

# Background Checks

February 22<sup>nd</sup> Webinar  
Presented by Eastern Benefits Group

Thanks for joining us! A few instructions before we begin:

- You may **join the audio** by selecting the radio button for either “Telephone” or “Mic & Speakers.” If you are using telephone, please dial in with the conference line and audio pin provided.
- If you are having any technical issues, please let us know in the chat box.
- We will have time for **Q&A**. Please enter your questions in the chat box at any time.
- This webinar is being recorded, and we will distribute the **recording** after the webinar.



**Marta Hodgkins-Sumner**  
Director of Membership and Programs



# Presented by:



**Catherine E. Reuben**



**Colleen Doherty**





What is a  
background  
check?



# Background Checks can include:



Criminal Record Checks (CORI, SORI, CHRI and others)



Reference Checks



Verification of Licenses, Education, Employment and  
Other Data Supplied by Applicant



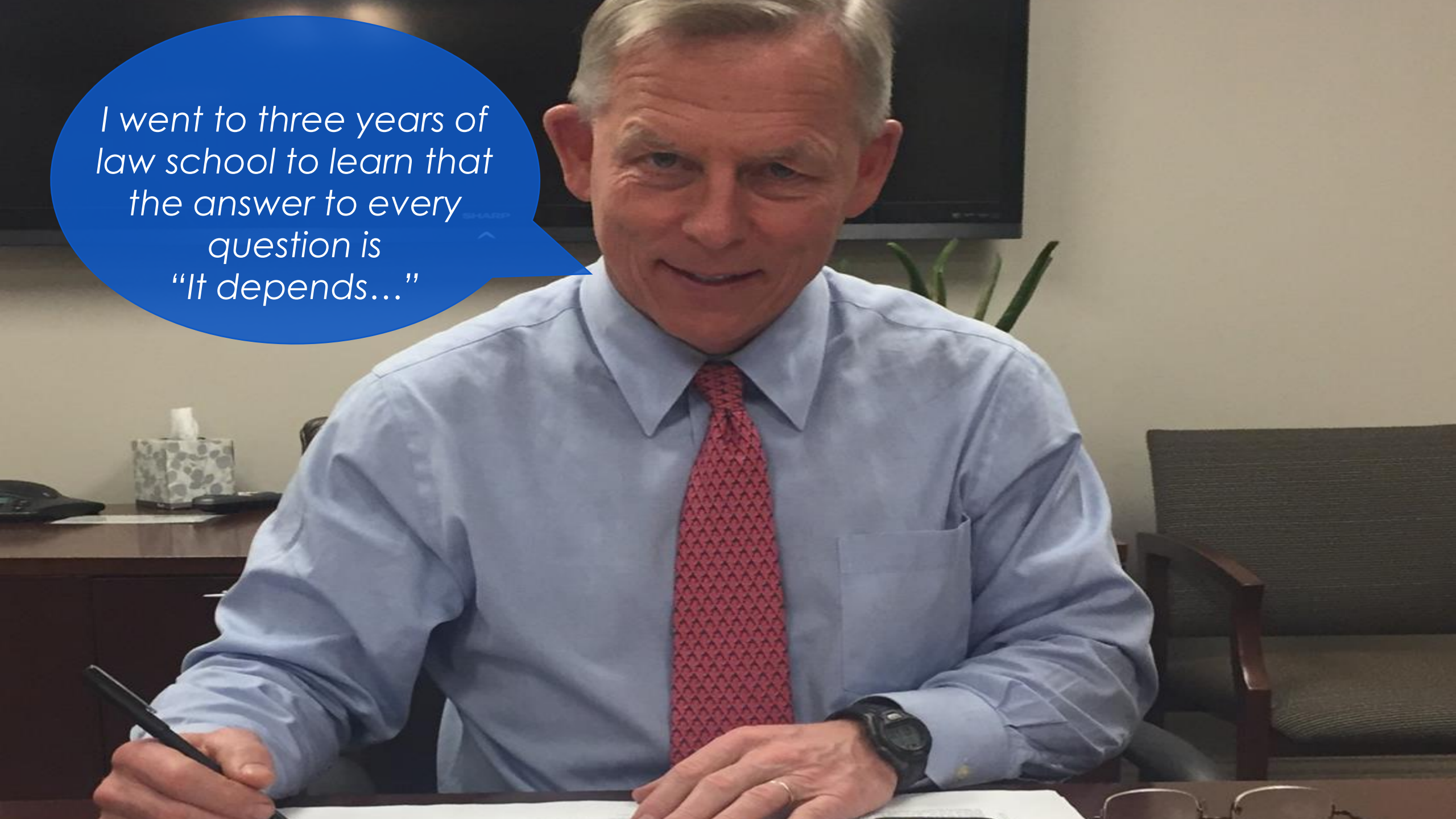
Credit Checks





**Are you legally  
required to conduct  
background checks?**



A middle-aged man with grey hair, wearing a light blue dress shirt and a red patterned tie, is seated at a dark wooden desk. He is holding a black pen in his right hand and looking directly at the camera with a slight smile. On the desk in front of him are some papers and a pair of glasses. To his left, there is a tissue box and a telephone. In the background, a television is mounted on the wall, and a potted plant is visible. A blue speech bubble is overlaid on the left side of the image, containing text.

*I went to three years of  
law school to learn that  
the answer to every  
question is  
“It depends...”*



Some employers are subject to laws or regulations that specifically require them to conduct certain types of background checks on certain types of employees. Examples include:



- Elder Care
- Childcare
- Elementary and Secondary Education
- Human Service



Some employers may be subject to contractual obligations to conduct background checks.

For example:

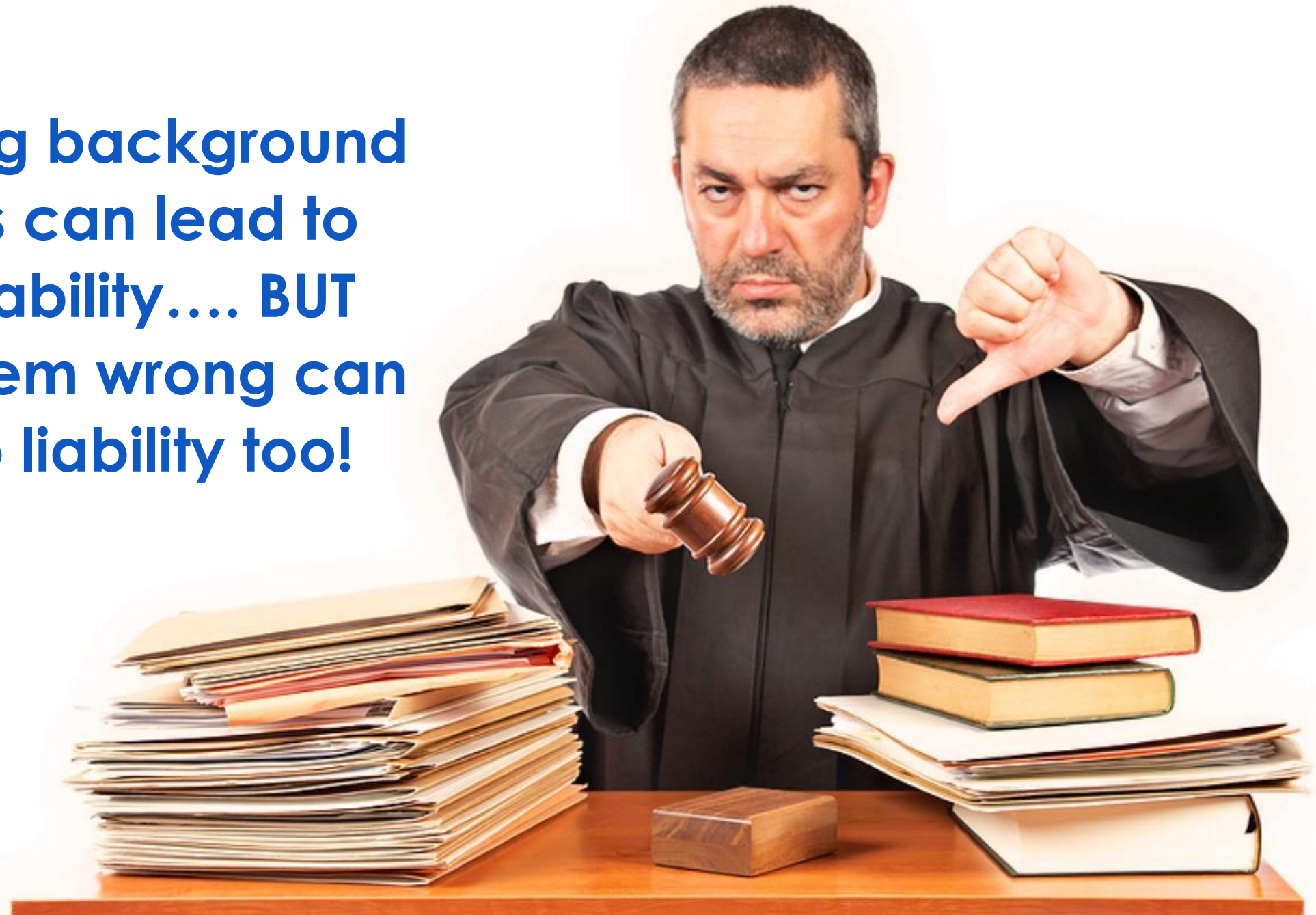
- ➡ Staffing contracts
- ➡ Government contracts
- ➡ Foundation grants





→ Employers have a legal obligation to exercise reasonable care in the employee selection process. An employer's failure to prevent foreseeable harm can give rise to a claim of negligent hiring.

**Not doing background  
checks can lead to  
legal liability.... BUT  
doing them wrong can  
lead to liability too!**







# Laws applicable to background checks:



Federal and State Anti-Discrimination/Human Rights Laws



State Criminal Offender Record Information (CORI) Laws and Regulations



Fair Credit Reporting Act (FCRA)

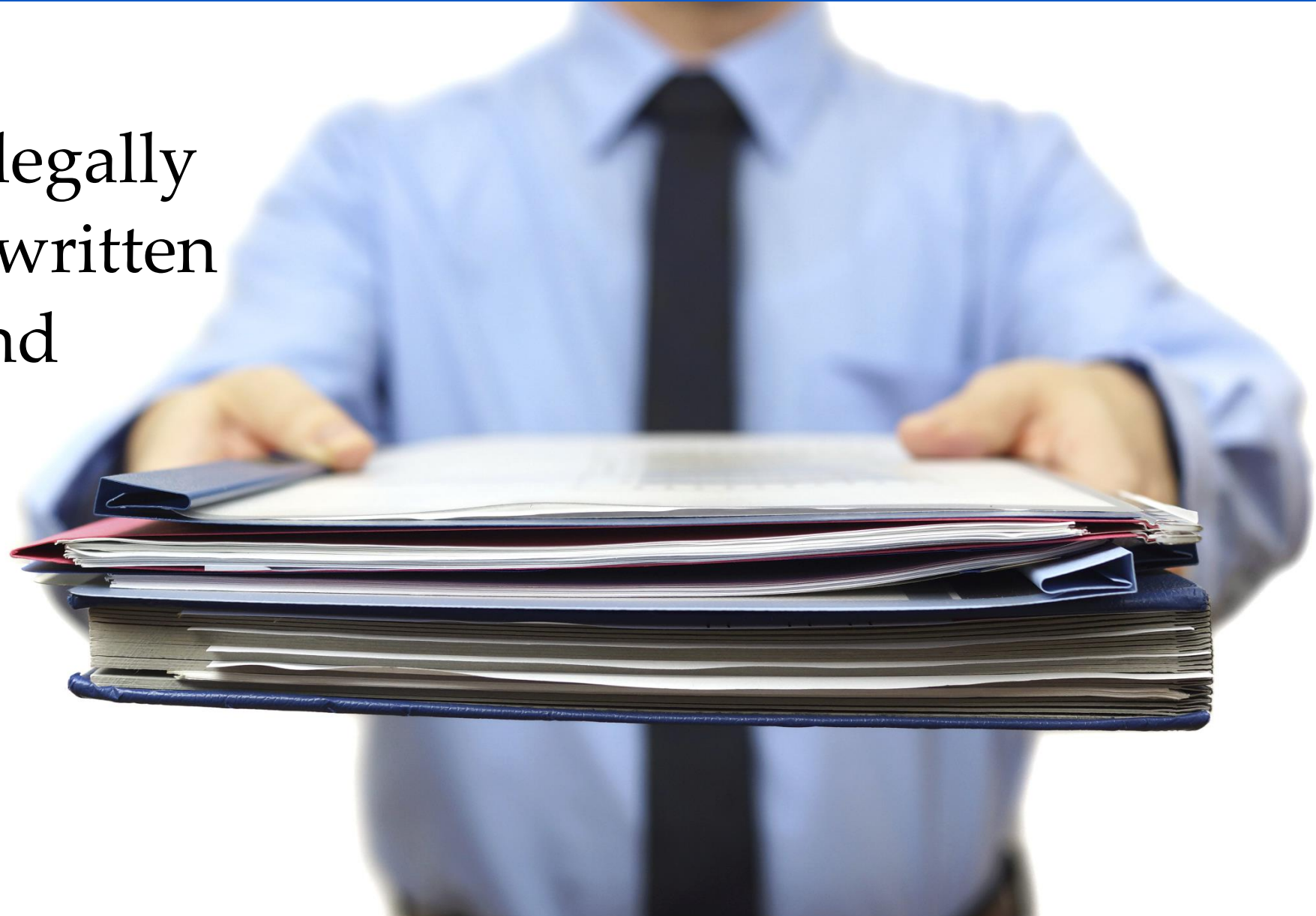
**It's all about  
the PROCESS**





# Polling Question: True or False

Employers in  
Massachusetts are legally  
required to have a written  
criminal background  
check policy



# Answer: True

True, if you conduct more than five criminal background checks per year





→ **TIP:** Use and scrupulously follow the DCJIS model policy






# Process for obtaining the information:

## What you can't do

 An employer cannot require an individual to furnish a copy of their own criminal background report. The employer must instead obtain it through the specific procedures set forth in the Mass. CORI law

 “Ban the box” law: Employers cannot ask about an applicant’s criminal record on an initial employment application form

# Even later in the hiring process, employers in Massachusetts may not *directly* inquire about:

-  Arrests, detention, or dispositions regarding any violation of law in which no conviction resulted
-  First convictions for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace
-  Any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, occurred five or more years prior to the date of such application for employment or such request for information, unless such person has been convicted of any offense within five years immediately preceding the date of such application for employment or such request for information.



# Process for obtaining the information: What you must do

Employers obtain written authorization from the individual prior to directly or indirectly accessing their criminal or credit history

- ↳ CORI Acknowledgement Form
- ↳ FCRA Authorization to Obtain a Consumer Report



# Polling Question: True or False



Once an individual signs a CORI Acknowledgement Form, the employer can “re-CORI” them as often as they wish without telling them.

Signature



# Answer: False



CORI Acknowledgement forms are valid for a year from the date of signature or until the subject's employment ends, whichever comes first. An employer can "re-CORI" a subject during the one-year period, but must provide at least 72 hours' notice, and if the person objects, the form becomes invalid.

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# Other issues related to authorization forms:



You must obtain an original signed form



You must verify the individual's identity and signature in person, or have the individual sign in the presence of a notary



What if the person refuses to sign?



Do not obtain/use until after a conditional offer of employment has been made

# Polling Question:

An employer properly submits an authorization from for a criminal background check. A report comes back indicating that the individual has committed a serious crime. Can the employer simply call them up and say, “We have decided not to hire you.”



# Answer: No!

→ Employers must follow certain procedural requirements before taking adverse action against an individual due to information in a background check





# Pre-adverse action disclosure notice

- ➡ Format to use depends on whether the employer obtained the information directly or indirectly
- ➡ Alerts individual to the fact that adverse action may be taken based on the background check report
- ➡ Provides the individual with the opportunity to dispute or explain the information in the report
- ➡ Encloses the background check results, the employer's policy, and state and/or federal information about their rights

# Duty to Avoid Discrimination

↳ Disparate Treatment

↳ Disparate Impact



**In general, the fact that a person has a criminal record should never be an absolute bar to employment. Employers should instead consider such factors as:**

- What any applicable regulations require (mandatory v. discretionary disqualification)
- Relevance of crime to position sought and the work to be performed
- How long ago the crime was committed
- Seriousness and circumstances of the crime
- The person's age the time the crime was committed
- Evidence of rehabilitation

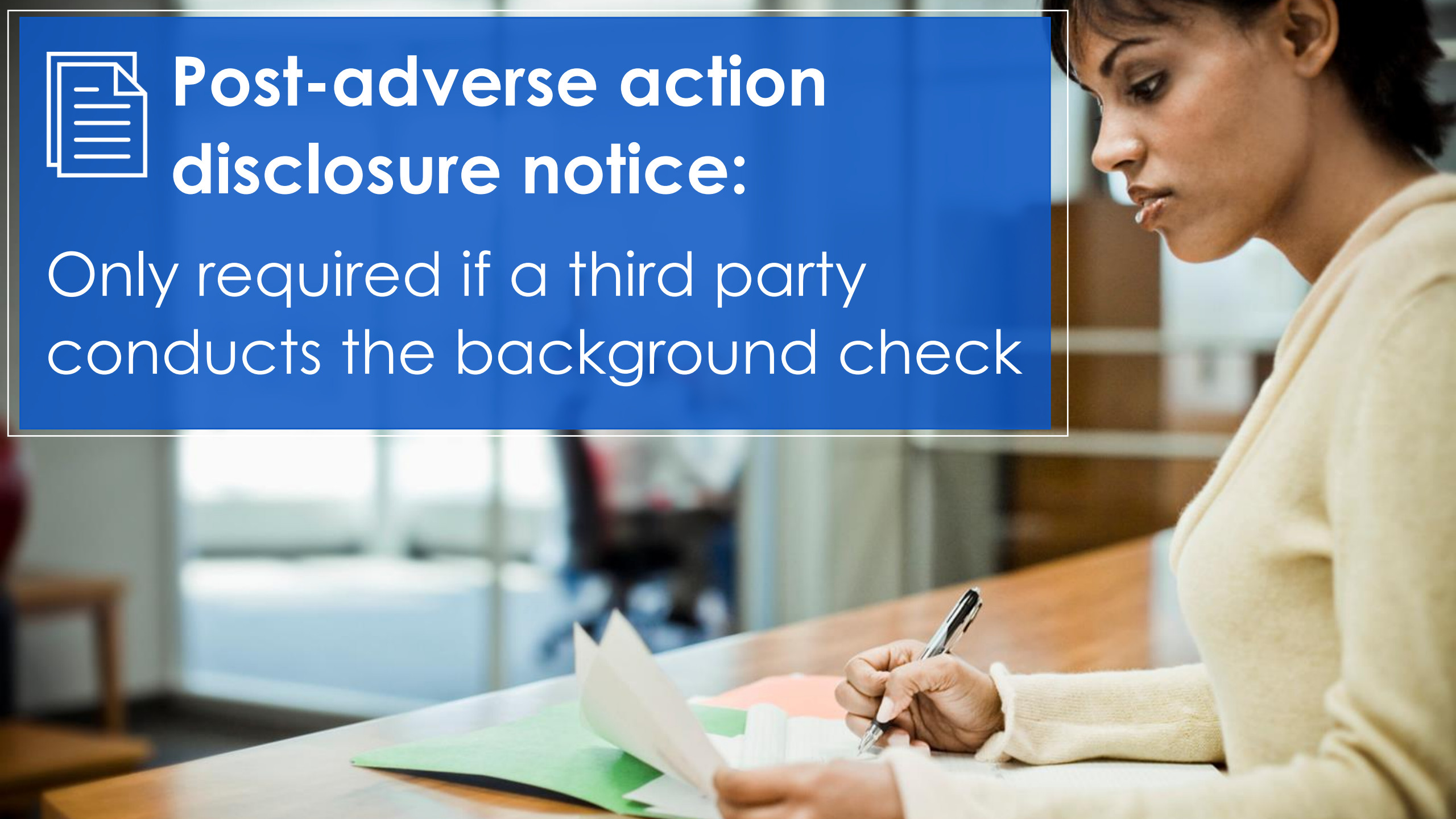






# Post-adverse action disclosure notice:

Only required if a third party conducts the background check



# Dissemination and storage of background check reports

- ➔ Must be stored in separate, locked and secure location
- ➔ Accessed by managers on a “need to know” basis only, with appropriate training
- ➔ Secondary dissemination logs
- ➔ Employers can be audited by DCJIS



# Common Mistakes

- Not checking references – and/or failing to document that you have done so
- Not verifying credentials
- Failure to follow the CORI/FCRA notice and other procedural requirements – Don't assume the background check company is hip to the requirements!
- Not properly safeguarding sensitive background information that a manager does not have a true business need to know
- Doing background checks after the person has already started working
- Not doing -- and documenting -- a case-by-case assessment before taking adverse action



# Questions?

