

Background Check Best Practices – The Key Steps

Backgrounding employees has become a matter of necessity, since many applicants make false claims on their job applications and resumes or have been involved in criminal activities which they do not disclose. Best Practices help you get the highest return on your investment.

The Best Practices – Key steps to preparing for and conducting employment background checks:

A. Establish Basic Policies and Procedures:

1. Establish a Background Check Policy. This may only need to be a memo to file.
 1. Background check all staff, including executives, full-time employees, part-time employees, temps, contractors, and volunteers.
 2. Limit access to background check information and files to select staff.
 3. Scale background checks based on a position's risk to the company, clients, public, and fellow employees. For example, you may want to conduct different searches for staff, professional & managerial, and executive positions. High risk positions justify more extensive research. Examples of higher risk positions include those who work with children or who have access to customer living quarters and executive & finance positions.
 4. Have your Background Check Provider help you with the necessary employer documentation, applicant notifications, and applicant approvals. For example, see [Background Check Start-Up Kit](#).
2. Use a Job Application that requires the applicant to document all employment, education, certification, and other job requirements. Note: The Background Check Authorization and Release must be a separate document from the application.
 1. Provide instructions to the applicant to completely fill out the application.
 2. Provide a place for the applicant to sign and certify the accuracy of all information.
 3. Provide a place for the applicant to acknowledge the consequences of false information.

B. Before the Background Check:

1. Clearly identify the skills and experience needed for the position.
2. Carefully interview final candidates for each job requirement. This usually requires multiple interviews by several people focusing on experience, technical skills, people skills, communication skills, problem solving ability, etc.
3. Check professional references of final candidates (usually best done by the hiring manager).
4. View originals of any supporting documents provided by applicants. Make copies for your files.
5. Require final applicants to completely fill out and sign the application, certify accuracy of all information, and acknowledge the consequences of false information.
6. Provide the applicant required written notifications and obtain applicant's signature on written notification and release. See, [Background Check Start-Up Kit](#).

C. Conduct A Thorough Background Check:

The core of a quality background check is the basic background check:

1. [Social Security Number Scan](#)
2. [County Criminal Record Check](#)
3. [Employment Verification](#)
4. [Education Verification](#) (especially for professional and management positions).

Then, based on your specific situation, other valuable checks may include:

1. [Credit Check](#)
2. [License Verification](#)
3. [Motor Vehicle Report](#)
4. [Sex Offender Registry Check](#)
5. [Workers' Compensation History](#)
6. [International Searches](#)

For a more detailed discussion of the types of searches available and when to use them, see [Comprehensive Background Check: The Best Background Check](#).

D. Follow Through

1. Conduct a Health Check as appropriate (can not be conducted prior to a formal job offer).
2. Verify Full Name and Social Security Number with Federal Government via E-Verify or SSNVS programs (normally conducted post-hire). See, [Verify A Social Security Number: Employer Tools To Check A SSN](#).

This entry was posted on Wednesday, December 23rd, 2009 at 6:27 pm and is filed under [Employee Screening](#). Both comments and pings are currently closed.

Employment Background Check Sample Policy

Note: The following sample is a general summary only and should not be used without tailoring it for specific needs and circumstances and adding important details for legal compliance. Please understand that this sample is intended to serve only as a general overview of certain issues and should not be used as a substitute for legal advice tailored to a specific factual scenario. Readers should not act upon information in this sample without legal counsel review.

Sample Employment Background Check Policy Summary

The Company will conduct employment reference checks, "investigative consumer reports," and background investigations on all candidates for employment prior to making a final offer of employment, and may use a third party to conduct these background checks. The Company will obtain written consent from applicants and employees prior to ordering reports from third-party providers, and will provide a description of applicant and employee rights and all other documentation as required by law to each applicant or candidate in accordance with FCRA and applicable state and federal statutes. All background checks are subject to these notice and consent requirements.

An "investigative consumer report" compiles information on a candidate's general reputation, personal characteristics or mode of living. This information may be gathered online, through public or educational records, or through interviews with employers, friends, neighbors, associates, or anyone else who may have information about the employee or potential employee. In the pre-employment process, investigative consumer reports typically include such things as criminal records checks, education verification checks, and employment verification checks.

The type of information that will be collected by the Company in background checks may include, but is not limited to, some or all of the following:

- Private and government agency reports related to any history of criminal, dishonest, or violent behavior, and other reports that relate to suitability for employment
- Education (including degrees awarded and GPA)
- Employment history, abilities, reasons for termination of employment
- Address history
- Credit reports
- Social security number scans
- Civil court filings
- Motor vehicle and driving records
- Professional or personal references

This information may also be sought out at other times during employment, such as during reassignment or promotional periods, and following safety infractions or other incidents.

The Company will conduct background checks in compliance with the federal Fair Credit Reporting Act (FCRA), the Americans with Disabilities Act (ADA), and all other applicable local, state, and federal laws

and regulations. Applicants and employees may request and receive a copy of requested "investigative consumer reports."

A reported criminal offense conviction will not necessarily disqualify a candidate from employment. The nature and seriousness of the offense, the date of the offense, the surrounding circumstances, rehabilitation, the relevance of the offense to the specific position(s), and whether hiring, transferring or promoting the applicant would pose an unreasonable risk to the business may be considered before a final decision is reached. The Company will follow FCRA requirements, other applicable statutes, and Company procedures for providing information and reports, making decisions, and responding to applicants and employees regarding potentially adverse actions to an investigative report.

The Company reserves the right to withdraw any offer of employment or consideration for employment, or discharge an employee, upon finding falsification, misrepresentation, or omission of fact on an employment application, resume, other attachments, or in verbal statements, regardless of when it is discovered.

Background check reports shall be maintained in separate, confidential files and retained in accordance with the Company's document retention procedures.

Note: Each employer must customize their own policy to comply with applicable regulations that may vary based on state and federal requirements, as well as their internal recruitment practices, to avoid potential claims of negligent hiring, violation of privacy rules, or other potential issues. For assistance in developing a policy customized to your company's needs, contact HRManagerToGoConsultants.com.

Related Resources

- For additional details about what reports may be included in background investigations, see [What Can Be Included In A Background Check](#)
- For a summary of suggestions on what should be in a thorough background check, see [Comprehensive Background Check: The Best Background Check](#)
- For information about federal requirements for employers conducting background investigations, see the pdf file [Notice to Users of Consumer Reports: Obligations of users under the FCRA](#)

We thank **Carole Edman** of **HR Manager To Go Consultants** for the contents of this page. For questions, contact her at HRManagerToGoConsultants.com.

Consider the old adage, "A job worth doing is worth doing right." Conducting Criminal Record Searches as part of a careful employment screening process is an investment in your organization's human capital. Dividends will include reduced turnover with its attendant recruiting and training costs, reduced employee dishonesty losses, and a safer workplace -- to

name but a few. Using Criminal Record Searches to realize these benefits requires accurate, current results. National or Statewide Databases, while seductively inexpensive, cannot provide these benefits.

A complete criminal history is not stored on a single database. Criminal records are stored at different locales depending on the jurisdiction and type of crime committed. These different locations generally do not share records; therefore, it is necessary to go to each site separately to obtain records.

Cost Vs. Quality

Organizations considering what sort of background checks to conduct must make educated trade offs on budget versus risk. The proper background check is one that minimizes the risk of missed criminal records because searches were not run in the necessary jurisdictions (i.e. criminal records exist in counties where searches were not run) or not run for the type of crimes (i.e. records of federal crimes or sex offenses).

From many years of experience and thousands of background checks, A Matter of Fact recommends the following criminal search solution as the strongest (the minimum risk of missing criminal records) and most practical (budget-wise): Criminal Record Searches of the applicant's residence, work and school locales for Counties, Federal Districts, and State Sex Offender Registries. Organizations hiring individuals providing health care should, in addition, run Medicaid Sanctions. Additionally, Nationwide and Statewide Criminal Database Searches, National Wants and Warrants, and Global Homeland Security Searches are run to check for records outside the normal geographical target.

Budgetary Considerations

Every organization is unique with differing needs and budgets; if the budget does not allow this level of thoroughness, reduce the cost and increase the risk of missing criminal histories by dropping searches until you reach the target budget. Realize that there are increased risks with smaller budgets.

Help us help you get the most from your money. Our clients may set a price threshold for their background checks. We then consult with each of our clients to determine which criminal searches to conduct to be as thorough as possible within that client's budget.

Courts

Federal Courts hold the records of federal crimes committed within certain districts. Federal crimes include crimes in which a federal law has been broken, crimes that cross state boundaries, or crimes committed on federal property. A typical background check would search those federal court districts in which the applicant has lived, worked, or gone to school. For more see [Federal Criminal Records Check](#).

County Courts contain the records of felonies, misdemeanors, and infractions committed within a given county. Felonies are—generally speaking—crimes punishable by one or more years of jail time, whereas misdemeanors and infractions are minor crimes punishable by a fine or

minimal jail time. Each state is divided geographically into counties. Counties keep their own criminal records and, for the most part, do not share records with other counties. For this reason, counties are checked individually for crimes committed in that county. For more information, see [County Criminal Record Checks](#).

Court Accessibility Varies. While most court records are very easily accessible, some courts have policies and procedures that make retrieving records more difficult. Some courts charge fees for accessing records. Others limit the number of searches permitted, or mask some of the information on the records. Some courts require that a court clerk retrieve the information. These procedures and policies are constantly changing and can have an adverse affect on the turnaround time of results. When court clerks are required to do the searches, for example, they do so at their own pace, sometimes taking longer to retrieve information. This is especially true when criminal convictions are found and case documents need to be pulled.

Databases

Statewide Criminal Databases are compiled from various sources, including Prior Criminal Record Searches, County Criminal databases, Department of Corrections, Administration of the Court, and State Sex Offender Registries. Multistate Criminal Databases are likewise compiled from similar sources. However, this does not imply that these are complete criminal history repositories. As mentioned before, there is no database available that contains a complete criminal history. While these database searches gather information from a variety of sources, they are notoriously incomplete and out of date. Databases are dependent on their sources for current information. This makes it very difficult to maintain an up-to-date database. Databases are also subject to court policies and procedures. Courts whose access is limited are more likely to be omitted from the database. For more see '[Statewide](#)' [Criminal Records Check](#) and '[Nationwide](#)' [Criminal Database Check](#).

Databases cannot be considered complete background checks. They can, however, be a tool in making a background check more thorough. Both Statewide and Multistate Criminal Database checks help to widen the search area covered by the criminal portion of a comprehensive background check.

Other databases that may be more complete but only contain a specific type of offense or crime are Medicaid Sanction searches and Sex Offender Registry searches. Sex Offender Registries, for example, are limited to a very specific type of crime and are thus very incomplete as a criminal record search. For more see [Medicaid Sanctions](#) and [Sex Offender Registry Check](#).

National Wants and Warrants

This search is a check of a national database for outstanding warrants. Most of the offenses on this database are extraditable offenses. As these are warrants, this search does NOT provide convictions and does not necessarily mean that the applicant is guilty of anything. For more see, [National Wants and Warrants Search](#).

Global Homeland Security

A Global Homeland Security Search checks a compilation of domestic and international sanctions lists. Individuals or organizations included on these lists may be involved in terrorist activities, money laundering, illegal imports, fraud against government agencies, violation of federal banking regulations, drug trafficking, etc. This search was developed as a response to The Patriot Act and the War on Terror. For more see [Global Homeland Security Search](#)

Related Resources

- To learn more about the trend to thorough background checks, see [The Growing Trend to Thorough Background Checks](#).
- For a description of available criminal history record searches, visit [Criminal History Background Check](#).
- For suggestions when budget restrictions impact what you can do, see [When Background Check Cost is an Issue](#).
- To understand how background checks improve profit, read [Improve Profitability: Dividends from Employment Background Checks](#).

About the Author: Glenn Hammer is a consultant and speaker on Employment Background Checks. He is founder and President of A Matter of Fact, a California-based employment background check firm. www.amof.info

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The Growing Trend to Thorough Background Checks

by Glenn Hammer

"Small-business executives...are realizing that background checks for employee applicants are not an expensive process exclusive to their big corporate brethren. Pre-employment screenings are seen as the first step in battling lost productivity or turnover as the result of employees who were hired based on training or experience they claimed to have, but just didn't." See [Pre-employment Screening Gaining Favor](#)

There is a noticeable trend toward more thorough employee background checks. Employers are finding that a simple criminal background check is no longer sufficient to protect their assets and reputation. Post-hire screening is also becoming more common.

The Reasons for the Trend

Reports of the disastrous consequences for organizations from poor background checks are regularly reported in the news. The errant actions of a bad hire can seriously harm the reputation and brand image of businesses large or small, resulting in a loss of sales, new business, and worker productivity.

Thorough background checks are a simple business investment given the potential losses they help avoid. Consider the benefits of reduced turnover, reduced theft and fraud, and other reduced employee misbehavior (violence, sexual harassment, or substance abuse etc.) to your bottom line.

Some vendors have assembled databases that purport to be statewide or national criminal databases. In practice, these databases are gathered from different sources, reporting only some jurisdictions and types of crime. Database criminal searches, in contrast to searches done directly at the courts, are notoriously incomplete. See [Criminal Background Checks Incomplete](#). Criminal history is only one facet of an applicant's character. Education and Employment verifications check the past for appropriate skills, experience, and workplace behaviors. More thorough background checks are a "must" in gathering accurate and complete information.

Your Return on Investment from Thorough Background Checks

It is becoming more common for experts of many kinds (lawyers, accountants, security experts, human resource consultants, loss prevention specialists, etc.) to strongly recommend thorough background checks. (For typical examples, see [Guidelines and Sample Policies by Industry Sources](#).) I was once stopped in the parking lot by an attorney who unexpectedly said, "Employers are stupid to not use your services."

A background check can help an employer in many ways. A recent SHRM article [Criminal Background Checks: A Checklist of the Pros and Cons](#) listed the following reasons to conduct a background check.

- Reduce theft and embezzlement.
- Limit legal exposure for negligent hiring and retention.
- Increase applicant quality.
- Check for potential discipline problems.
- Verify application information.
- Decrease insurance costs.
- Discover drug or alcohol problems in applicant.
- Decrease workplace violence.
- Discourage applicants who have something to hide.
- Limit uncertainty in the hiring process.
- Enable the company to know who it is hiring.

The National Association of Professional Background Screeners (NAPBS) says, "The need to hire the most qualified candidate, and the inherent risk in hiring the wrong candidate, has never been greater. Workplace crime, unethical business practices, and misleading résumés are on the rise. The costs of fraud, embezzlement, theft and violence are a multi-billion dollar drain on our economy, bleeding organizations both large and small. Furthermore, negative publicity associated with negligent hiring—especially as the result of a less than thorough background check—can devastate the very foundation of a trusted organization. Organizations owe it to themselves and to everyone with whom they come into contact to know everything they can about their employees and volunteers, and the most effective method to accomplish this is by conducting thorough background checks." See, [Background Screening – Past, Present and Future](#).

How are employers being more thorough in their background checks?

- More employee positions are being backgrounded. We have many examples in our own customer base of employers conducting background checks on a single function, such as accounting, and then expanding to all job functions.
- Employers are expanding background checks beyond just full-time employees to part-time employees, temps, contractors, and volunteers.
- Employers have discovered that Database Criminal Record searches are riddled with errors and are hardly better than no background check at all. If used properly, databases can be a great research tool, but they are never a bona fide background check by themselves.
- Background checks now commonly include county criminal record checks for counties of school, work, residence, and their neighboring counties. While a single county criminal record check used to be the norm, nearly all of our customers now request at least counties of school, work, and residence on all background checks.
- Many employers have moved beyond just County Criminal Record Checks to Federal Criminal Record Checks, National Wants and Warrants, Sex Offender Registry Checks, 'State-Wide' Criminal Record Checks and 'Nation-Wide' Criminal Record Checks.

- Most background checks now include verifications such as Employment Verifications, Education Verifications, and Professional License Verifications. There is good reason for this: ***We find more fraud and misrepresentations in these checks than we do in unreported criminal histories.***
- More employers are discovering international background checks. While international background checks are more costly, slower, and less comprehensive than domestic U.S. background checks, they are nevertheless worthwhile.
- Employment eligibility checks are a recent additional requirement for employers. Checks such as Medicaid Sanctions, Terrorist Watch Lists, Social Security and Department of Homeland Security Employment Eligibility Verifications are now essential elements of employment background checks.
- A myriad of other screens, checks, and searches are available to the employer. These include Credit Checks, Driving Record Checks, Drug Screening, and Skills Testing.

Summary

A thorough, complete background check is a good business investment. It protects companies from hiring problem employees, as well as from negligent hiring claims. Businesses are now backgrounding part-time workers, temps, and volunteers. More background checks are now being done for all work positions. A thorough background check goes beyond a simple criminal background check and verifies educational claims and previous employers, revealing many other potential problems.

Related Resources

- For a quick outline of how A Matter of Fact suggests you create a thorough background check, see [Comprehensive Background Check: The Best Background Check](#).
- For more articles about the need for thorough background checks, see [Background Checks Articles of Interest](#).
- For a step-by-step process on how to conduct employment background checks, visit [How to Conduct a Background Check: A Step-by-Step Guide](#).
- [Fake Resumes, Fake References, Fake Degrees: Employer Beware!](#)

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Background Check Articles by Industry Sources

The following articles may be of interest to employers seeking information about background checks and employment screening.

Avoiding Negligent Hiring Lawsuits

HR Management

<http://www.hrmreport.com/article/Avoiding-Negligent-Hiring-Lawsuits/>

Points of Interest:

- Background Checks go a long way in providing for a safe, productive work environment and avoiding litigation as a result of negligent hiring.
- The best practice for an accurate, cost-effective criminal background check is to research where your applicants have lived, worked, and gone to school during the last 7 years.
- Properly documenting pre-employment background checks does not guarantee you won't be sued, but will drastically reduce the chance of being found guilty of negligence or discrimination.

The ROI of Background Screening

HR Management

<http://www.hrmreport.com/article/The-ROI-of-Background-Screening/>

Points of Interest:

- The net annual Return On Investment for background screening is over 900%. There are scarce few business expenses that can generate the type of ROI that background screening can.
- According to the US Small Business Administration, for every dollar an employer invests in employment screening, the return on investment ranges from \$5-16, resulting from improved productivity, reduced absenteeism, lower turnover – and decreased employer liability.
- The Saratoga Institute estimates the cost of turnover at 150% of annual compensation for salaried workers.
- Dr. Bradford Smart suggests that the cost for senior executive turnover is as high as 2,400% in his book Topgrading..
- The United States Department of Commerce reports that 30% of all business failures result from theft or embezzlement.

Criminal Background Checks Incomplete: How convicted felons can slip through safety net

MSNBC

<http://www.msnbc.msn.com/id/7467732/>

Points of Interest:

- Spotty participation by the nation's 3,100 county courts, along with a hodgepodge of data formats, make national crime databases vastly incomplete.
- The national databases have a 41 percent error rate.
- There is only one way to conduct a thorough criminal background check: combine computer-based nationwide searches with old-fashioned in-person visits to county courthouses that house criminal record information.

Executives: Making It by Faking It

Business Week

http://www.businessweek.com/managing/content/oct2007/ca2007104_799274.htm

Points of Interest:

- Sixteen percent of executive resumés contain false academic claims and/or material omissions relating to educational experience.
- The hiring organization can trust that engaging the services of a professional background-screening consultant will pay off.
- A thorough background check is an important insurance policy for the recruiting process.

Do You Really Know Your Contractors? The Hard Evidence for Contractor Screening and Employment Background Check Searches

HRM Guide

<http://www.hrmguid.com/recruitment/contractor-screening.htm>

Points of Interest:

- Contractors are the Achilles heel of a company's supply chain and pose the greatest risk because they have the least oversight.
- In a series of landmark decisions, the US court system has held that hiring companies are accountable for actions of employees, contractors, vendors, and suppliers.
- Background checks should be run on all contractors.
- Perform a criminal and employment background check, credential and/or license verification, immigration status (if applicable), and, for jobs with considerable money responsibilities, a credit history report on every employee that will be dealing with your assets.

Drugs in the Workplace: Fact Sheet

Substance Abuse & Mental Health Services Administration

[Division of Workplace Programs](#)

Points of Interest:

- 77 percent of illicit drug users in the United States are employed.

- Problems related to alcohol and drug abuse cost American businesses roughly \$81 billion in lost productivity in just one year.
- Substance-abusing employees function at about 67% of their capacity.
- Up to 40 percent of industrial fatalities and 47 percent of industrial injuries can be linked to alcohol use and alcoholism.
- Employees who use drugs are 3.6 times more likely to be involved in a workplace accident and 5 times more likely to file a workers' compensation claim.
- Implement a drug-free workplace program. Even if your organization is not required to have a drug-free workplace program, your organization can still benefit.

10 Ways to Catch a Liar

webmd.com

<http://www.webmd.com/balance/features/10-ways-catch-liar>

Points of Interest:

- Experts share ten tips that can help you know if someone is telling you the whole truth.

The Case for Background Checks

Insurance & Technology

<http://www.insurancetech.com/showArticle.jhtml?articleID=197001284>

Point of Interest:

- Thirty percent of insiders who launch system attacks have criminal records.

Do A Thorough Background Check On Workers -- Or Let The Hirer Beware

Bankrate.com

http://www.bankrate.com/brm/news/biz/Biz_ops/20000515.asp

Points of Interest:

- About one-third of résumés have some degree of puffery.
- Two-thirds of all job applicants say they have stretched the truth at least once in an effort to land a job.
- Bogus college degrees or scholastic honors, or distorted majors and minors are common distortions.
- Require all applicants to fill out a formal job application.
- Look carefully at all documents. Compare an applicant's résumé to the job application for discrepancies.

Improving Retention

Saratoga Human Resources Services

PwC Publication

Point of Interest:

- Turnover-related costs represented more than 12% of pre-tax income for the average company. At the 75th percentile, turnover costs are equivalent to nearly 40% of earnings.

Pre-Employment Screening Gaining Favor

Phoenix Business Journal

<http://www.bizjournals.com/phoenix/stories/2005/11/14/smallb1.html>

Points of Interest:

- Pre-employment screenings are seen as the first step in battling lost productivity or turnover as the result of employees who were hired based on training or experience they claimed to have, but just didn't
- Business owners also can use the background checks to reduce the risk of hiring an employee who has a propensity for physically harming a customer or another employee.

Overwhelming Passage of Criminal Background Check Legislation

Michigan Health Care Fraud Division

<http://www.michigan.gov/ag/0,1607,7-164--132186--,00.html>

Points of Interest:

- Almost 10% of the employees caring for seniors and vulnerable adults have criminal backgrounds.
- 25% of residential care facility employees committing crimes against residents had past criminal convictions.
- 9% of Certified Nurse's Aides (CNAs) had outstanding criminal warrants and 3% had past criminal convictions.
- At four sample Michigan nursing homes, 9% of employees had outstanding warrants and 11% had past criminal convictions.

Guide To Employment Law, October 2000

Reish & Luftman

<http://www.reish.com/publications/pdf/Emplawoct00.pdf>

Point of Interest:

- Employers lost 60% of negligent hiring/supervision jury trials.

Avoid Sexual Harassment Lawsuits

Office.com

Point of Interest:

- The average jury award against employers in sexual harassment lawsuits is about \$250,000.

Background Screening – Past, Present and Future

NAPBS, National Association of Professional Background Screeners

http://napbs.i4adev.com/files/public/Consumer_Education/Resources/HistoryBackgroundScreening.pdf

Quotes of Interest:

- "Organizations owe it to themselves and to everyone with whom they come into contact to know everything they can about their employees and volunteers, and the most effective method to accomplish this is by conducting thorough background checks."
- "Making background checking a part of an organization's culture can not only enhance its effectiveness (e.g., through greater productivity and retention), but also its reputation."
- "Background checking can supplant an organization's loss prevention efforts by helping provide a safer environment for employees, volunteers, and others."
- "The most common reason among employers for not conducting background checks is cost. However, the cost of background checks represents a fraction of the cost of: terminating an individual; re-recruiting, re-hiring, and re-training his or her replacement; and defending a lawsuit brought by a victim of a dishonest or violent individual's actions (which can range in the multi-millions of dollars)."

Bulletproof Practices

HR Magazine, November 2002

www.shrm.org

Points of Interest:

- The annual tab for workplace violence and stress-inducing hostility in the workplace comes to about \$13.5 billion in medical costs and 500,000 workers missing 1.75 million days of work.
- Background checks are not foolproof. Nonetheless, doing them reduces vulnerability in a negligence claim.
- Even if a reference refuses to supply information, the fact that an effort was made helps demonstrate due diligence.

Beyond Pre-Hire Background Checks: Post-Hire Screens Become the Norm

SHRM Staffing Management Library

www.shrm.org

Point of Interest:

- Since things can change so quickly, many employers are realizing that post-hire employee background screening should be conducted at regular intervals for certain job categories or employment situations in order to mitigate business risk.

More Background Screening Yields More ‘Red Flags’

SHRM Staffing Management News July 2007

www.shrm.org

Points of Interest:

- The percentage of "hits," or red flags, showing up in background checks is increasing as more companies are opting to conduct more complete background checks for larger segments of their job applicant pools and current employees.
- More thorough background checks include more complete data. Employers are digging deeper than ever before.
- Companies are screening all employees, not just managers. Companies also are increasingly screening temporary employees, vendors and consultants, all of whom could also pose a threat to their business.

Criminal Background Checks for Employment Purposes

SHRM Legal Report July/August 2006

www.shrm.org

Important Point:

- The ideal background check is accurate, comprehensive, consistent, timely and, of course, legal. Coordinating these factors is expensive and time-consuming, but getting the best background check possible is too important to let budgetary or time constraints compromise the process.

Criminal Background Checks: A Checklist of the Pros and Cons

SHRM Information Center

www.shrm.org

Points of Interest:

- There are significant rewards to doing Criminal Background Checks.
- There are significant limitations and restrictions employers need to be aware of when conducting Criminal Background Checks

Not Wanted: Thieves

HR Magazine: Legal Trends

www.shrm.org

Points of Interest:

- Employee theft and fraud is pervasive and not well known.
- Approximately 30% of employees admit to stealing from their employers.
- Of the perpetrators 41.2% are managers, 39% are employees, and 19.3% are owners or executives.

Cost of Turnover

SHRM Briefly Stated ROI Series

www.shrm.org

Turnover Costs May Be Categorized Into Four Types:

- Separation Processing Costs (e.g. exit interviews and administrative overhead)
- Replacement Hiring Costs (e.g. recruiting and interviewing replacements)
- Training Costs
- Lost Productivity (e.g. performance differential as a new hire gets up to speed etc.)

In Their Shoes

HHR Magazine, August 2001

www.shrm.org

Point of Interest:

- The average cost of turnover is between 33 percent and 250 percent of an employees annual pay.

Workplace Violence: Trends and Strategic Tools for Mitigating Risk

SHRM White Paper

www.shrm.org

Points of Interest:

- Workplace homicides are the second leading cause of fatalities within the workplace for males and the first leading cause of fatalities for females.
- The fourteen of the fifteen assailants studied had a history of violence, substance abuse, mental health problems and/or criminal convictions.
- Negligent Hiring is "the failure of the employer to investigate a job applicant's work experience, character, criminal history and other relevant data prior to the hiring of an employee."

- An acceptable practice for background investigations usually includes:
 - (i) verifying prior employment;
 - (ii) verifying educational experience;
 - (iii) obtaining information relative to experience, knowledge and skills;
 - (iv) obtaining criminal conviction information; and
 - (v) in positions where there is financial risk, obtaining personal credit history information, including personal bankruptcy filings.

Note: A Matter of Fact has no control over the content of the above sites and is not responsible for their content.

Employment Background Checks: What Do We Recommend?

by Glenn and Rose Maree Hammer

From years of experience backgrounding prospective employees for our clients, we have identified certain background check best practices that maximize the probability of discovering problems. Information from multiple sources provides the clearest understanding of an applicant's qualifications and prior history, thus reducing the risk of negligent hiring liability claims and the many other costs of a bad hire.

- We recommend that you **background all your staff**, including full-time employees, part-time employees, temps, contractors, and volunteers.
- We strongly recommend a **Social Security Number Scan** to reveal any jurisdictions the applicant purposefully or inadvertently failed to disclose to you.
- Because the Form I-9 and **E-Verify** (Employment Eligibility Verification Program) search is the most accurate and easiest to use method of verifying Social Security, Immigration "A," and I-9 numbers available to an employer, we recommend it to all employers for use in verifying every employee's eligibility to work.
- We strongly recommend **County Criminal Record Checks** for any position. We recommend that, at a minimum, all counties of residence, work, and school be searched for a period of at least seven years. Additional county criminal court records may also be searched as requested by an employer or as determined by the details of a specific background check.
- We recommend **Federal Criminal Records Checks** to any employer who wishes to extend research into potential criminal activity from the state level to the federal level. Federal Criminal Records Checks cover jurisdictions that County Criminal Records Checks do not, and are thus an essential element of the criminal portion of a comprehensive background check.
- We recommend a **Global Homeland Security Search** as part of a quality, comprehensive background check.
- We recommend the **National Wants and Warrants Search** for all applicants. This search allows employers to better protect themselves from individuals who may be attempting to escape the law or who are trying to hide criminal records.
- We recommend a **Sex Offender Registry Check** on all employees who work with the infirm, the elderly, and children, as well as for all employees who have access to living quarters or residences. We also recommend a Sex Offender Registry Check for any employer who wishes to broaden the scope of Criminal Record Checks to the state level for this type of crime.
- We recommend **State/Multi-State Criminal Database Checks** for employers seeking to widen the geographical area being searched for criminal records. This allows employers to better protect themselves from individuals who may be trying to hide criminal records.
- We strongly recommend verifying each prior employer for the last seven years. Verifying prior employment claims is an essential element of a thorough background check. **Employment Verifications** should be conducted for all employees.
- Because of the large number of candidates who make false educational claims, we strongly recommend an **Education Verification** when a degree or certification is required or desired for a given position.

- We recommend a **Motor Vehicle Report** for all employees who drive company vehicles or will be driving on company business.
- A Professional **Reference Check** should be done on every job applicant. We are happy do this check but recommend clients do it themselves since they are most familiar with the unique requirements of their businesses. We believe the hiring manager is normally the best person to conduct this important element of a comprehensive background check.
- Because verifying a Professional License claim is essential when the prospective employee will be in a position that requires such a license, we recommend **Professional License Verification** for any comprehensive background check involving a license claim.
- We strongly recommend an **Employment Credit Report** for any potential employee who will have fiduciary responsibilities. It will outline habits with regard to financial management skills as well as reveal potential financial pressures.
- We recommend a **Workers' Comp History** for any employer who wishes to use the information to determine whether the individual is capable of performing the essential functions of the job and to properly channel work assignments. This search can only be ordered after a conditional job offer has been made.
- Because candidates with sanctions are excluded from participating in any Medicaid, Medicare, childcare, social services or federally funded health care program, a **Medicaid Sanctions** search is a must for all employers in related industries.
- A **County Civil Records Check** can provide valuable character information concerning a potential employee. We recommend County Civil Records Checks to any employer who wishes to extend research from the criminal level to the civil level, thus broadening the scope of a comprehensive background check.

For more detailed information about the above searches see [What Can Be Included In A Background Check](#).

Related Resources

- To learn more about the trend to thorough background checks, see [The Growing Trend to Thorough Background Checks](#).
- For our most frequently asked questions, see [Background Check FAQ: Questions on Pre Employment Screening](#).
- For a step-by-step process on how to conduct employment background checks , visit [How to Conduct a Background Check: A Step-by-Step Guide](#).

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Note: This information is for educational purposes only and should not be used as a substitute for professional legal advice.

Need to Speed Up Your Background Checks?

It can be a time-consuming process to gather information from the multiple sources required to provide a thorough understanding of a job applicant's qualifications.

Is it possible to speed up this background checking process? The answer is Yes! However, it is important to first understand the following:

- **An Employer is Required to Comply with** the Fair Credit Reporting Act, the Americans with Disabilities Act, and all other **Applicable State and Federal Laws**, including properly establishing an account with a background-checking agency and providing the written disclosures, authorizations, and notifications, etc., required by law. (There can be no "cutting corners" here to save time!)
- When placing an order for a Comprehensive Background Check, **the Following Documents are Required:** An Employee Background Check Request Form, an Applicant Authorization and Release Form, and a copy of the applicant's Job Application or Resume.
- **Background Checks are Best Done "Through the Front Door,"** meaning that contact information for the schools, prior employers, and other record repositories is located independently of the contact information provided by the applicant. This ensures that we are contacting the actual school, prior employer, etc., claimed.
- Schools, prior employers, and other **Record Sources Maintain and Release Data in a Variety of Ways.** While many records are computerized, many others are maintained on microfiche, microfilm, and paper. Records converted to computers are not necessarily complete. Records are also not necessarily shared between campuses in the same school system or between branches of the same company. Each record repository has its own rules and regulations as to how records are kept and released, and interpretation of the local "legalese" or source language may also be required. Some repositories require that a request for information be made either by mail, fax, or voice mail, adding time to the process (as we must wait for the repositories to do the search on "their time").

So What Can be Done to Speed Up Your Background Checks?

- **Provide All Applicable Documents.** Provide A Matter of Fact with all required documents to establish an account and to request a background check. Provide the job applicant with all documentation as required by law. This avoids delays caused by waiting for the proper documentation. (See [How to Conduct a Background Check.](#))
- **Ensure that All Documentation is Filled Out Completely and Legibly.** Proper contact information for the client and clarity as to what is being requested are essential. Proper signatures are required before a background check can be started. Complete names, dates of birth, social security numbers, and addresses for places of residence, school, and work ensure that we are verifying the correct information. ***Carelessness in filling out the Employee Background Check Request Form, the Applicant Authorization and Release Form, and the Job Application is the main reason for delays***

when conducting a Comprehensive Background Check. Such carelessness requires our staff to follow up for more information and may require the running of additional searches.

- **Contact Our Office with any Special Requests.** You can contact us by phone, e-mail, or just by adding a note in the Comments Box on the Employee Background Check Request Form. Our most important product is customer service. We cannot guarantee that a school, prior employer, or other record source will speed up an order when requested to do so, but we will contact them with this request when your needs require it, and we will attempt to obtain for you a verbal response while we wait for the paperwork to arrive.
- Most search results are available online for your review as soon as each result has been checked for accuracy. We can also arrange **Alternative Methods of Delivering Your Reports** if that would help.

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HR MATTERS E-TIPS

Published by Personnel Policy Service, Inc.

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THIS WEEK'S TIP: **Limiting Negligent Hiring Claims**

Most HR professionals know that reference checking and work history verification are fundamental steps in applicant screening. What many may not realize is that these simple steps not only weed out bad candidates but also may help protect the employer from negligent hiring exposure if there is an incident of workplace misconduct or violence later. Unfortunately, you may be tempted to skip these checks in order to make a quick **hiring decision**. However, the consequences of omitting them can be devastating and range from huge monetary settlements and bad publicity to, in the worst case scenarios, loss of life. You can help prevent these problems and limit your organization's exposure by taking a few basic precautions in checking candidate backgrounds.

What is **Negligent Hiring**?

The legal theory of negligent hiring is based on the premise that an employer can be liable for the violent acts or wrongdoing of its employees if it did not investigate adequately their backgrounds or qualifications. **Negligent hiring claims** often involve employees both who are in a position to pose a threat of injury to the public (such as a driver or delivery person) and who subsequently attack another employee or an outside third party (such as a client or customer).

To establish negligent hiring, the harmed person generally must show:

1. That the employer did not exercise reasonable care in hiring the employee (for example, by talking to former employers);
2. That the employee had dangerous tendencies which should have been apparent if the employer had exercised reasonable care (such as by conducting an adequate **preemployment investigation**); and
3. That the employer placed the employee in a position where others could be injured.

The **employer's legal liability** typically depends on the circumstances leading up to the employee's misconduct and on whether the employee was acting within the scope of his employment duties. For example, in *Judith M. v. Sisters of Charity Hospital*, 93 N.Y.2d 932 (N.Y. 1999), a hospital was not liable for the negligent hiring of an employee who was accused of sexually assaulting a patient. The New York Court of Appeals found that the hospital acted with reasonable care in hiring and supervising the employee and that its management did not authorize, participate in, consent to, or ratify the employee's alleged conduct.

Similarly, in *Vinci v. Las Vegas Sands, Inc.*, 984 P.2d 750 (Nev. 1999), the Nevada Supreme Court determined that the employer could not be held liable for negligent hiring since there was no evidence that it failed to conduct a reasonable background check.

Simple Steps to Prevent Claims

Clearly, the best way to limit negligent hiring claims is to follow common sense procedures to get as much information from the candidate as you can and then to verify the information before offering a position. To accomplish these goals, consider taking the following eight steps:

1. **Train your interviewers.** Every interviewer should be familiar with your hiring policy and know what types of background checks are required.
2. **Have each applicant fill out an application form** which you carefully review. Pay particular attention to gaps in employment and inconsistencies, and require references.
3. **Question the candidate** about any gaps in work history. Make sure you have an accurate timeline of past employment dates and know what happened during any periods of unemployment.
4. **Check references.** At a minimum, confirm the applicant's dates of employment and position. Try to get substantive information about past performance and disciplinary records.
5. Ask about **criminal convictions**. Remember, however, that asking about arrest information (as opposed to convictions) could violate state discrimination laws.
6. **Perform additional background checks** appropriate to the position being sought. For example, consider credit checks on candidates who will handle money and review the motor vehicle records of potential drivers.
7. Conduct **criminal conviction checks** on candidates who will be in "positions of confidence." For example, if you are filling a position in which the employee would work in a customer's home, with impaired individuals, or in a daycare center or hospital, a criminal check is appropriate (and required by some state laws). Make sure these checks cover each jurisdiction where the candidate has lived.
8. **Document the steps** you take to investigate the candidate. Even if you can't get in touch with a reference or if a background check does not produce any information, make sure you have a clear record of the steps you took. Remember, too, if you ask a consumer reporting agency to conduct any of your investigations, you must comply with the notice and

disclosure requirements of the Fair Credit Reporting Act.

Better Safe than Sorry

As a practical matter, most negligent hiring claims involve extreme but isolated incidents of employee violent conduct. However, the risks of having to defend against these claims, and the negative publicity surrounding them, far outweighs the time and cost of taking a few simple steps to prevent them. As a general rule, your first line of defense is to weed out high-risk applicants before making hiring decisions. Your last line is to have clear documentation showing you took the reasonable steps a prudent employer is expected to take to avoid a negligent hiring action

