

Publication

CRIMINAL RECORD CHECKS

The bill of 23 July 2016 amending the register of criminal records brings a certain number of changes impacting the procedures to be followed by employers for conducting criminal record checks.

Collecting criminal records

Under the new provisions, only a written request of the candidate's criminal record which is duly specified in the job offer and motivated by specific job requirements legally entitles the employer to conduct such checks as part of staff recruitment.

Updated records of the workforce may only be collected where specific legislation (ex. security firms, financial institutions) or an employee's new assignment require that integrity checks are repeated.

However, the records no longer need to be collected in person but extracts may be handed to a third person upon presentation of a written power of attorney from the person concerned together with a copy of his identity card.

Keeping criminal records

The employer may not keep copies of the records collected from job candidates for more than 1 month after conclusion of the employment contract. If the candidature is rejected, the document must be destroyed without delay.

The maximum period for storage of criminal records collected for HR management purposes is reduced from 24 months to only 2 months after their date of issue.

Content of criminal records

The register of criminal records is divided into so-called bulletins. Several new bulletins will be introduced and their respective content is structured according to the purpose for which they may be issued. In principle its Bulletin n° 3 (convictions of a certain severity) which may be requested by employers, respectively

- Bulletin n°5 (sexual abuse, sexual exploitation of children and child pornography) where a candidate applies for a job involving regular **contact with minors**
- Bulletin n°4 (driving offences) where holding a **driving license** is a prerequisite for performance of the job.

Penalties

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Penalties up to imprisonment are applicable for violation of the above rules.

The new legislation will be applicable as from February 1st, 2017.

This letter is merely intended to summarise the main features of the reform. The entire bill may be consulted in French under this link. For further information, do not hesitate to contact [Patricia Hemmen](#).

