

## **Employee screening procedures do not stand still. New laws and regulations to be aware of in terms of The FIC Act**



Often you will hear employers in South Africa complaining bitterly about the complex regulatory landscape that they have to operate in. This now includes the Financial Intelligence Centre Act (FICA). While FICA primarily focuses on combating money laundering and financing terrorism, its impact extends beyond financial institutions to encompass various sectors, including many other businesses and employers. Ignoring FICA requirements can have significant consequences and it is now essential for employers to understand and comply with FICA regulations.

FICA, enacted in 2001, imposes obligations on accountable institutions and designated non-financial businesses and professions (DNFBPs) to implement measures for identifying and verifying clients' identities, reporting suspicious transactions, and maintaining records. Although these obligations primarily apply to financial institutions like banks and insurance companies, certain provisions also affect employers, especially regarding employee screening and due diligence.

Employers cannot afford to overlook FICA requirements for several reasons. Firstly, non-compliance can result in severe penalties, including fines and imprisonment. These penalties can have a detrimental impact on businesses, tarnishing their reputation and financial stability.

In the context of employee screening, FICA compliance requires employers to verify the identity, qualifications, and background of job applicants, especially for positions that involve financial transactions, sensitive information, or access to confidential data. This includes verifying South African ID numbers, checking qualifications with relevant authorities, conducting criminal record checks, and

ensuring compliance with industry-specific regulations.

If your company falls within the list below consider how to set up your FICA screening both pre-employment and regular checks during employment.

1. **Banks and Financial Institutions:** Commercial banks, investment banks, credit unions, micro-lenders, insurance companies, and other financial institutions fall under the category of accountable institutions and must comply with FICA requirements.
2. **Money Services Businesses:** Money remitters, foreign exchange bureaus, money transfer operators, and other businesses involved in money services are accountable institutions under FICA.
3. **Asset Management Companies:** Asset management firms, investment advisors, hedge funds, private equity firms, and other entities managing investments or financial assets are accountable institutions.
4. **Trust Companies:** Companies providing trust services, estate planning, fiduciary services, and managing client assets in trusts are accountable institutions under FICA.
5. **Real Estate Agencies:** Real estate agencies involved in property transactions, sales, rentals, and property management may be considered DNFBPs and subject to FICA obligations.
6. **Attorneys and Legal Practitioners:** Law firms, attorneys, legal advisors, and legal practitioners handling client funds, trust accounts, or providing financial services are accountable institutions under FICA.
7. **Accounting and Auditing Firms:** Accounting firms, auditors, tax consultants, and financial advisors offering financial services to clients are accountable institutions and must comply with FICA requirements.
8. **Estate Agents:** Companies and individuals involved in property sales, rentals, leasing, and property management are considered DNFBPs and must conduct FICA checks.
9. **Motor Vehicle Dealers:** Dealerships selling high-value items such as luxury vehicles, motorcycles, boats, and aircraft may be considered DNFBPs under FICA.
10. **Jewellery and Precious Metal Dealers:** Businesses dealing in precious metals, gemstones, jewellery, and luxury items are subject to FICA regulations.
11. **Art Dealers and Galleries:** Companies selling artworks, antiques, collectibles, and high-value cultural artefacts may be considered DNFBPs and must comply with FICA requirements.
12. **Casinos and Gambling Establishments:** Casinos, gaming operators, betting companies, and lottery providers are accountable institutions under FICA due to the nature of their financial transactions.
13. **Debt Collectors:** Debt collection agencies, debt recovery firms, and companies engaged in debt restructuring or credit management are accountable institutions under FICA.
14. **Payment Service Providers:** Companies offering payment processing, electronic funds transfers, mobile money services, and payment gateways are accountable institutions.
15. **Tourism and Hospitality:** Hotels, resorts, travel agencies, tour operators, and companies in the

tourism and hospitality sector may be considered DNFBPs and subject to FICA obligations.

**16. Healthcare Providers:** Certain healthcare providers, such as private clinics, medical practices, and wellness centres, may fall under the category of DNFBPs and must comply with FICA regulations if they engage in financial transactions.

It's important to note that this list is not exhaustive, and the determination of whether a company is an accountable institution or DNFBP under FICA depends on various factors, including the nature of its business activities, financial transactions, and risk profile. Companies should consult legal and compliance experts to assess their FICA obligations accurately.