

## Background Check Laws: Louisiana

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A Q&A guide to background check and employment reference law for private employers in Louisiana. This Q&A addresses employers' obligations when conducting criminal and non-criminal background checks and penalties for violating these laws. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Background Check Laws: State Q&A Tool).

### Overview of State Background Check Law

**1. Please list each state statute or regulation governing background checks (for example, state equivalents of the federal Fair Credit Reporting Act and state law governing criminal background checks or driving records). Include law governing both criminal background checks and non-criminal background checks. For each, please:**

- Provide a brief description of the statute or regulation.
- Identify which employers are covered.
- Identify which employees are covered (for example, all employees or only those in specific job functions, such as commercial driving).
- Describe whether it provides for a private right of action.
- Identify the state agency or entity that administers the statute.

#### General Immunity for Background Checks: La. R.S. 23:291(D)

##### Description

In Louisiana, an employer is immune from civil liability for all claims arising out of the disclosure of background

information if the employer conducted a background check of an employee or prospective employee and either:

- Obtained written consent.
- Conducted the check at the request of the owner or operator of a facility where the employee performs or may perform all or part of their work.

A background check includes:

- Research by any lawful means, including electronic means.
- Research into state or federal criminal history repositories.
- Social security status or verification.
- Research under the USA Patriot Act, and for any permissible purpose allowed by the USA Patriot Act.
- Research for any permissible purposes under the federal Fair Credit Reporting Act.

(La. R.S. 23:291(D).)

##### Covered Employers

The law covers:

- All employers, including the state and its political subdivisions, and their agents, with one or more employees or contract workers.
- Prospective employers, to which a prospective employee has:
  - applied, whether orally or in writing;
  - sent a resume; or



- sent correspondence showing an interest in employment.

(La. R.S. 23:291(C)(2), (5).)

### Covered Employees

The law covers:

- All employees, paid or unpaid.
- Prospective employees having:
  - made an oral or written application;
  - sent a resume; or
  - shown an interest in employment.

(La. R.S. 23:291(C)(1), (4).)

### Private Right of Action

The law does not create a private right of action.

### State Agency

There is no state agency in Louisiana responsible for administering this law.

## Mandatory Background Checks for Employers in Certain Health- and Safety-Related Occupations: La. R.S. 40:1203.1 to 40:1203.7

### Description

Employers in certain health-related businesses must perform both criminal history and security checks (see Question 6: Mandatory Background Checks for Employers in Certain Health- and Safety-Related Occupations: Terms of Art) before employing or contracting with non-licensed persons or licensed ambulance personnel to provide, to any individual, either:

- Nursing care.
- Medic services.
- Supportive assistance.
- Other health-related services.

(La. R.S. 40:1203.2(A)(1).)

For employers that are facilities, homes, or institutions that are part of a larger complex of buildings, the requirement of a criminal history and security check applies only to an offer of employment or contract made to non-licensed persons or licensed ambulance personnel working primarily in the institutions' immediate boundaries (La. R.S. 40:1203.2(A)(1)).

Employers **may** obtain criminal history record information maintained by the office of the Louisiana State Police for any non-licensed person or licensed ambulance personnel offering to provide, to any individual, either:

- Nursing care.
- Other health-related services.
- Supportive services.

(La. R.S. 40:1203.2(A)(2).)

The employer:

- May make an offer of temporary employment pending results of the check but must request the check within 72 hours of the employee accepting the temporary position.
- Must inform the employee or contractor of its duty under law and receive written consent for the background check.

(La. R.S. 40:1203.2(C)(1), (E).)

An adult day health care provider or any home- and community-based service provider providing adult day care services may make an offer of employment to a non-licensed person without conducting the criminal history and security check if the provider was required to temporarily cease operations under Proclamation Number 33 JBE 2020, or a subsequent proclamation, due to the statewide COVID-19 public health emergency if the non-licensed person:

- Was employed by the provider on March 22, 2020.
- Is no longer employed by the provider as a result of the temporary closure mandated pursuant to Proclamation Number 33 JBE 2020, or a subsequent proclamation, due to the statewide COVID-19 public health emergency.
- Is being rehired by the same provider within 60 days of the provider resuming operations.
- Provides a written attestation that they have not been arrested or received a criminal conviction during the period:
  - from the date they were last employed by the provider;
  - to the date they were rehired.

(La. R.S. 40:1203.2(C)(3).)

### Covered Employers

The law covers:

- Nursing facilities.
- Intermediate care facilities for people with developmental disabilities.

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- Adult residential care providers.
- Pain management clinics.
- Home health agencies.
- Hospices.
- Ambulance services.
- Ambulatory surgical centers.
- Crisis receiving centers.
- Home- and community-based service providers.
- Non-emergency, non-ambulance medical transportation facilities or entities.
- Medicaid Personal Care Services or Section 1915(C) Home and Community-Based Services Waiver Programs.
- Any other direct service workers.
- Pediatric day health care facilities.
- Adult day health care providers.
- Psychiatric residential treatment facilities.
- End-stage renal disease facilities.
- Behavioral health services providers.
- Adult brain injury facilities.
- Rural health clinics.
- Therapeutic group homes.
- Case management services providers.
- Forensic supervised transitional residential and aftercare facilities.
- Outpatient abortion facilities.
- Hospitals.
- Free-standing birth centers.

(La. R.S. 40:1203.1(4).)

### Covered Employees

The law covers prospective employees or independent contractors who are:

- "Non-licensed persons," meaning persons providing nursing care or other health-related services for compensation to:
  - residents in or patients of certain facilities, including nursing facilities, adult residential care facilities, pediatric day health care facilities, psychiatric residential treatment facilities, behavioral health

services providers, pain management clinics, and therapeutic group homes, and who are not licensed health providers; or

- individuals in their own homes, as employees or contract providers of a home health agency, hospice, or home- and community-based service provider.

(La. R.S. 40:1203.1(6).)

- Licensed ambulance personnel.

(La. R.S. 40:1203.2(A)(1).)

### Private Right of Action

The law does not create a private right of action.

### State Agency

The [Louisiana Department of Health](#) oversees compliance with the law (La. R.S. 40:1203.1(2) and 40:1203.5).

## Mandatory Background Checks Under the Louisiana Child Protection Act: La. R.S. 15:587.1 and 15:587.1.1

### Description

Employers must make a request in writing to the [Louisiana Bureau of Criminal Identification and Information \(LBCII\)](#) to determine whether applicants or employees for positions involving supervisory or disciplinary authority over children have been arrested for, convicted of, or pled nolo contendere to any criminal offense. The request must:

- Be made on a LBCII-prepared form.
- Be signed by a responsible officer of the organization making the request.
- Include a statement signed by the person about whom the request is made.

(La. R.S. 15:587.1(A)(1)(a).)

When a prospective employer requests criminal history information for an employee applying for a position with supervisory or disciplinary authority over children in a child care facility, or an independent contractor that will perform work in a child care facility, the individual applicant can receive, on written request, a certified copy of the criminal history information from the LBCII. This satisfies the employer's obligations to conduct mandatory background checks for one year from the date the LBCII issues the certified copy. (La. R.S. 15:587.1(A).)

Private employers of persons in elementary and secondary educational institutions may receive a record of all

criminal convictions from before the date of the request (La. R.S. 15:587.1(A)(2)).

### Covered Employers

The law covers employers responsible for the actions of one or more persons who have been given or have applied to be considered for a position of supervisory or disciplinary authority over children.

### Covered Employees

The law covers persons given or applying to be considered for a position of supervisory or disciplinary authority over children.

### Private Right of Action

The law does not create a private right of action.

### State Agency

The LBCII has the authority to implement and issue rules and regulations (La. R.S. 15:577 and 15:578).

## Optional Background Checks for Institutions of Post-Secondary Education: La. R.S. 15:587.2

### Description

Institutions of post-secondary education may require any applicant or prospective employee to provide fingerprint samples and submit to a criminal history records check by the LBCII (La. R.S. 15:587.2(A)).

On request, and if given fingerprint samples, the LBCII must provide all previous conviction information, data relating to arrests for sexual offenses, aggravated offenses or crimes of violence, and state or national criminal history record information (La. R.S. 15:587.2(B)). Applicants must sign a written form allowing the release of this information (La. R.S. 15:587.2(C)).

### Covered Employers

The law covers institutions of post-secondary education in Louisiana.

### Covered Employees

The law covers applicants or prospective employees to post-secondary institutions.

### Private Right of Action

The law does not create a private right of action.

### State Agency

The LBCII has the authority to implement and issue rules and regulations (La. R.S. 15:577 and 15:578).

## Optional Background Checks for Volunteers and Employees in Youth-Serving Organizations: La. R.S. 15:587.3

### Description

Covered employers may require persons who apply to work with children as volunteers or paid employees to do one or more of the following:

- Agree to a release of investigatory information to verify criminal violation information submitted on the application.
- Submit fingerprint samples and submit to a criminal history records check instituted by the Louisiana Bureau of Criminal Identification and Information (LBCII).
- Attend a comprehensive youth protection training program that includes adult training on recognizing, disclosing, reporting, and preventing abuse.
- Submit to character, employment, education, and reference checks.

If an employer requires any of these steps, any applicant or volunteer who refuses to comply may not work for that employer. (La. R.S. 15:587.3.)

### Covered Employers

The law covers institutions and organizations that are either:

- Religious.
- Charitable.
- Scientific.
- Educational.
- Athletic.
- Youth-serving.

(La. R.S. 15:587.3(A).)

### Covered Employees

The law covers applicants for volunteer work or paid employment with covered employers (see Covered Employers).

A special provision applies to any head coach of youth athletes (La. R.S. 15:587.3(A)(2)).

### Private Right of Action

The law does not create a private right of action.

### State Agency

The LBCII has the authority to implement and issue rules and regulations (La. R.S. 15:577 and 15:578).

## Non-Criminal Background Check Law

**2. For each law identified in Question 1 addressing non-criminal background checks, list the key terms of art used and their definitions.**

### General Immunity for Background Checks: La. R.S. 23:291(D)

This Louisiana law covers both criminal and non-criminal information.

#### Background Check

This law defines a background check as research by any lawful means, including electronic means, into the background of a prospective employee or employee, including research:

- Into state or federal criminal history repositories.
- Into social security status or verification.
- Under the USA Patriot Act regarding politically exposed persons (31 U.S.C. § 5318(l) (2010)).
- For any permissible purposes under the federal Fair Credit Reporting Act.

(La. R.S. 23:291(D)(2).)

#### Employee

An employee is any person, paid or unpaid, in the service of an employer (La. R.S. 23:291(C)(1)).

#### Employer

An employer is any person, firm, or corporation, and their agents, that has one or more employees or individuals performing services under any contract of hire or service, whether express or implied, or oral or written (La. R.S. 23:291(C)(2)).

### Prospective Employee

A prospective employee is a person who has either:

- Applied for a job, orally or in writing.
- Forwarded a resume.
- Sent correspondence expressing an interest in employment.

(La. R.S. 23:291(C)(4).)

### Prospective Employer

A prospective employer is any employer to which a prospective employee has applied, orally or in writing, or forwarded a resume or other correspondence expressing an interest in employment (La. R.S. 23:291(C)(5)).

**3. For each law identified in Question 1 addressing non-criminal background checks, please describe potential penalties for violations of the law.**

### General Immunity for Background Checks: La. R.S. 23:291(D)

This Louisiana law does not impose penalties.

**4. For each law identified in Question 1 addressing non-criminal background checks, please describe the employers' legal obligations, including obligations to provide notice to applicants or employees.**

### General Immunity for Background Checks: La. R.S. 23:291(D)

An employer in Louisiana is immune from civil liability for all claims arising out of the disclosure of background information if the employer conducted a background check of an employee or prospective employee and either:

- Obtained written consent.
- Conducted the check at the request of the owner or operator of a facility where the employee performs or may perform all or part of their work.

(La. R.S. 23:291(D)(1).)

**5. For any law identified in Question 1 that functions as the state equivalent of the federal Fair Credit Reporting Act, please describe any significant differences between the state and federal law.**

Louisiana does not have a state equivalent of the federal Fair Credit Reporting Act.

### Criminal Background Check Law

**6. For each law identified in Question 1 addressing criminal background checks, please identify the law and describe:**

- The key terms of art.
- The potential penalties for violations.

#### General Immunity for Background Checks: La. R.S. 23:291(D)

##### Terms of Art

For key terms of art in Louisiana, see Question 2.

##### Penalties

For penalties in Louisiana, see Question 3.

#### Mandatory Background Checks for Employers in Certain Health- and Safety-Related Occupations: La. R.S. 40:1203.1 to 40:1203.6

##### Terms of Art

Key terms of art include:

- **Licensed ambulance personnel.** Paid and unpaid persons performing services of an emergency medical service practitioner, including licensed:
  - emergency medical technicians;
  - advanced emergency medical technicians;
  - paramedics; and
  - first emergency medical responders.

(La. R.S. 40:1203.1(4).)

- **Non-licensed person.** Any non-licensed health provider who provides, for compensation, nursing

care, or other health-related services directly related to patient care of:

- residents in or patients of certain facilities, including nursing facilities, adult residential care facilities, pediatric day health care facilities, psychiatric residential treatment facilities, behavioral health services providers, pain management clinics, and therapeutic group homes, and who are not licensed health providers; or
- individuals in their own homes, as employees or contract providers of a home health agency, hospice, or home- and community-based service provider.

(La. R.S. 40:1203.1(6) and 40:2179.1(A).)

- **Security check.** The use of personal identifiers, including name, social security number, date of birth, and drivers' license number, to search the national sex offender public registry (La. R.S. 40:1203.2(B)(3)).

##### Penalties

The law does not provide for penalties, but the [Louisiana Department of Health](#) reviews these entities for compliance (La. R.S. 40:1203.5).

#### Mandatory Background Checks Under the Louisiana Child Protection Act: La. R.S. 15:587.1 and 15:587.1.1

##### Terms of Art

As defined, criminal history record or criminal history record information is information collected by criminal justice agencies on individuals consisting of:

- Identifiable descriptions.
- Notations of arrests, detentions, indictments, bills of information, or any formal criminal charges.
- Dispositions of the above, including:
  - sentencing;
  - correctional supervision; and
  - release.

The terms do not include:

- Information collected for intelligence or investigatory purposes.
- Identification information that does not indicate the involvement of the individual in the criminal justice system.

(La. R.S. 15:576(2).)

### Penalties

Any individual who acquires or distributes criminal history information except as authorized by law, for each offense, is subject to:

- A fine of:
  - at least \$500.
  - not more than \$1,000.
- Not more than three months' imprisonment.
- Both.

(La. R.S. 15:596(B)).

Any individual who transmits false information, withholds information, or prevents the transmission of information is subject to:

- A fine of:
  - at least \$500;
  - not more than \$1,000.
- A prison term of not more than five years with or without hard labor.
- Both.

(La. R.S. 15:596(C)).

### Optional Background Checks for Institutions of Post-Secondary Education: La. R.S. 15:587.2

#### Terms of Art

See Mandatory Background Checks Under the Louisiana Child Protection Act: Terms of Art.

#### Penalties

See Mandatory Background Checks Under the Louisiana Child Protection Act: Penalties.

### Optional Background Checks for Volunteers and Employees in Youth-Serving Organizations: La. R.S. 15:587.3

#### Terms of Art

See Mandatory Background Checks Under the Louisiana Child Protection Act: Terms of Art.

#### Penalties

See Mandatory Background Checks Under the Louisiana Child Protection Act: Penalties.

### 7. Please describe:

- The kind of criminal background information into which an employer may inquire, including obligations to provide notice to applicants or employees.
- The kind of criminal background information into which an employer may not inquire (for example, expunged or juvenile records).
- Any other circumstances under which a criminal background inquiry may be limited (for example, where there is no business necessity).
- Any additional requirements under the laws identified in Question 1, including obligations to provide notice to applicants or employees.

### Authorized Inquiry

Louisiana law does not specify the kind of criminal background information into which an employer may inquire. An employer is immune from civil liability for conducting background checks into criminal history, social security information, and for any permissible purpose allowed by the USA Patriot Act if the employer either:

- Obtains written consent.
- Conducts the background check at the request of the owner or operator of a facility where the employee works or may work.

(See Question 1: General Immunity for Background Checks.)

### Unauthorized Inquiry

Louisiana law does not specify the kind of criminal background information into which an employer may not inquire.

For information on state and local legislation limiting access to the criminal history information of job applicants, see [Ban-the-Box State and Local Laws Chart](#).

### Other Limitations

Louisiana law does not specify any other general circumstances that may limit a criminal background inquiry.

### Additional Requirements

Employers engaged in certain health- and safety-related occupations must request:

- A security check, which provides information on whether the prospective employee is a sex offender.
- Criminal record information. The [Louisiana State Police](#) must only provide information that is necessary to specify:
  - whether the person has been arrested for, convicted of, or pled *nolo contendere* to any crime;
  - the related crimes; and
  - the dates on which the crimes occurred.

These records are confidential and employers may only disclose them by court order or with written consent. The employer must destroy these records one year after the employee's termination of employment. (La. R.S. 40:1203.4 and 40:1203.2(B), (D); see Question 1: Mandatory Background Checks for Employers in Certain Health- and Safety-Related Occupations.)

For additional requirements of employers subject to the Louisiana Child Protection Act or employers of persons in schools, see Question 1: Mandatory Background Checks Under the Louisiana Child Protection Act, Optional Background Checks for Institutions of Post-Secondary Education and Optional Background Checks for Volunteers and Employees in Youth-Serving Organizations.

### **8. Please describe how an employer can collect criminal background information and what an employer can do with criminal background information, including:**

- Whether and under what circumstances an application for employment in your state can include a question about convictions or arrests.
- Whether and under what circumstances criminal convictions or arrests can be used as a bar to employment generally.
- Whether and under what circumstances criminal convictions or arrests can be used as a bar to employment in specific jobs (such as child care), including under any or all laws identified in Question 1.

### **Questions in Application**

Employers in Louisiana in certain health- and safety-related occupations may ask about convictions or arrests, but the law requires written consent to obtain the background checks (La. R.S. 40:1203.2(E) and see Question 1: Mandatory Background Checks for Employers

in Certain Health- and Safety-Related Occupations: Description).

Employers subject to the Louisiana Child Protection Act may also ask about convictions or arrests in applications, as the law allows an employer to obtain information on convictions, arrests, and *nolo contendere* pleas (La. R.S. 15:587.1(A)(1)(a) and see Question 1: Mandatory Background Checks Under the Louisiana Child Protection Act: Description).

In addition, employers of volunteers and persons in youth-serving and similar organizations may ask questions in applications about criminal history, as the law permits these organizations to investigate to confirm an applicant's truthfulness (La. R.S. 15:587.3 and see Question 1: Optional Background Checks for Volunteers and Employees in Youth-Serving Organizations: Description).

### **Bar to Employment**

Louisiana law does not specify under what circumstances an employer may use criminal convictions or arrests as a bar to employment generally.

### **Bar to Employment in Specific Jobs**

#### **Health- and Safety-Related Occupations**

Covered employers engaged in certain health- and safety-related occupations may not hire any licensed ambulance personnel or non-licensed personnel (see Question 6: Mandatory Background Checks for Employers in Certain Health- and Safety-Related Occupations: Terms of Art) with a conviction for certain enumerated crimes, including:

- Certain degrees of murder.
- Feticide.
- Assault or battery.
- Mingling of harmful substances.
- Sexual battery.
- Kidnapping and false imprisonment.
- Burglary.
- Robbery.
- Extortion.
- Human trafficking.
- Theft of assets of the aged or disabled.
- Identity theft.



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- Use of electronic means to maliciously and intentionally embarrass or intimidate a person with infirmities.
- Distribution or possession with the intent to distribute certain listed controlled dangerous substances.

(La. R.S. 40:1203.3(A)(1).)

An employer must terminate a temporary employee for these same crimes. These prohibitions include convictions of attempt or conspiracy to commit these crimes. (La. R.S. 40:1203.3(A) and see Question 1: Mandatory Background Checks for Employers in Certain Health- and Safety-Related Occupations.)

Covered employers providing care or services to any persons under the age of 21 may not hire employees with convictions for any of the following, or of attempt or conspiracy to commit any of the following:

- Felony carnal knowledge of a juvenile.
- Aggravated kidnapping of a child.
- Molestation of a juvenile or a person with a physical or mental disability.
- Cruelty to a juvenile.

(La. R.S. 40:1203.3(B).)

These restrictions do not apply:

- To an employee:
  - who was working under a waiver granted under the law in effect before August 15, 2010; and
  - who continues to be employed for that same employer.
- To a person who has received a pardon or had their conviction expunged.

(La. R.S. 40:1203.3(D)(1).)

### Education and Youth-Serving Organizations

The law prohibits schools from knowingly hiring a person as an administrator, teacher, or substitute teacher if the person has been:

- Convicted of, or has pled *nolo contendere* to a felony offense, even if:
  - adjudication was withheld; or
  - a pardon or expungement was granted.
- Found to have:
  - submitted fraudulent documentation to the State Board of Elementary and Secondary Education or

the state Department of Education as part of an application for a Louisiana teaching certificate or other teaching authorization; or

- facilitated cheating on any state assessment, as determined by the State Board of Elementary and Secondary Education.

Individuals must obtain State Board of Elementary and Secondary Education approval before they may be hired for these positions.

(La. R.S. 17:15(A)(1)(b).)

A school or school system may not hire persons who have been convicted of or have pled *nolo contendere* to certain serious felonies and sex-related crimes as:

- A bus operator.
- A substitute bus operator.
- A janitor.
- A temporary, part-time, or permanent school employee of any kind.

(La. R.S. 17:15(A)(1)(a) and 15:587.1(C).)

A school or school system may reemploy an administrator, teacher, or other school employee dismissed for conviction of certain crimes if either:

- It has written approval from the district judge of the parish and the district attorney.
- The court in which the conviction occurred provides written documentation stating that the conviction has been reversed, set aside, or vacated.

(La. R.S. 17:15(A)(2)(c) and 15:587.1(C).)

An applicant may not work or volunteer for certain religious, charitable, scientific, educational, athletic, or youth-serving institutions or organizations if the institution requires the applicant to agree to a background check and the applicant refuses (see Question 1: Optional Background Checks for Volunteers and Employees in Youth-Serving Organizations).

**9. If your state has a statute or regulation protecting the employment rights of persons with criminal records, please identify the statute or regulation and briefly describe the rights it confers.**

In Louisiana, employers may not charge applicants for their background checks for jobs involving childcare, or

unless those background check requests involve school employees under Section 17:15 of the Louisiana Revised Statutes (La. R.S. 15:587.1(D)(1) and (2)). Employers in institutions of post-secondary education and certain health- and safety-related occupations must pay for background checks they request (La. R.S. 15:587.2(E)(1)(a) and 40:1203.2(B)(2)).

On written request, employees covered by the Louisiana Child Protection Act must receive a copy of their background checks from the [Louisiana Bureau of Criminal Identification and Information](#) (La. R.S. 15:587.1(A)).

### Employer Liability

**10. Have courts in your jurisdiction recognized privacy claims brought by applicants or employees as a result of an employer's conducting a background check? If so, please name any relevant cases and briefly describe their holdings.**

No case law in Louisiana recognizes an actionable right to privacy in these circumstances.

**11. Have courts in your jurisdiction recognized negligent hiring, negligent supervising, or negligent retention claims brought by employees, customers, or others associated with the employer as a result of allegedly flawed background checks? If so, please name any relevant cases and briefly describe their holdings.**

### Negligent Hiring

Louisiana employers may be held liable for negligent hiring if they fail to adequately inquire about an employee's criminal history. This is a fact- and circumstance-dependent inquiry. An employer is not negligent when it conducts a reasonable background investigation and the wrong committed was not foreseeable based on the nature of the employee's previous criminal conduct. (*Lou-Con, Inc. v. Gulf Bldg. Servs., Inc.*, 287 So. 2d 192 (La. Ct. App. 1973).)

In *Smith v. Orkin Exterminating Co.*, the court held the employer liable for an employee's sexual assault of a customer where a background check would have revealed

the employee's criminal record. Although the company conducted annual polygraph examinations, only six questions out of 74 addressed the protection of customers, and no question asked about previous arrests or assaults. (540 So.2d 363 (La. Ct. App. 1989).)

In *Smith*, the employer had a higher standard of duty because it sent its employees to customers' homes (*Smith*, 540 So.2d at 368). Courts have also found employers failed to use reasonable care when the employee has a position of authority. For example, in *Harrington v. Louisiana State Board of Elementary & Secondary Education*, the court held the employer was liable for its total failure to screen a prospective professor who later sexually assaulted a student (714 So. 2d 845 (La. Ct. App. 1998)).

In *Doe v. ABC School*, the court held a public school board liable for the sexual assault of a minor by a janitor employed with the school. After offering the employee a position, the school ran a background check, which revealed criminal activity, including bank fraud and violation of protective orders. The court found the school board failed to exercise reasonable care in the retention of the employee after receiving the results of the background check. (2020 WL 7396260, \*6 (La. Ct. App. Dec. 17, 2020).)

### Negligent Training

Although beyond the scope of background checks, the Louisiana Court of Appeal has also held an employer liable for negligent training. In *Bourgeois v. Allstate Insurance Co.*, the court held a nail salon liable for an employee's alleged theft of a customer's ring, noting the employer admitted that it failed to provide training and establish procedures for handling customer valuables (820 So. 2d 1132 (La. Ct. App. 2002)).

### State Law Regarding References

**12. If your state has any law governing employment references, please identify that law and:**

- Describe any requirements for obtaining references for employees or applicants.
- Describe any requirements for giving references for employees or former employees (including any provision insulating employers from or exposing employers to liability because of references given).

### Obtaining References

Prospective employers in Louisiana that reasonably rely on information regarding an employee's job performance or reasons for separation that a former employer discloses are immune from civil liability, unless the law requires further investigation, for example, a criminal background check (La. R.S. 23:291(B)).

### Giving References

Employers that give references regarding job performance or reasons for separation on request from a prospective employer or employee are immune from civil liability if the information is both:

- Accurate.
- Not provided in bad faith (meaning the employer does not provide knowingly false and deliberately misleading information).

(La. R.S. 23:291(A); *Stone v. La. Dep't of Revenue*, 707 F. App'x 216, 218 (5th Cir. 2017), cert. denied, 138 S. Ct. 1990 (2018).)

## Social Networking for Background Checks

**13. Are there statutes, regulations, cases, or any other guidance in your state on an employer's use of social networking or other online searches of applicants or employees for employment background check purposes? If so, please briefly characterize them.**

### Personal Online Account Privacy Protection Act: La. R.S. §§ 51:1951 to 51:1955

The Louisiana Personal Online Account Privacy Protection Act (POAPPA) applies to all employers and their agents, representatives, or designees, engaged in any business, industry, profession, trade, or other enterprise. The POAPPA also applies to the state and units of state or local government (La. R.S. § 51:1952(3)).

Under the POAPPA, Louisiana employers cannot:

- Request or require employees or applicants to disclose any username, password, or other authentication

information allowing an employer access to the employee's or applicant's personal online account.

- Discharge, discipline, fail to hire, or otherwise penalize or threaten to penalize an employee or applicant for employment for failure to disclose that information.

(La. R.S. § 51:1953(A).)

The POAPPA defines a personal online account as an online account that an employee or applicant for employment uses exclusively for personal communications. A personal online account does **not** include an account or profile created, serviced, maintained, used, or accessed by a current employee or applicant for employment either:

- For the business purposes of the employer.
- To engage in business-related communications.

(La. R.S. § 51:1952(4).)

The POAPPA does **not** prohibit an employer from:

- Requesting or requiring an employee or applicant to disclose any username, password, or other authentication information to the employer to gain access to or operate:
  - an electronic communications device paid for in whole or in part or supplied by the employer; or
  - an employer-provided account or service obtained because of the employee's or applicant's relationship with the employer or used for the employer's business purposes.
- Disciplining or discharging an employee for transferring the employer's proprietary or confidential information or financial data to an employee's personal online account without the employer's authorization.
- Investigating or requiring an employee or applicant to cooperate in an investigation if:
  - there is specific information about activity on the employee's personal online account to ensure compliance with applicable laws against work-related employee misconduct; or
  - the employer has specific information about an unauthorized transfer of the employer's proprietary information, confidential information, or financial data to an employee's or applicant's personal online account.
- Investigating or requiring an employee or applicant to cooperate in an investigation to make a factual determination without obtaining the username and password to the employee's or applicant's personal online account.

## Background Check Laws: Louisiana

- Restricting or prohibiting an employee's or applicant's access to certain websites while using an electronic communications device paid for or supplied in whole or in part by the employer or while using an employer's network or resources, under state and federal law.

(La. R.S. § 51:1953(B).)

### Additional Resources

**14. If the state agency charged with oversight of background check or references laws in your state has useful online guidance or forms, please provide the link for those resources and a brief description of them.**

The Louisiana State Police provide authorization and disclosure forms for required background checks on its [website](#).

**15. Please describe any other significant background check or references laws, cases, or requirements specific to your state not otherwise addressed in this survey.**

Louisiana law allows any judge presiding over a reentry division of court, to issue:

- A temporary certificate of employability if the offender has completed their sentence.
- A permanent certificate of employability if the offender is under the intensive supervision of the reentry division of court.

(La. R.S. 23:291.1(A).)

There are specific nullification provisions of employability certificates if either:

- The offender's probation is revoked.
- The offender is convicted of a subsequent felony.

(La. R.S. 23:291.1(B).)

An employer, general contractor, premises owner, or third party is not subject to a cause of action for negligent hiring of or failing to adequately supervise an offender certified to be employed due to damages or injury caused by the employee or independent contractor due solely to the employee or independent contractor having previously been convicted of a criminal offense (La. R.S. 23:291.1(C)).

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