

CAN EMPLOYERS CONDUCT BACKGROUND CHECKS ON SEXUAL OFFENDERS PRIOR TO EMPLOYMENT?

The National Registrar for Sex Offenders (NSRO) is not readily accessible to employers and the general public at large, however, where persons are employed to work with disabled persons or children, the law makes an exception.

The NSRO's stated purpose and objective is to "curb the prevalence of sexual offences in South Africa" and "stop the spate of incidents against children and the mentally disabled". In order to do this, the NSRO requires that such offenders are formally registered in order to prevent them from working with the aforementioned groups.

In terms of the Criminal Procedure Act, the employee must disclose such convictions to new employers. Failure to disclose a conviction relating to a sexual offence may result in the employee being subject to either a fine or imprisonment, or maybe even both.

Whilst the NSRO requires honesty on the part of those convicted of sexual offences during the application process, the register does still allow for employers to verify such details should there be any concerns or misgivings during the employment application process.

The NSRO register confers a right on employers in the public or private sector such as schools; crèches and hospitals to verify that the individual being employed is fit and proper to work with children or mentally disabled people.

To ensure offenders are recorded on the register, use is made of the Police, Department of Correctional Services, the Department of Health and the courts to provide the relevant information for the registration of offenders.

As per the provisions of the NSRO, offenders who are convicted of any number of sexual offences may be listed on the national register.

How to apply for a background check

The National Child Protection Register, in terms of section 126 of the Children's Act, 2005, is accessible to employers offering services which allow for access to children.

Employers who want to conduct their own background check can do so before employing a person.

The employer is entitled to establish from the Registrar of the National Child Protection Register whether or not the candidate's name and details appear on Part B of thereof.

Should the candidate's name appear on the Register, he or she will not be allowed to work in an environment which allows for access to children, since persons whose names appear on the Register have been found unsuitable to work with children by the court.

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