

# EEOC Compliance: How to Remain Outside Of the Radar and Ensure Maximum Compliance with Latest Trends

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Equal Employment Opportunity Commission (EEOC) has created and substantiated laws that protect employees from discrimination of any form.

Is there a problem?

Yes.

The laws are not etched in stone.

The EEOC guidelines change to create a more egalitarian (equal opportunity) hiring and disqualification process. Hence, it is crucial that you remain abreast of the latest trends and remain outside of the EEOC's radar when screening your employees (either new hires or current employees).

Here are the basics for what you must do before getting the information, how to use it, and how to dispose it. For further information, get in touch with us anytime!

## [Rules for Getting the Background Information](#)

Your background check becomes illegal the moment you decide to perform one based on an employee's/candidate's religion, color, race, nationality, sex, color, age, or medical history (genetics). If you call for a background screening because of any of the above, you evidence discrimination. EEOC has made a special case for using your candidate/employee's medical history. It should not be used for making an employment decision. This includes asking medical questions unless you have evidence that it might prevent them from satisfactorily performing their job.

You can check EEOC's GINA (Genetic Information Nondiscrimination Act) for further information.

<https://ghr.nlm.nih.gov/bulletin>

## [How Should You Use the Background Information](#)

All use of background information must not discriminate. This can be broadly categorized into three instances:

**1. Discrimination When Similarities Exist** — Your decision must be applicable to every employee in the organization or in the applicant pool. Hence, if you reject applicants of one nationality because of their criminal records, then you must reject all applicants with similar records. In a phrase, you cannot use the information to discriminate because of nationality, race, color, sex, etc.

**2. Discrimination Through Labeling** — Some background problems may be prominent because of social, cultural, or socioeconomic reasons e.g. religion, ethnicity, nationality, sex, due to disability and age, and another protected characteristic. Your decisions and policies must not exclude such candidates and employees by “labeling” them. Example of prominent labels include safe, reliable, and responsible employee, among others.

**3. Discriminating Due to Disability** — You must make exceptions for candidates/employees when their background checks reveal disability as a cause. Hence, instead of disqualifying someone from a job because of a disability (unless you can evidence operational or financial loss), you should allow them to demonstrate whether they are able to do the job or not.

#### [How Should You Dispose Background Information](#)

You must preserve and retain all records (regardless of whether the candidate was hired or not) for one year, starting at the date at which the records were made or when a personal action was taken (whichever comes later). If you are an academic or government institution, EEOC has extended the requirement up to two years. In case the candidate or employee pursues the pre-Adverse Action notice with a charge of discrimination, the records must be retained until conclusion of the case.