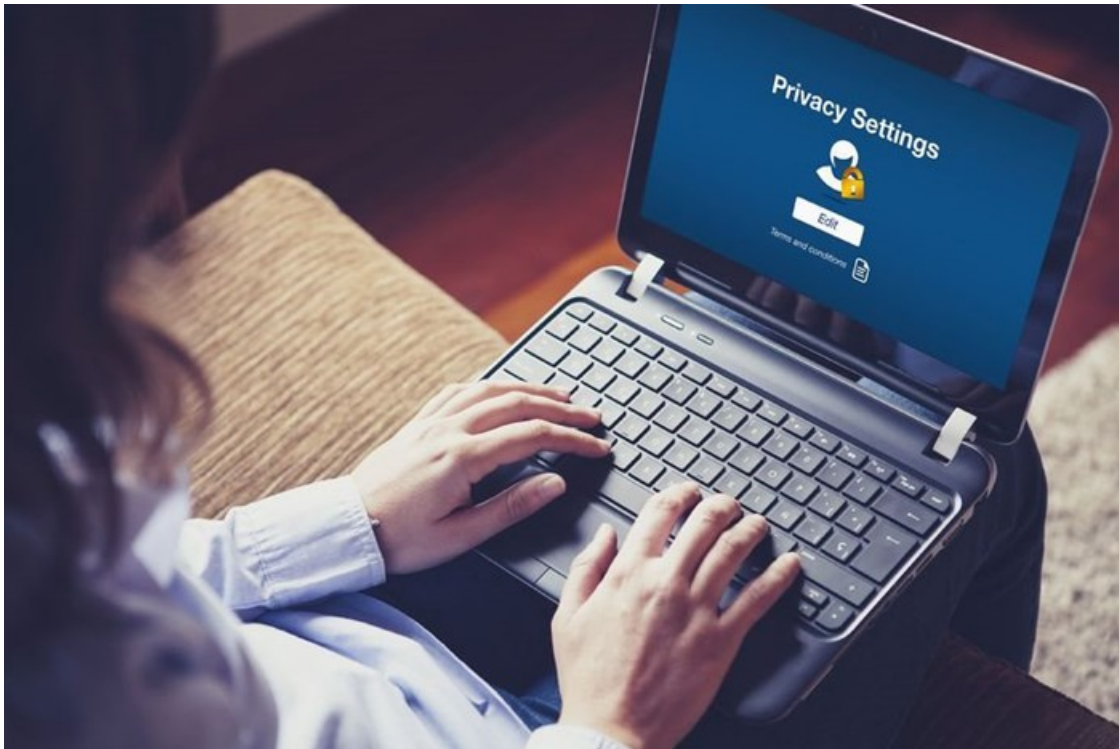


PoPIA compliance when processing job candidate consent forms

By  Jeff Lomey

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Recently a client approached me and wanted to know how to adapt the candidate's application and consent forms to comply with PoPIA.



Source: David Molina – 123RF.com

1. Criminal record consent (*Source Employment Law Alert; Cliff Dekker Hofmeyer; 3 May 2021)

Criminal information is the person's criminal history and can be processed without consent. E.g. Criminal or background checks and references from previous employers.

Criminal behaviour is “special personal information” and may not be processed without consent. Section 26(1)(b). Alleged commission of any offence or proceedings. Unless a legal body or such information obtained by law.

It is recommended that employers do not process criminal behavior information.

Employers must get consent or prove that processing is necessary taking into account exceptions in Section 27(1).

2. Credit checks (*Source New limitations on prospective employees; CSInvestigate; 24 October 2019)

National credit regulator Regulation 19(12) refers.

Credit checks only allowed where there is direct handling of cash or finances in the business.

The responsibilities for 3.1 above are clearly outlined in the job description.

If the job description does not match then such information may not be collected even when the candidate gives consent.

The process then requires the following:

- 2.1.1. Written consent
- 2.1.2. Job description
- 2.1.3. Above kept for three years.

3. Pre-employment polygraph testing

Effective alternative; freedom to determine character; flexible question and answer format.

Lines of questioning include:

- 3.1.1. Reasons for leaving employment.
- 3.1.2. Determining the truthfulness of achievements and qualifications.
- 3.1.3. History of substance abuse.
- 3.1.4. To determine truthfulness to protect other members of staff and the business.
- 3.1.5. Criminal actions despite no arrest or conviction.
- 3.1.6. Eliminating the potential for corporate espionage
- 3.1.7. Affiliations with other criminal groups.

**Guidance note. Based on research we provide informal guidance notes. Jeff Lomey Associates is not a legal firm and does not give legal advice.*

ABOUT JEFF LOMEY

Jeff Lomey is an executive business coach specialising in Strategy-in-Action. He is also the founder of Jeff Lomey Associates, a niche consultancy with expertise in executive coaching and strategy execution

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