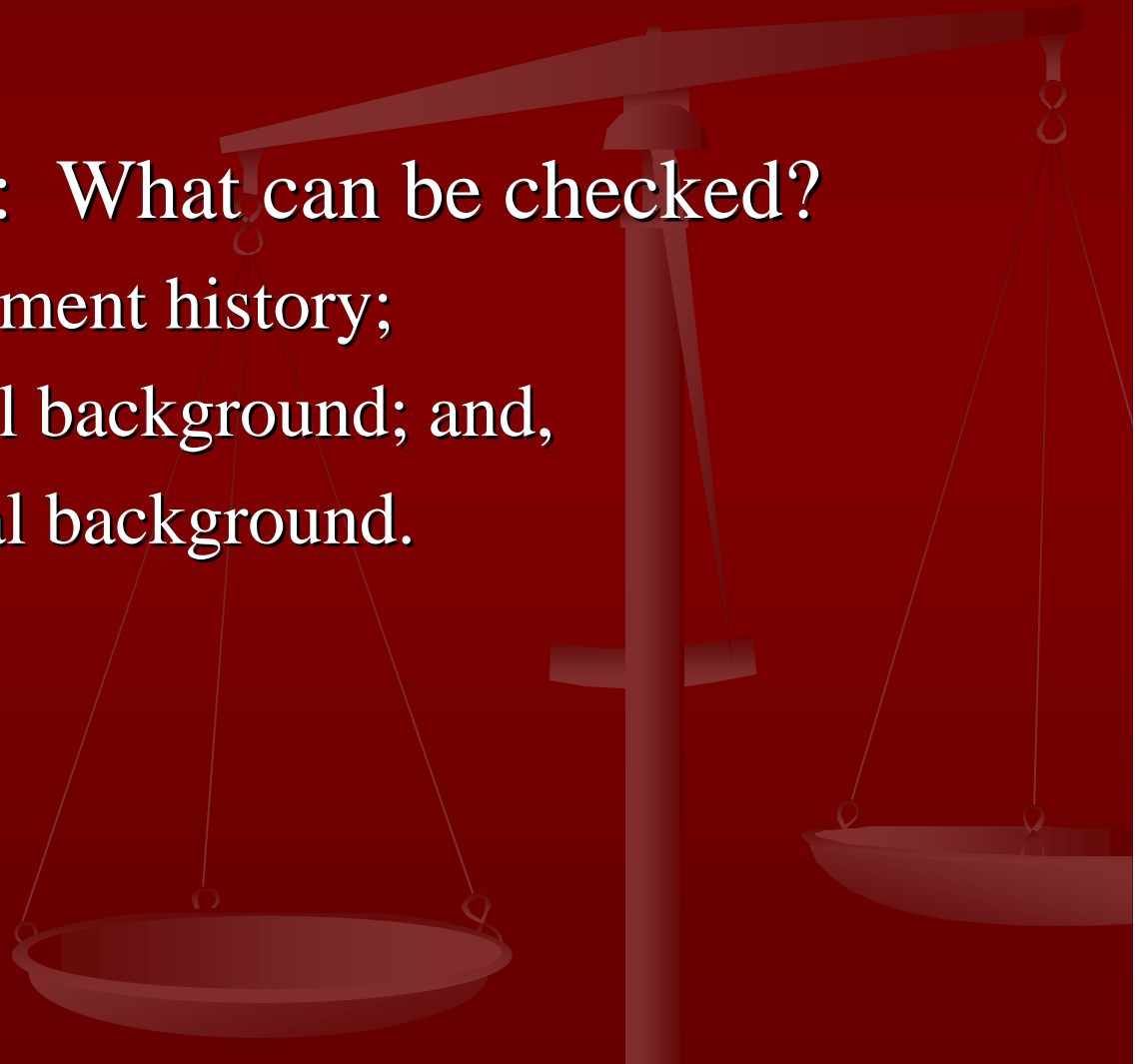
- Allows employers to disclose:
 - “factual information concerning an employee’s or former employee’s job performance,
 - an act committed by such employee which would constitute a violation of the laws of this state if such act occurred in this state, or
 - ability or lack of ability to carry out the duties of such job to a perspective employer of such employee or former employee upon request of the perspective employer or of the person seeking employment”.

Background Checks

- Employer providing the requested information is presumed:
 - “to be acting in good faith unless lack of good faith is shown by a preponderance of the evidence,
 - unless the evidence was disclosed in violation of an non-disclosure agreement or the information disclosed was otherwise considered confidential according to applicable federal, state, or local statute, rule or regulation.”
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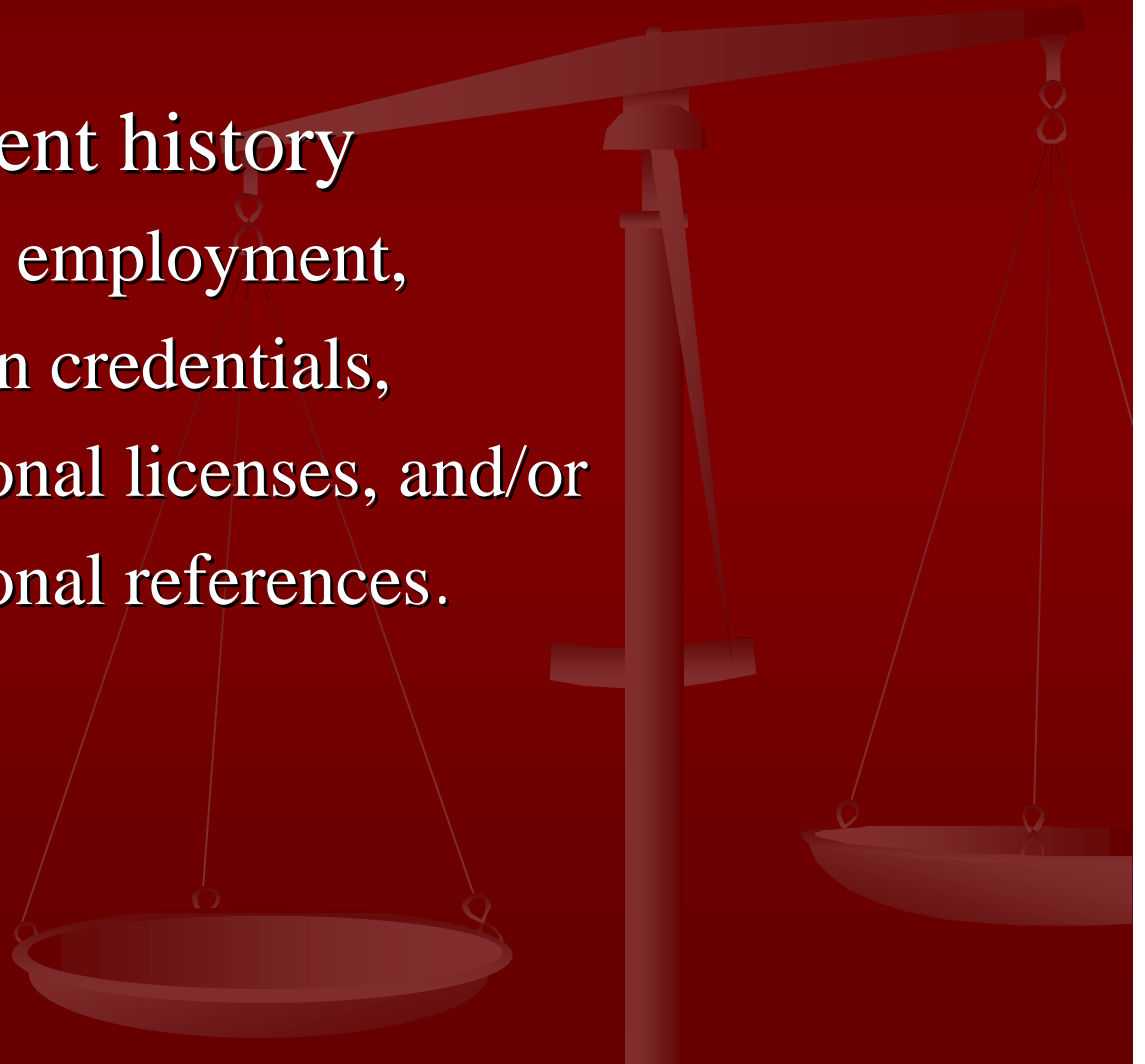
Background Checks

- Question: What can be checked?
 - (1) Employment history;
 - (2) Personal background; and,
 - (3) Criminal background.



Background Checks

- Employment history
 - previous employment,
 - education credentials,
 - professional licenses, and/or
 - professional references.



Background Checks



- Inquire only about information that would be essential to the performance of the job along with basic information
 - Positions held,
 - Job duties,
 - Performance assessments,
 - Salaries/hourly wage history,
 - Disciplinary record,
 - Circumstances surround discharge,
 - Eligibility for rehire,
 - Tendency for violence.

Background Checks



- Listen closely to the responses provided
- Make notes:
 - attempts to contact previous employers,
 - the individual spoken with, and
 - the information given by the individual.

Personal History/Background Check

- Residence history
- Credit history
- Driving Record



Background Check

- Federal, State, Local
- Sex offender registries
- Drug and alcohol



Application Checklist

- General Form - guideline
- Each Employer's situation is unique
- Special situations (children, driving, heavy equipment, etc.) require higher standards in certain areas

