

2008 - 2009

The Employment Screening Journal



Background
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Buyer's Guide

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The National Institute for the Prevention of Workplace Violence, Inc. is a professional consulting firm that specializes in providing training, consulting, research, publications and services to assist public and private organizations to:

- create violence free workplaces,
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Workplaceviolence911.com is widely recognized as the most comprehensive source of information on workplace violence on the Internet. The site includes articles, a resource center, research reports & studies, model workplace violence prevention policies, training information, publications

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The Background Screening Directory -

www.PreemploymentDirectory.com

PreemploymentDirectory.com helps businesses to meet the critical need to know who they are hiring, who is on their payroll and to avoid making bad hires. Our background screening directory is the largest and most comprehensive web based directory of background screening firms designed specifically to make it easy for businesses to quickly find a company to meet their screening needs.

The Directory consists of several sections to guide businesses quickly to the company that will serve them best:

- 1) • U. S. Domestic Section (firms are listed by their location, State by State)
- 2) • International Section (firms that conduct international background screenings are listed by geographic region and country, e.g., European Union, Asia Pacific, etc.)
- 3) • Vendor Showcase (firms that provide services to the background screening industry are listed by sub-categories such as court searchers, software providers, etc.)

- 4) • Alphabetical listing



The Directory has over 1,000 firms listed and is continuously growing. It is a comprehensive tool to support your workplace security effort to provide a safe workplace for employees.

Publications

Screening for Violent Prone Individuals

Background Screening and Investigations: Managing Hiring Risk from the HR and Security Perspectives

Contemporary review of background screening practices that addresses legal requirements, infinity screening, international screening, security risk, sexual offenders, and much more. Written from the perspective of a SPHR certified senior human resource manager and a CPP certified senior security manager the book offers insight into a cross functional view of background screening and addresses many of the issues that oftentimes arise between these two functions that have an important role in the hiring process. It is a must read for all professionals involved in hiring people.



Booklets

Comprehensive Guide for Selecting a Background Screening Firm

The Guide contains everything you need to know to select a background screening firm that will help you to avoid bad hires. The guide clearly identifies specific selection criteria that should be used by Human Resource, Security and Risk Management professionals or hiring managers to select an outsourced service provider that complies with appropriate legal requirements, industry best practices and standards. The Guide is written in an easy to read format. Anyone involved in selecting a background screening firm should read this booklet before they make a decision. It is a must read to maximize your human resource investment, avoid costly legal and/or fiduciary issues.

A free copy of the Guide can be downloaded at www.PreemploymentDirectory.com.

Complete Hiring Process to Screen for Violence Prone Individuals:

A detail description of actions employers should take to ensure their employment processes are tuned to address screening out potentially violent individuals. Topics covered include interviewing techniques, important questions to ask during interviews as well as appropriate type responses, identification of critical behavior traits, psychological testing, reference checking, and much more.

Workplace

Violence Prevention Booklets

Zero Tolerance is Not Enough - How to Make Violence Prevention Really Work

An easy to read booklet designed for supervisors that provides a solid overview of prevention techniques for implement-

The National Institute for the Prevention of Workplace Violence, Inc. is a professional consulting firm that specializes in providing training, consulting, research, publications and services to assist public and private organizations

ing your firm's workplace violence prevention policy. It includes tips on how to create a violence free workplace, identifies the early warning signs and covers many violence prevention techniques.

Financial Impact of Workplace Violence

An in depth analysis of the cost impact of workplace violence on a business is explored. A cost model is introduced to identify the cost that are associated with a serious workplace violence incident occurring. Emphasis is placed on the critical role of Disaster and Emergency Preparedness Planning which can reduce the impact of such occurrences. The case is also made for focusing on anticipating the possibility of workplace violence and not just preparing to react, but also taking preventative steps to reduce the likelihood of such events occurring. The role of Financial Managers in preparing for addressing workplace violence is also discussed.

Common Factors to Organizations that are Violence Prone:

An overview of the factors that have been

identified as being the most common in organizations that have had violent incidents and have an increased risk of experiencing an incident of violence. A must read for managers who want to learn how to create a violence free work environment.

Workplace Violence Prevention Software Products

The Ultimate Workplace Violence Prevention Policy Maker

The Policy Maker Software allows a firm to create a comprehensive workplace violence prevention policy in about an hour. The software has been specifically designed for organization to use to significantly shorten policy development time. We have built into the database extensive research on workplace violence policies as well as our in depth knowledge and experience gained through our consulting practice. The result is a software product that allows you to create a highly customized policy that fits the unique culture and work environment in your organization. This product is designed to create a comprehensive workplace violence prevention policy, not a generic policy as many policy development products on the market are designed to do. You will be able to quickly and easily create a comprehensive workplace violence prevention policy by answering a series of carefully crafted questions specific to workplace violence that cover a wide array of the policy, procedure and legal issues related to workplace violence.

The software is available online at <http://www.workplaceviolence911.com/PolicyMaker/policymaker.html>

The Employment Screening Journal

Special Edition Featuring 2008-09 Background Screening Industry Buyers Guide



From the Publisher

Welcome!

I want to extend a heartfelt welcome to the first edition of The Employment Screening Journal.

As you read this message and go through this Journal you are making history. This is the first 'Buyers Guide' produced for the background screening industry. Not much more than ten years ago background screening was mostly focused on law enforcement or security related jobs, very unique jobs, high level executives or government related positions requiring special clearances and the number of screening firms could be committed to memory. However, fueled by growing numbers of workplace violence, negligent hiring lawsuits, identify theft becoming a leading crime, employee fraud and theft reaching record proportions, and the shock of the tragic attack on September 11, 2001 the business world has clamored for more and more background checks.

A recent report by KPMG indicates background screening is now a 2-3 billion dollar industry. It has also become a profession with its own professional association – the National Association for Professional Background Screeners. By any measure it is an amazing growth story.

This birth of an industry has spawned the creation of this Journal. Our intent is to create an information bridge for Human Resource Managers charged with the responsibility to hire the best talent for their organization and the industry that provides vital support to help the hiring decision process. Our goal is to help connect businesses to background screening firms and the state of the art of employment screening.

In this Journal you will see many of the top background screening firms in the country and the world. We also have an online background screening directory – PreemploymentDirectory.com that features background screening firms which we encourage you to use to source screening firms to meet your needs as well.

In addition to being able to find a screening company in these pages, we have also included some exceptional articles and information on background screening that are must reads for you.

- *Our Comprehensive Guide for Selecting a Background Screening Firm will help you key in on the way to select the best firm to work with you.*
- *The ASIS International Preemployment Background Screening Guidelines will give you a clear understanding of an effective process for conducting background screenings.*
- *Several of the top surveys that have been conducted on background screening to ensure you are up to speed about what other businesses are doing.*
- *An insightful article 'Taking Screening to the Next Level' that discusses Infinity Screening which is one of the hottest trends in background screening.*
- *Information about national databases, international data protection laws and an innovative new approach to conducting reference checks.*

The Employment Screening Journal is packed with information to enhance your background screening knowledge to help you make the best hiring decisions possible.

We hope you enjoy reading the first edition of the Employment Screening Journal and invite you to provide us your honest input which will be useful in planning next years edition. I would love to hear from you regarding your feedback. I can be reached at 949-770-5264 or online at wbnixon@aol.com.

Thanks and happy hiring!

Barry Nixon

The Employment Screening Journal

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Background Investigator	117	(866) 909-6678	www.StraightlineInternational.com
Choicepoint	79	(866) 432-7241	Screening.choicepoint.com
Corporate Research and Investigation	64	+92 51 111 888 400	www.cri.com.pk
Corporate Screening	29	(800) 224-8606	www.corporatescreening.com
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Sterling Testing	102	(800) 899-2272	www.Sterlingtesting.com
Straightline	80	(866) 909-6678	www.StraightlineInternational.com
Verifications	126	(866) 455-0779	www.verificationsinc.com
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Comprehensive Guide For Selecting a Background Screening Firm

W . B A R R Y N I X O N , S P H R

The purpose of this guide is to increase business' awareness of the essential elements that should be considered when selecting an outsourced background screening firm. It is our presumption that every business entity wants to maximize their return on investment from services procured and more importantly they want to provide a safe and secure workplace for their employees.

To this end, it is our intent to identify important considerations that will strengthen the quality of selection of a background screening firm which ultimately will lead to higher quality employee selection outcomes. Our focus is on helping businesses to select providers that operate within compliance with all governing laws, have established business practices that demonstrate excellence in protecting consumer personal data based on 'best practices' and that adhere to the spirit of the accreditation standards promulgated by the National Association of Professional Background Screeners. (NAPBS)

It is also important to note that our firm, the National Institute for the Prevention of Workplace Violence, Inc. is not in the business of providing background checks of any kind so we are an unbiased and objective view of the selection process. Our business focuses on providing workplace violence prevention solutions to public and private organizations. And, of course, background screening is an important element of any effective workplace violence prevention initiative.

The intent of this guide is to present the most current information available and to provide general guidelines that should be considered in selecting a background screening firm. It is my firm belief that businesses need to consider the selection of a background screening firm as carefully as selecting a CPA firm. A good background screening firm can keep you out of trouble, while one that doesn't protect applicant or employee data or provide accurate information can get you into a lot of hot water.

Some Compelling Reasons to Conducting Background Checks

The rapid growth of the background screening industry is a testimony to the importance that organizations of all kind have put on the need to check applicants' backgrounds as part of the employment hiring process. Also, it is evidenced by statistics that the process of conducting background screening actually works. The 2005 ADP Screening Index and 2005 InfoLink Screening Services Annual Screening Statistics reported that approximately 1 out of ten applicants have a criminal record and 40-60% falsify or exaggerate information presented on their resume, employment application or CV. The translation of this means that if you hired ten people this year and did not check their backgrounds, it is likely that you have at least one person with a criminal past and 4 to 6 employees on your payroll

that do not actually have the experience, education or credentials upon which you based your hiring decision.

Some real cases

- Disgraced former Radio Shack CEO David Edmondson isn't the only one to lie about college degrees on his resume; it seems that 14 percent of Americans have twisted the truth about educational attainment.
- Springfield, MA Police Department conducted an investigation into a report that a convicted sex offender was driving a vehicle carrying public school children for a private transportation company.
- A former employee of a St. Louis charter school, used about \$100,000 of the school's money to buy a BMW, fancy clothes, electronics, hotel stays and airline flights. When he was hired he was on probation for stealing and writing bad checks.
- A Chief Financial Officer of a bank stole \$150,000 from the bank where he worked to cover his personal financial problems.
- In a case involving the healthcare industry, a patient suffering from cerebral palsy was murdered in his home by a visiting nurse.

Some of the factors that continue to drive the focus on background screening

include the obvious focus on security resulting from the terrorist attack on the World Trade Center in New York City to the dramatic rise in workplace criminal activities such as identity theft, fraud, product and information theft to other problems such as workplace violence and exposure to negligent hiring liability.

Employers are besieged by the advent of these issues and their financial toll:

- Employees are responsible for approximately 60% of losses due to fraud, information and property thefts,
- A 2003 KPMG Forensic Practice Survey of executives at public companies with revenues of more than \$250 million reported that 36% of the companies surveyed suffered fraud of \$1 million or more.
- U.S. organizations lose an average of 6% of their revenues to all forms of occupational fraud according to the Association of Certified Fraud Examiners and the costs of fraud from such things as employee espionage or identity theft is estimated around \$6 billion annually.
- The number of workplace violence homicides have actually decreased over the last several years, however, horrific incidents continue to happen and cause tremendous suffering and financial burden on employers. Researchers from the National Institute for Occupational Safety & Health (NIOSH) estimate that the average cost of a workplace homicide is \$800,000.
- Negligent hiring lawsuits that result in a jury trial have an average cost of over 3 million dollars to employers that lose and cases settled prior to trial are running around a half million dollars.



**The average
out-of-court settlement
approaches \$500,000
and the average
jury award is \$3 million.
A few awards
have reached as high
as \$5.49 million.**

Employers have responded by conducting background screenings at an unprecedented level.

The Society for Human Resource Management's (SHRM) 2004 Survey on Reference Checking indicated that over 80% of business that responded to their survey were conducting some form of background checks and the PreemploymentDirectory.com's 2005 Employer Background Screening Practices Survey (see http://www.workplaceviolence911.com/docs/03_2006_results.pdf) produced a similar result with 82% of respondents indicating they conduct screenings.

Another factor that is encouraging the increase in background screening is technological developments with the Internet and software that is facilitating the integration of background screening with enterprise human resource information systems. Through Information Dash Boards, employers are able to access all the information that is relevant to

making hiring decisions from one place and one source versus the old process of having to go to multiple sources and data feeds. The process is getting simpler and more efficient.

In addition, with biometric advances we are getting to the point where we will be able to identify individuals with a higher degree of certainty by cross referencing multiple physical attributes like fingerprints and iris scans which will help significantly reduce troublesome situations caused by false negatives or mistaken identity.

The next frontier that both employers and background screening firms must face is addressing privacy issues and data protection. After the 'year of the data breach' which 2005 has become known as, the industry is facing new data protection and privacy legislation and must exert much more due diligence in addressing this very important issue. Nuala O'Connor Kelly, chief privacy leader at General Electric articulates the issue best when she said, "A breach of employee data could be as damaging to a company's reputation as a consumer data breach, she says.

"Privacy is to the information age what the environment was to the industrial age,"² O'Connor Kelly says.

Accordingly, we believe that the trend towards background screening will continue well into the future as security concerns continue to be at the forefront as organizations continue to focus on avoiding costs associated with making poor hiring decisions.

Selecting a Background Screening Firm

These are some of the key factors that firms should consider in selecting a background screening firm:

- 1) Does the vendor provide 'Full Service'

Comprehensive Guide For Selecting a Background Screening Firm

background screening services that will meet your business and hiring needs? At minimum, these services should include the following:

- Verification of identity
 - State, County and multi-jurisdictions (national*) Criminal and civil background check including current warrants as well as felonies and misdemeanors, when available
 - Reference check and previous work history
 - Verification of education and professional license records
 - Motor Vehicle records
 - Sexual offender search
 - Terrorist search
 - Credit history
 - Other searches as deemed necessary
- 2) Does the vendor have the capability to collect direct information from court houses in jurisdictions appropriate to



**The capability to collect
direct information
from court houses
is essential to be able
to verify the accuracy of
records found.**

meet your needs?

- 3) Can the vendor meet your required turn-around time for each type of background check you will require?
- 4) Does the vendor use a variety of methods for meeting your order and reporting needs including Internetbased tool with 24 X 7 access from any computer device at anytime from anywhere as well as fax, email, interactive voice response, and electronic file transfer?
- 5) Verify that in providing educational verification that the vendor also provides college and university accreditation status, legitimacy of the institution as a degree granting entity and for foreign institutions equivalency information to US institutions.
- 6) Verify that the vendor is certified in states that require Background Screening firms to be certified or require a Private Investigator license.
- 7) Does the vendor have a clearly demonstrated process in place to fully explain limitations of national or multi-jurisdiction databases to clients and have a written procedure in place for how criminal hits received from such sources will be reverified?
- 8) Require the vendor to certify their compliance with all applicable federal, state and local privacy, EEO/discrimination, consumer reporting, data destruction and other governing laws and has written procedures in place to ensure that all information sent to client will comply with the law, e.g., arrest records, sealed or expunged records, etc.? In addition, does the vendor provide all necessary FCRA forms, procedures and training in how to appropriately use, as needed?
- 9) Does the vendor have a written policy and procedure that clearly articulates their process that will be used when a criminal hit is reported? At minimum this should include who will report it, how it will be reported, specific information that will be included, process for re-



**30 states require
private investigator
licenses to conduct
background checks.**

verifying information, etc.

- 10) Does the vendor have a written policy and procedure in place to avoid contacting a current employer if the applicant has requested that they not do so?
- 11) Does the vendor certify that all staff, regular, parttime and temporary, have been criminally screened at time of hire and ongoing checks are made to ensure employees continue to have acceptable work backgrounds. This should be a contractual agreement that is part of the service delivery contract?
- 12) Does the vendor certify that all employees of the vendor and their sub-contractors that are involved in processing or who will have access to personal identifiable information sign a confidentiality and non-disclosure agreement that meets your company requirements? This should include language that addresses new hires and employees leaving the firm. Have your legal counsel review the agreements.
- 13) Does the vendor have a written policy and procedure that details how they investigate and certify that all their sub-contractors are bona fide businesses involved in the legitimate processing of personal identifiable information for a permissible purpose as defined by FCRA? Also, does the vendor's policy

address that personal identifiable information will only be provided to an authorized representatives of your firm.

- 14)** Require the vendor to fully disclose previous litigation involving data breaches within the last five years and any that occur while the contract is in place. Make sure this language is built into your contractual agreement.
- 15)** Does the vendor have the capability to interface and/or integrate their database with the your HR and/or Employment information system(s) to allow information to seamlessly flow in and out of your organization's HR system. The desired result is to have the ability to go to one place to retrieve screening information along with other employment related information in one report that facilitates hiring decision making.



One of the worst things that can happen is to have a current employer contacted for a reference or background check against the applicants request.

- 16)** With the advent of artificial intelligence and smart programming systems, predetermined hiring criteria can be programmed into a system so each report on an applicant is graded consistently and fairly. Using rules that apply to the various searches conducted during a background screening, a system can electronically evaluate all the information to yield individual search decisions, as well as an overall recommendation. Does the vendor have this ability to create 'smart' systems? Please note that care needs to be taken that these systems do not simply identify "pass/hire or fail/no hire" decisions which could run afoul with EEOC guidelines addressing hiring ex-convicts. For example, a decision matrix that defines positions that involve handling of cash or other valuables no one with a conviction within the last seven years for a financial related crime, e.g., embezzlement, etc. would be recommended for hire might very well be fine versus a blanket rule that no one ever convicted of a felony would be automatically disqualified.

- 17)** Does the vendor have a documented and visible training process in place for all staff whom will be involved in processing or will have access to personal identifiable information? This training should be offered at time of hire and on an ongoing scheduled basis to ensure competency levels are maintained. Training should, at minimum, cover:

- legal requirements for conducting background screening,
- effective data protection and privacy to ensure security of information,
- essential elements of a background screening policy and how to effectively implement an effective background screening program. (see http://www.hrtutor.com/en/featuring_Background_Screening_Violence_Prevention_Suite.aspx)

Require the vendor to provide periodic



Predetermined hiring criteria can be programmed into a system so each report on an applicant is graded consistently and fairly.

reports that demonstrate that the training is occurring as scheduled.

- 18)** Can the vendor assist you in developing an effective Background Screening Policy, if needed, or if one already exists will they review your policy and make recommendations for improvements?
- 19)** Does the vendor have a documented compliance policy, on-going training and audit processes in place that ensures that all staff complies with all appropriate federal, state, local and international laws and regulations as required to legally conduct background screenings?
- 20)** Does the vendor have System Security that provides high level of Data Protection. Ensure that the vendor has an Information Security Policy that:
- details the purpose of the collection of an applicant or employee's personal identifiable information,
 - the intended use, and how the information will be shared, stored and destroyed
 - creates an audit trail of who has accessed information? Have your Information Technology staff verify

that the vendor and any sub-contractors that are involved with processing personal identifiable information:

- a) have system security in place that fully meets your data security requirements and meets background industry standards as defined by NAPBS.
 - b) have procedures in place to mask some or all of the social security number from all reports, as well as obscure the year of birth.
 - c) have your Information Technology staff closely scrutinize data security processes for communicating and securing data if the firm utilizes independent contractors or home operators for court record verifications or sends data offshore for processing. In addition, if such practices are used by the vendor you should have your Legal Counsel define contractual language to be included in the vendor's agreement with their contractors that addresses:
- the appropriate type and amount of Errors & Omissions insurance coverage that needs to be in force with your firm named as co-beneficiary,
 - the contractors and their employees are held to the same requirements and standards as the vendor's employees,
 - specific procedures exist to ensure your data is protected and
 - all data protection laws are strictly followed.
- d) Have your Security staff verify that the vendor and any sub-contractors that process personal identifiable information meet your physical security requirements for securing their systems and meets background



**Training should
be offered at the time
of hire and on an on going
scheduled basis
to ensure competency
levels are maintained.**

industry standards as defined by the NAPBS.

- 21) Does the vendor have a documented quality assurance policy and on going process in place to ensure the highest report accuracy and maintains records of quality audits for all their sources of data and information?
- 22) Does the vendor have demonstrated financial stability over the last three years? Have your Controller or CPA review:
 - Debt ratio and outstanding debt to analyze whether they are within acceptable industry standards and do not indicate potential problems in the near term,
 - Existence of sufficient cash, credit and liquid assets to fund continued investments in technology to maintain a competitive position
- 23) Verify that a written policy exists that states that applicant or client personal data information is never resold. Make sure this language is built into your contractual agreement.
- 24) Require the vendor to disclose all sub-contractors that will be used that are

involved with the processing of personal identifiable information or will have access to this information and ensure that these vendors and their employees be held to same standards you have established for your employees. Require that new vendors that may be hired during the duration of the contract be held to these standards and require the vendor to either provide periodic reports verifying this procedure is being followed or to allow their processes to be audited.

In the above items we have presented many of the essential factors that should be considered in selecting a background screening firm to help you make informed hiring decisions. Two future considerations that we believe also warrant your attention include two technology driven issues.

The first issue deals with "Infinity Screening (continuous post hire employee screening)" which is emerging as a valuable tool to notify firms of derogatory information, status of licenses, etc. that occur after the person becomes an employee.

This will become a powerful tool to prevent negligent retention, once the myriad of issues that must be addressed to introduce it are overcome.

The second issue is the impending convergence of two heretofore separate areas: Physical Access Control and Background Screening. This will usher in the age of Identity Verification Management in which verification and authentication are joined together in one automated system. Any future plans dealing with selecting a background screening firm should consider these emerging issues. In summary, we have attempted to present comprehensive information to you regarding 'factors to consider in selecting a background screening firm,' and hope that this information will provide you valuable insight in selecting your future employees. It should also be noted that the specific application of these recommendations should be done under the auspices of a

knowledgeable labor attorney and/or expert consultant with specialized knowledge of background screening. There is no intent to provide legal advice in any form which can only be provided by a licensed attorney.

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- *The Complete Hiring Guide to Screen for Violent Prone Individuals*
- *Common Factors to Violent Prone Organizations*
- *The Financial Impact of Workplace Violence Software: The Ultimate Workplace Violence Prevention Policy Maker software*

The Background Screening Directory

PreemploymentDirectory.com helps employers meet the critical need they have to



Data protection and system security needs to be in a high priority evidenced by a comprehensive information security policy and continuous due diligence.

know whom they are hiring and who is on their payroll. The Background Screening Directory is the largest and most comprehensive web based directory of background screening firms designed for employers to quickly and easily find a company to meet their screening needs.

The Directory consists of several sections to guide employers quickly to the company that will serve them best:

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The Directory has over 1,000 firms listed and is continuously growing. It is a comprehensive tool to support your workplace security effort to provide a safe workplace for employees.

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Citations

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2. This statement was originally made by --Deirdre Mulligan as quoted in Philadelphia Inquirer, February 15, 2001

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8. *Preemployment Background Screening (Draft Guidelines)*, ASIS International, Background Screening - Taskforce, www.ASISonline.com.

To download a free copy of the *Comprehensive Guide for Selecting a Background Screening Firm* go to www.PreemploymentDirectory.com

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Employment-Related Screening Providers



Listed in alphabetical order

Company, Web address	Number of employment-related screenings performed in most recent 12 months	Revenue for employment- related screenings provided for employers in most recent 12 months	Corporate clients currently using employment-related screening services	Key clients	Geographic regions covered by employment-related screening services
ACCURATE BACKGROUND www.accuratebackground.com	1.75 million	Would not disclose	1,500	J.C. Penney, Macy's, Sephora, Adventist Health, Hanover, Books-a-Million	U.S., international
ACXIOM www.acxiom.com/backgroundscreening	6.7 million	\$41.6 million	3,000	Would not disclose	U.S., international
ADP www.adp.com	5.8 million	\$8 billion	30,000	Would not disclose	U.S.
CHOICEPOINT http://screening.choicepoint.com	10 million	Would not disclose	22,000	Would not disclose	U.S., international
EMPLOYMENT BACKGROUND INVESTIGATIONS INC. www.ebilinc.com	2.2 million	Would not disclose	5,000	Would not disclose	U.S., international
FIRST ADVANTAGE www.fadv.com/employer	9.2 million	Would not disclose	35,000	Would not disclose	U.S., international
HIRERIGHT www.hireright.com	5.5 million	Would not disclose	1,500+	Would not disclose	U.S., international
INFOMART www.infomart-usa.com	2 million	Would not disclose	7,500	Cox Enterprises, FedEx Ground, Randstad North America, AutoZone	U.S., international
INTELIUS www.hr.intelius.com	750,000	Would not disclose	3,000	FedEx Ground, Corinthian Colleges, Bartell Drugs, UW Physicians	U.S., international
INTELLICORP RECORDS www.intellicorp.net	2 million	Would not disclose	5,000	Would not disclose	U.S., international
KROLL www.kroll.com	1.5 million	Would not disclose	12,000	Would not disclose	U.S., international
PRE-EMPLOY.COM www.pre-employ.com	1.75 million	Would not disclose	3,000	Would not disclose	U.S., international
STERLING TESTING SYSTEMS www.sterlingtesting.com	3.3 million	Would not disclose	6,000	A&P, EchoStar, Laboratory Corporation of America, Bed Bath & Beyond, Staples	U.S., international
TALX/THE WORK NUMBER www.theworknumber.com	3 million	Would not disclose	1,700	Would not disclose	U.S.
USIS www.usis.com	37 million	Would not disclose	33,000	Would not disclose	U.S., international

Note: Verifications Inc. did not respond to requests for information.
Sources: Companies

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This list first appeared in the November 5, 2007 edition of Workforce Management.

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✓ A professional firm does not utilize HOME-BASED operators for employment and education verifications. Do you really want your applicant's confidential data spread out amongst kitchen tables and dorm rooms across America? A professional firm uses a controlled calling environment to ensure quality and privacy.

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The Top 10 Signs You Are Hiring A To Happen

Employee lawsuits often catch employers by surprise. Yet, an examination of the employee's application shows that an employer could often have predicted well in advance that they were hiring a lawsuit just waiting to happen. By looking for the following ten (10) danger signals, an employer can avoid hiring a problem in the first place.

- 1 Applicant does not sign application.** An applicant with something to hide may purposely not sign the application form so they later cannot be accused of falsification.
- 2 Applicant does not sign consent for background screening.** When a firm uses an outside agency to perform screening, federal law requires a separate disclosure and consent. A background consent form protects employers in two ways: It discourages applicants with something to hide and encourages candid interviews. If a firm does not perform some sort of screening, they become the employer of choice for problem applicants. If a candidate fails to sign the consent, that is not a good sign.
- 3 Applicant leaves criminal questions blank.** An applicant with a past problem may simply skip the questions about criminal record. Every employment application should ask, in the broadest possible terms allowed by law, if the applicant has a criminal record. Most jurisdictions only permit questions about convictions and pending cases only. Employers make a big mistake if they only ask about felonies since misdemeanors can be extremely serious. Although employment may not be denied automatically because of a criminal conviction, an employer may consider the nature and gravity of the offense, the nature of the job and the age of the offense in evaluating whether there is a sound business reason not to employ someone with a criminal record. If an applicant lies about a criminal record however, the false application may be the reason to deny employment.
- 4 Applicant self-reports a criminal violation.** Just because an applicant self-reports an offense does not eliminate the possibility of other offences, or that it was reported it in a misleading way to lessen its seriousness. An employer is well advised to check it out.
- 5 Applicant fails to explain gaps in employment history.** It is critical to look for unexplained employment gaps. There can be many reasons for a gap in employment. However, if an applicant cannot account for the past seven to ten

Lawsuit Waiting

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years, that can be a red flag. It is also important to know where a person has been because of the way criminal records are maintained in the United States. Contrary to popular belief, there is not a national criminal database available to most employers. Searches must be conducted at each relevant courthouse, and there are over 10,000 courthouses in America. However, if an employer knows where an applicant has been, it increases the accuracy of a criminal search, and decreases the possibility that an applicant has served time for a serious offense.

6 Applicant fails to give sufficient information to identify a past employer for reference checks. If an applicant does not give enough details about past employers, that can be a sign of trouble. Verifying past employment is a critical and important tool for safe hiring. Some employers make a costly mistake by not checking past employment because past employers may not give detailed information. However, even if a reference check only reveals dates of employment and job titles, this critical information eliminates employment gaps. In addition, documenting the fact that an effort was made will demonstrate due diligence.

7 Applicant fails to explain reason left past jobs. Past job performance can be an important predictor of future success.

8 Explanations for employment gaps or reasons for leaving past jobs do not make sense. A careful review of this section is needed and anything that does not make sense must to be cleared up in the interview.

9 Excessive cross-outs and changes. Can be an indication that an applicant is making it up as they go.

10 Applicant failed to indicate or cannot recall the name of a former supervisor. Another red flag. Past supervisors are important in order to conduct past employment checks.

These danger signs assume employers use an application form. Some employers put their firm at risk by just using just resumes. However, using an employment application is considered a best practice. Resumes are not always complete or clear. Applications ensure uniformity and all needed information is obtained. It also protects employers from having impermissible information a resume may contain, and provides employers with a place for applicants to sign necessary statements that are part of the hiring process. ©2001 Employment Screening Resources

Les Rosen is the President of ESRCheck, Inc., a leading background screening firm. Les can be reached at 414-898-0044 or lsr@esrcheck.com.

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Fourth Background Screening Industry Survey

C h e r i e S m i t h H o m a , K P M G C o r p o r a t e F i n a n c e L L C

K

PMG Corporate Finance LLC would like to thank all of the companies that participated in the fourth edition of our Background Screening Industry Survey. We received responses from a wide range of companies: from large, diversified firms with significant technology infrastructure and Fortune 500 customer lists, to small regional service providers with local customer bases and modest technology investments. Ultimately, the success of the survey would not have been possible without the candid feedback that we received from each of you, so please accept our appreciation for making this survey a success.

Overall, we believe the results of the survey provide a broad perspective on the current state of the background screening industry, as well as the future of the industry. We have summarized our findings based on all of the responses that we received and have also segmented responses into large companies (annual revenues greater than \$25 million), medium-sized companies (annual revenues between \$5 and \$25 million) and small companies (annual revenues less than \$5 million) in our summary of key findings. While not all respondents provided their revenue classification, we believe that an analysis of responses by company size provides a meaningful perspective on the competitive environment of the industry as a whole, as well as the issues facing different size companies.

If you have any questions or com-

ments on the survey, would like more information on KPMG Corporate Finance or would like to discuss our thoughts on the background screening industry, please contact me. Thank you once again for your participation and we look forward to hearing from you.

Key Findings

Technology remains key in delivering service, however, industry providers are placing a lower importance on technology as a differentiator

Virtually all background screening firms provide a technology-enabled screening service. The industry has evolved over the past few years and a base level of technology is required even to be considered a viable service provider. Said another way, utilizing technology – whether it is proprietary or a third party system – to deliver service is now standard in the screening industry. That said, less than 40% of survey respondents indicated that technology was generally a differentiator in the sales process. Furthermore, respondents did not feel that technology drives customer purchasing decisions. Less than one in four respondents ranked technology in the top three factors driving their customers purchasing decision.

As background screening technology advances and companies become more comfortable conducting business over the internet, technology is utilized to more

fully automate the interaction between providers and their customers. Background screening providers are able to save time and money and also reduce data entry errors by enabling their customers to input requests electronically through a hosted online application. Almost 65% (compared to 62% last year) of all background requests are submitted electronically from clients. Roughly 70% of screening requests to large and medium-sized companies are submitted through a hosted application. There has been a steady increase in the companies providing results through hosted online services as almost half of the respondents claim that more than 75% of results were transmitted through hosted online services. Almost 57% (compared to 52% last year) of the background requests to small companies were submitted through a hosted application, showing that even small firms are increasingly moving towards automated interactions.

Electronic tracking of background checks is also becoming increasingly offered. Roughly 90% (compared to 83% last year) of respondents provide electronic tracking of background checks with almost all of the large and medium companies offering electronic tracking. Over half of companies offer instant response for criminal background checks with almost 70% of medium companies offering instant products. For roughly 14% (compared to 12% last year) of companies, the revenues from instant check products were more



than 50% of their total revenues.

Technology is critical to delivering screening services to customers. Automation yields a better customer experience by improving information access, accuracy and efficiency. Although technology is being utilized more in the delivery of service and has become critical to competing in the industry, technology is not the same differentiator that it was even two or three years ago.

While integration of services is expected to increase in all areas, only integration with HRIS has shown substantial growth

The level of integration that has been requested by customers to date varies by provider size. Although there has been a four year trend of increased requests by customers to integrate their offerings – especially with HRIS – integrated services still comprise only a small portion of the market. Not surprisingly, the larger background screening companies have had the most requests to provide integrated solutions and their experience with integra-

tion will likely provide a competitive advantage in winning larger accounts.

Integration with HRIS

In prior years, survey respondents have projected that integration with HRIS would increase. Approximately 34% (up from 22% last year) of the respondents have received requests for integration from more than 10% of their customers. Almost half of the large companies have seen requests from more than 10% of their customers likely reflecting the needs from their larger customers. Going forward, one half (up from 41% last year) of providers feel that the integration will “significantly increase” with HRIS. Compared to recruiting systems and assessment testing, the integration with HRIS is expected to be more pronounced.

Integration with Recruiting Systems

The requests from customers for integration of recruitment systems have shown only modest increases. Overall, roughly 22% (compared to 19% last year) of the companies have received requests for integration from more than 10% of their cus-

tomers. Almost 40% of the large companies and 25% of medium providers have seen requests from more than 10% of their customers. However, in contrast, only 10% of small providers integrate with recruiting systems. Even though the growth has been slow with recruiting systems, almost 40% of providers expect that requests for integration will “significantly increase.”

Integration with Assessment services

Integration with assessment testing has not reached the same level as integration with HRIS and recruiting systems and this is unlikely to change. Almost 95% of the respondents indicated that few of their clients have requested integration with assessment testing. The integration is not expected to rise as over half of respondents expect this level to remain the same.

Customer penetration of ancillary services has increased

As background screening providers seek closer ties to their customers and increase the average revenue per candidate, offering ancillary services such as employment

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verification, educational verification, applicant tracking and drug testing, has become more prevalent. While the level of respondents offering the various ancillary services has remained consistent with prior years, providers are more successful at selling the ancillary services to their existing customers.

Consistent with the last survey, almost all of the respondents offer employment and educational verification, while over 80% offer drug testing and over 25% offer applicant tracking. The number of customers purchasing these services has increased as follows:

- Almost 70% (up from 56% last year) of the respondents claim that more than 20% of their clients are users of educational verification services.
- Almost 16% (up from 7% last year) of the respondents claim that more than 20% of their clients use the applicant tracking services.
- Almost 48% (up from 40% last year) claim that more than 40% of the clients use the service.

The notable exception to increased customer penetration is drug testing. Companies may have an established relationship with outside drug testing firms already so the movement of this service to screening companies has been slower to materialize. Generally, as human resource departments become more accustomed to outsourcing services, we expect background screening providers to continue to benefit.

Concentration risk is inversely related to customer size

Customer concentration

Almost half of the larger providers do not have a customer that accounts for more than 5% of revenue and 84% do not have a customer that accounts for more than 10% of revenue. Conversely, 64% of small

providers have a single customer representing over 10% of their revenues. Furthermore, 6% of small providers have a customer that comprises over 40% of their screening revenue. Over half the medium-sized providers indicated that their largest customer accounted for 5 to 10% of revenue.

Geographic concentration

Concentration in immediate geographic region is largely seen in small companies with almost 45% having more than half their revenues and 73% of them having more than 20% of their revenues coming from the immediate geographic region. In contrast, larger companies have lesser geographic concentration with over 90% generating less than 20% of the revenues from immediate geographic region.

Pricing remains a key factor driving customer purchasing decisions

Respondents were asked to rank the top three factors driving customer purchasing decisions. The rankings varied by provider

Factors Cited as the Number One Driver of Customer Decisions

Table 1

LARGE PROVIDERS	MEDIUM PROVIDERS	SMALL PROVIDERS
Customer service (23%)	Price (38%)	Price (31%)
Price (15%)	Customer service (21%)	Customer service (25%)
Technology (15%)		
Suite of products (15%)		
Turnaround (15%)		

Factors Cited in the Top three Drivers of Customer Decisions

Table 2

LARGE PROVIDERS	MEDIUM PROVIDERS	SMALL PROVIDERS
Price (77%)	Price (83%)	Price (75%)
Turnaround (54%)	Turnaround (62%)	Turnaround (39%)
Customer service (46%)	Customer service (59%)	Customer service (72%)

size, however, consistent with the last three surveys, price remains key. Price was once again ranked the number one factor driving customer purchasing decisions by 30% of the respondents and was the top factor cited by small and medium-sized companies followed by customer service. Almost 80% of all respondents ranked price among the top three factors and, regardless of provider size, it was the factor most cited in the top three.

For large providers, customer service was cited as the most important factor driving customer decisions. Price was ranked as the second most important factor along with technology, turn around time and the ability to offer a comprehensive suite of products. While price is not the most important factor driving customer decisions for large companies, it is still an important factor with three out of four respondents ranking price in the top three.

The following charts highlight the factors that were cited most by providers. Table 1 summarizes the factors that were most cited as the number one factor driving customer purchasing decisions (with

Factors Cited as the Most Important Challenge Facing the Company

Table 3

LARGE PROVIDERS	MEDIUM PROVIDERS	SMALL PROVIDERS
Maintaining the technology (23%)	Recruiting (31%)	Recruiting (22%)
Building company infrastructure (23%)	Margin compression (24%)	Competition (19%)
	Competition (17%)	

Factors Cited in the Top Three as Challenge Facing the Company

Table 4

LARGE PROVIDERS	MEDIUM PROVIDERS	SMALL PROVIDERS
Margin compression (69%)	Recruiting (66%)	Recruiting (22%)
Building company infrastructure (54%)	Maintaining the technology (48%)	Competition (19%)
Maintaining the technology (46%)	Margin compression (45%)	
Competition (46%)	Legal and FCRA compliance (45%)	
	Competition (41%)	

the percentage of respondents ranking the factor number one in parenthesis).

Table 2 highlights the factors driving customer decisions that were most cited in the top three (with the percentage respondents ranking the factor in the top three listed in parenthesis).

Challenges vary based on provider size

Respondents were asked to rank the top three challenges in their business. The rankings varied by provider size. Medium and small companies ranked recruiting professionals as their most significant challenge. Identifying, recruiting and maintain a team of professionals that are knowledgeable about the industry is more challenging for these companies than the larger competitors in the industry.

In contrast, the large companies felt that building internal company infrastructure and investing and maintaining technology were the main challenges. Large companies are providing various solutions to the market and generally tar-

get a larger and more demanding customer. Furthermore, some of the large players have made acquisitions historically and establishing one platform and one infrastructure has been difficult.

The following charts highlight the most important challenges being faced by the industry. Table 3 summarizes the challenges cited as the number one challenge (with the percentage of respondents ranking the factor number one in parenthesis).

Table 4 highlights the challenges being faced by the companies that were cited the most in the top three (with the percentage respondents ranking the factor in the top three listed in parenthesis).

Large and medium-sized providers are facing margin pressure

We have previously debated whether background screening services are more of a commodity or a customized professional service. While most respondents (43%) characterized the market in the middle of the two, 34% thought it is more commodity-like, whereas 26% indicated it is more

customized. Interestingly, the larger the provider, the more they characterized the services as a commodity, with over half of the large and 37% of medium providers, but less than 25% of small providers, describing the industry as a commodity.

The percentage of respondents lowering prices “often” to win or maintain business has increased drastically. Almost 23% (up from 16% last year) of respondents have “often” lowered the prices in order to win or maintain business. Large and medium providers lower prices most frequently with 38% of large companies (up from 20% last year) and 24% of medium companies (up from 13% last year) lowering their prices “often” to win business. Furthermore, margin compression was cited in the top three challenges by over half of all respondents. In fact, almost 70% of large providers cited margin compression as a critical challenge.

The average revenue per search has increased, with 25% (up from 21% last year) of respondents reporting revenues greater than \$75 per search. This increasing trend in average revenue per search is

Fourth Background Screening Industry Survey

more pronounced with small and medium providers, with over 40% of small companies and 17% of medium-sized companies reporting revenues per search greater than \$75.

Approximately 64% of all respondents indicated that the profitability of a search has either stayed the same or decreased. This is led by roughly 80% of medium-sized providers and over 60% of large providers. In contrast, half of the small companies indicate increased profitability. The difference between the small providers on one hand and the medium and large providers on the other can be explained by (1) intensified competition among large and medium players who lower price to gain market share and (2) small companies being able to increase prices due to a better customer experience with improvements in technology and processes. While smaller companies may not be facing the same margin pressure as the medium-sized and large companies, almost half of small companies still view margin compression as a key challenge to their business.

Industry consolidation continues

Historically, the background screening industry has witnessed substantial annual deal volume with over 50 publicized transactions over the past few years. The pace of disclosed transactions in 2007, however, has slowed. The large industry consolidators Choicepoint and First Advantage made only one screening acquisition in 2007. While overall deal activity has slowed most companies are still considering M&A as an alternative. Over the past year,

- Almost 30% (up from 25% last year) of the respondents considered selling their business
- Almost 57% (down from 64% last year) of respondents were ap-

proached by a potential acquirer seeking to buy their business

- Almost half (compared to 56% last year) of the respondents considered buying another business and nearly 14% acquired another company
- Over 70% (up from 64% last year) of the companies established strategic relationships to expand the sales channel

Generally, consolidation is not changing the outlook of providers with only 11% (compared to 5% last year) of the survey respondents indicating that consolidation has hurt their ability to win new business or maintain their customer base. In contrast, about 47% (compared to 52% last year) of the respondents feel that industry consolidation has enhanced their position in the industry.

Although competition remains strong, providers project strong industry outlook

Large and medium-sized companies continue to grow their customer base by taking business from other third-party suppliers. Over 77% (down from over 80% last year) of large companies, and almost 93% (up from 83% last year) of medium-sized companies were able to take customers from other providers. The number of new implementers (companies implementing background checks for the first time) has decreased from 36% in 2004 to 30% in the last survey to 24% today. This likely reflects a more saturated market and the level of new implementers will decrease going forward.

The environment to win new accounts is highly competitive with almost 78% of the respondents indicating that they generally compete against one to three competitors and 21% stating that they generally compete against four or more competitors when seeking new business. The large providers typically face more com-

petition (38% indicate that there are generally four or more competitors for new business). The intense competition at the upper end of the market is also reflected with low customer retention rates. Almost 23% of large companies have customer retention rate less than 90% whereas only 7% of the medium companies and almost no small companies have less than 90% customer retention rate.

Almost half of the respondents cite the large national providers (ADP, FADV, Kroll, etc.) as the most significant competitors. Not surprisingly, 85% of large providers and 54% of medium-sized providers indicated that the large national providers are their primary competition.

The competition in this industry remains high with almost 72% of the respondents (consistent with last year) expecting competition to increase over the next 12 months. Roughly half of all respondents cited competition in the top three challenges facing their business (the second most frequent answer behind margin compression).

Consistent with last year's survey, virtually all respondents expect revenues to increase over the next 12 months. That said, the growth is anticipated to be more modest than in previous years. Over 86% of respondents project revenue to increase by more than 10% and 35% of respondents project their revenue to increase by more than 25%. Medium-sized providers continue to be the most optimistic about growth. Roughly 40% anticipate revenue growth above 25%. This is down from 50% in the last survey and down further from 75% the year before. Strong industry dynamics will continue to drive growth, however, the industry remains exposed to changes in the overall economic outlook and hiring trends, both of which are uncertain for 2008.

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Developments of a frontier free Internal Market and of the so called 'information society' increase the cross-frontier flows of personal data between Member States of the EU. In order to remove potential obstacles to such flows and to ensure a high level of protection within the EU, data protection legislation has been harmonized. The Commission also engages in dialogues with non-EU countries in order to insure a high level of protection when exporting personal data to those countries. It also initiates studies on the development on European and international level on the state of data protection.

Data Protection Laws in Effect (to access any of the following data protection laws go to www.PreemploymentDirectory.com and click on International Resource Center.

See Chartered Institute of Personnel and Development (CIPD) Fact Sheet at <http://www.cipd.co.uk/subjects/em-plaw/data-prot/dataprotec.htm?IsSrchRes=1> for introductory guidance on the law associated with data protection and privacy provides an action plan for employers.



- **European Union Data Protection Legislation**
- http://europa.eu.int/comm/justice_home/fsj/privacy/index_en.htm
- **Austria - Data Protection Act**
- **Belgium - Data Protection Act**
- **Cyprus - Data Protection Act**
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- **Dutch - Data Protection Act**
- **Estonia - Data Protection Act**
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- **France - Data Protection Act**
- **Germany - Data Protection Act**
- **Data Privacy Protection in Germany from the perspective of Siemens AG**
- **Greece - Data Protection Act (unofficial translation)**
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Employee Screening Challenges

Faced by Indian Service Providers

R. Swaminathan, CEO, Matrix Business Services India Pvt Ltd

India has emerged as one of the preferred outsourcing destinations for the whole world. Increasingly a large number of corporations in the USA and elsewhere are outsourcing work in some form to offshore delivery centers in India. The work outsourced to India usually extends to Information Technology (IT) Services or IT enabled Business Process Outsourcing (BPO) services.

As the trend of off-shoring work into India gains momentum, it brings with it several new risks that have to be managed. The most visible risk is associated with people. The backgrounds of people who work on these outsourcing assignments in India need to be screened comprehensively. To do this, screening agencies have to necessarily rely on India based Service Providers who have the local knowledge relating to Indian screening practices.

The purpose of this article is to throw some light on the challenges faced by Indian Service Providers when they carry out searches for international screening clients. Some of the major challenges are as follows:

- Lack of organized and aggregated criminal record data
- Absence of a unique identification mechanism for individuals
- Inadequate credit history data
- Low levels of digitization and computerization

1 • Lack of organized and aggregated criminal record data:

There is no comprehensive criminal database in India at the national level, and in

the case of many states, even at the state level. Criminal searches in India are usually done by physically visiting the local police station (unlike in the US, the court houses in India don't provide criminal data, it is the police stations that do). The jurisdiction of the local police station

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merely covers a borough or a neighborhood that extends to a few square miles. If a crime has been committed by the employee a few miles away, the same will not come to light in this search. To cover just one state in India, thousands of individual police stations have to be physically visited to do a single search. Since this is physically impossible, providers in India restrict their searches to the few square miles covered by the police station that is physically visited. Naturally, the probability of getting a criminal "hit" through this procedure is minimal, almost zero.

2 • Absence of a unique identification mechanism for individuals:

There is no Social Security Number (SSN)

equivalent database in India. There is virtually no way to uniquely identify every individual with a specific number. Driving licenses are held only by those who drive vehicles – a small fraction of the country's population. Passports are held only by those travelling or planning to travel abroad – again a small fraction of the country's population. Therefore the only meaningful way to validate the identity and residential address of an employee is by physically sending a verifier to the employee's residence. The verifier meets up with the employee or his / her family members at the residence and confirms that the stated address is correct. During the course of the visit, the verifier also asks for some ID proof / address proof document (Driving License, Ration Card, Passport etc.) to cross-check the identity and address details. This process is an integral part of employee screening in India. The challenge here is to visit the employee's permanent residence, and not just the current residence where the employee is temporarily being lodged. Most of the jobs in India are in large towns and cities, and employees often migrate to these large towns and cities from upcountry small towns or villages. Authentic residential address verification involves visiting the small town / village where the employee has his / her permanent residence. This process can significantly increase the overall turnaround time (TAT).

3 • Inadequate Credit History data:

Retail credit data aggregation in India is in its early stages. There are no organized



credit bureaus, except for Credit Information Bureau of India Limited (CIBIL) which is still in the process of building up a comprehensive credit history database. Again, the services of CIBIL are available only for the purpose of financial screening of borrowers and not for employee screening. There is therefore no way to comprehensively ensure whether an employee has a credit default against his name or not.

4 • Low levels of digitization and computerization:

Most searches in India involve going through handwritten records in bulky paper registers. Information is hardly available at the click of a mouse. At many police stations, criminal records are in handwritten form in registers that have to be physically searched page by page. A large number of educational institutions (colleges / universities) are yet to completely computerize their records. To confirm the education of a candidate, the old mark-sheet files have to be physically retrieved from their storage locations. Completing these searches within a tight turnaround time (TAT) is therefore a severe challenge. Often the police stations or the educational institutions will not commit to any TAT and will take their own time to provide confirmations. The timelines in these cases are therefore completely beyond the control of the Service Provider.

Conclusion

The good news is that India is moving forward to create an eco-system that facilitates a vibrant background screening culture and most of the above challenges are getting addressed at a rapid pace. In the interim there will be some hiccups and teething troubles as the background screening industry takes off in India. The objective of this article is to create some awareness within the international screening community about the issues they can expect to face when they interact with Service Providers in India.

The author is CEO at Matrix Business Services India Pvt Ltd (www.matrixbsindia.com) one of India's leading employee screening agencies. The views expressed in this article are personal. The author can be reached at r.swaminathan@matrixbsindia.com.

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Consumer confidence is critical to the ongoing growth of industry, be it financial services, professional services, corporate, consumer or not-for-profit. As a consequence, the ability of any organisation or business to prosper and succeed relies greatly on the trustworthiness and honesty of its employees.

Employment screening and reference checking play a critical role in managing this growing area of risk and in protecting an organization's valuable assets.

Two recently released Handbooks, the Employment Screening Handbook and the Reference Checking Handbook for the Financial Services Industry that was developed in close collaboration with the Australian Securities and Investments Commission (ASIC), will help industry put in place measures to significantly reduce the risk of potential security breaches and to ensure the identity, credentials and integrity of staff and contractors.

Mr John Tucker, CEO of Standards Australia said the Handbooks will play a significant role in employment security and screening in Australia.

"Used together with the Australian Standard for Employment Screening – the only Standard of its type in the world – employers now have a comprehensive guide to help them ensure the staff they employ are who they say they are and can do what they claim to be capable of," Mr Tucker said.

"Organisations large and small, understand that the illegal, unethical or negligent actions of a single staff member or contractor can result in major financial, performance or safety related harm – damaging both hard earned reputations and balance sheets.

"Court listings regularly highlight cases of fraud, embezzlement, larceny and

ing is an important risk management tool, designed to minimise the risks associated with hiring fraudulent or unqualified management and staff.

"Research tells us the typical fraudster is male, middle aged, tertiary qualified and in a middle to senior management position. Given their position within an organisation, any fraud they do commit can have a significant impact in terms of dollar value and damage to corporate reputation. It is therefore crucial that employers understand who they are hiring and the potential impact if they do not verify their background.

"These Handbooks will help industry put in place measures that will reduce the risk of individuals using fraudulent and deceptive means to gain employment, advancement or other benefits to which they may not be entitled or suitably qualified," Mr Underwood said.

Traditionally, employment screening has focussed on the pre-employment phase of recruitment, rather than addressing employment screening as a holistic process involving both the individual throughout their employment relationship and the changing nature of the organisation. Some approaches have limited screening to only the most senior staff, while others have adopted employment screening at all levels of the organisation. The rigour of employment screening has also varied from an often cursory

**Employment screening
and reference checking
play a critical role in
managing this growing area
of risk and in protecting
an organization's
valuable assets.**

other crimes taking place in the work place, and each year millions of dollars are spent on protecting the reputations of corporate and business," said Mr Tucker.

Mr Guy Underwood, a member of the Standards Australia Employment Screening Working Group, and a co-author of the handbook said, "Employment screen-

referee check, to a comprehensive background and records review.

These Handbooks bring new focus to internal risks, such as those created by changing employment circumstances through promotions, change of duties, the possibility of redundancies, or the impacts of changing personal circumstances for example, family, business interests or unmanaged debts.

Whatever the situation, employment screening needs to match the context that the organisation operates and the role to which the person is to be appointed.

Developed by the Employment Screening Working Group, a sub-group of the Human Resources and Employment Committee, the Handbooks examine all aspects of building an effective employment screening regime including:

- developing an employment risk analysis;
- the employment screening process;
- communication with staff; and
- the types of people employed to do the screening.

While the Employment Screening Handbook offers advice to all employers, the Handbook for Reference Checking was produced with ASIC specifically for the Financial Services industry.

The Reference Checking Handbook is designed to encourage industry to seek, and when requested, provide reference checking information to help identify dishonest, incompetent or unethical financial advisers.

Mr Tony D'Aloisio, Chairman of ASIC said the Reference Checking Handbook would play an integral part of employment screening within the financial services industry and, along with the Department's

B a d
Apples project, aims to assist the financial services industry disrupt the movement of financial advisers with dubious employment records.

"The risks associated with the employment of financial advisers of questionable credibility are great with the consequences often extending beyond any one organisation," said Mr D'Aloisio.

"Over the years, we have seen instances where such advisers have resigned from one position and moved to similar position in another firm were that firm is unaware of their unethical history.

"We have seen the reputation of a number of firms, painstakingly built over a number of years seriously damaged overnight by an irresponsible adviser.

"As the saying goes, 'one bad apple can ruin the whole barrel' which is why, together with industry ASIC is encouraging all employers to share this type of information so that dubious or dishonest conduct does not go undetected and so that we maintain consumer confidence in the financial services industry," said Mr D'Aloisio.

Effective employment screening should enable the employer to make decisions on prudent hiring, promotion and change of duties that are based upon an informed understanding of the candidate's background and credentials.

Such employment screening should

also verify compliance with any legislative requirements that may exist such as citizenship, work visas and disqualifications. Employment screening should be established as a proactive risk treatment that promotes a safe working environment and that protects the organization's reputation and other assets including people, property and information.

To ensure that employment screening is integrated into the normal business processes, it is important that all areas of the organisation and stakeholders are aware of the implementation and operation of employment screening policies and practices.

The Employment Screening Handbook and the Reference Checking Handbook for the Financial Services Industry provide organisations with a broad framework and core processes for inclusion in any employment screening process, project or program of work. Used together with the Standard, the Handbooks outline a base line for the conduct of employment screening and help industry minimise risk.

The Handbook for Reference Checking in the Financial Services Industry can be downloaded from ASIC's website at no cost: www.asic.gov.au/referencechecking

The Employment Screening Handbook and Employment Screening Standard can be purchased from SAI Global's webshop. www.saiglobal.com/shop

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US Department of Commerce

Safe Harbor Agreement

with European Commission

The European Commission's Directive on Data Protection went into effect in October, 1998, and would prohibit the transfer of personal data to non-European Union nations that do not meet the European "adequacy" standard for privacy protection. While the United States and the European Union share the goal of enhancing privacy protection for their citizens, the United States takes a different approach to privacy from that taken by the European Union. The United States uses a sectoral approach that relies on a mix of legislation, regulation, and self regulation. The European Union, however, relies on comprehensive legislation that, for example, requires creation of government data protection agencies, registration of data bases with those agencies, and in some instances prior approval before personal data processing may begin. As a result of these different privacy approaches, the Directive could have significantly hampered the ability of U.S. companies to engage in many trans-Atlantic transactions.

In order to bridge these different privacy approaches and provide a streamlined means for U.S. organizations to comply with the Directive, the U.S. Department of Commerce in consultation with the European Commission developed a "safe harbor" framework. The safe harbor -- approved by the EU in 2000-- is an important way for U.S. companies to avoid experiencing interruptions in their business dealings with the EU or facing prosecution by European authorities under

European privacy laws. Certifying to the safe harbor will assure that EU organizations know that your company provides "adequate" privacy protection, as defined by the Directive.

Safe Harbor Benefits

The safe harbor provides a number of important benefits to U.S. and EU firms.

The safe harbor framework offers a simpler and cheaper means of complying with the adequacy requirements of the Directive, which should particularly benefit small and medium enterprises.

Benefits for U.S. organizations participating in the safe harbor will include:

- All 25 Member States of the European Union will be bound by the European Commission's finding of adequacy
- Companies participating in the safe harbor will be deemed adequate and data flows to those companies will continue;
- Member State requirements for

prior approval of data transfers either will be waived or approval will be automatically granted; and

- Claims brought by European citizens against U.S. companies will be heard in the U.S. subject to limited exceptions.

The safe harbor framework offers a simpler and cheaper means of complying with the adequacy requirements of the Directive, which should particularly benefit small and medium enterprises.

An EU organization can ensure that it is sending information to a U.S. organization participating in the safe harbor by viewing the public list of safe harbor organizations posted on the Department of Commerce's website (<http://export.gov/safeharbor>). This list will become operational at the beginning of November 2000. It will contain the names of all U.S. companies that have self-certified to the safe harbor framework. This list will be regularly updated, so that it is clear who is assured of safe harbor benefits.

How Does an Organization Join?

The decision by U.S. organizations to enter the safe harbor is entirely voluntary. Organizations that decide to participate in the safe harbor must comply with the safe harbor's requirements and publicly declare that they do so. To be assured of safe harbor benefits, an organization needs to self certify annually to the Department of Commerce in writing that it agrees to



adhere to the safe harbor's requirements, which includes elements such as notice, choice, access, and enforcement. It must also state in its published privacy policy statement that it adheres to the safe harbor. The Department of Commerce will maintain a list of all organizations that file self certification letters and make both the list and the self certification letters publicly available.

To qualify for the safe harbor, an organization can (1) join a self-regulatory privacy program that adheres to the safe harbor's requirements; or (2) develop its own self regulatory privacy policy that conforms to the safe harbor.

What Do the Safe Harbor Principles Require?

Organizations must comply with the seven safe harbor principles. The principles require the following:

Notice: Organizations must notify individuals about the purposes for which they collect and use information about them. They must provide information about how individuals can contact the organization with any inquiries or complaints, the types of third parties to which it discloses the information and the choices and means the organization offers for limiting its use and disclosure.

Choice: Organizations must give individuals the opportunity to choose (opt out) whether their personal information will be disclosed to a third party or used for a purpose incompatible with the purpose for which it was originally collected or subsequently authorized by the individual. For sensitive information, affirmative or explicit (opt in) choice must be given if the information is to be disclosed to a third party or used for a purpose other than its original purpose or the purpose authorized subsequently by the individual.

Onward Transfer (Transfers of Third Parties): To disclose information to a third party, organizations must apply the notice and choice principles. Where an organization wishes to transfer information to a third party that is acting as an agent(1), it may do so if it makes sure that the third party subscribes to the safe harbor principles or is subject to the Directive or another adequacy finding. As an alternative, the organization can enter into a

The safe harbor framework offers a simpler and cheaper means of complying with the adequacy requirements of the Directive, which should particularly benefit small and medium enterprises.

written agreement with such third party requiring that the third party provide at least the same level of privacy protection as is required by the relevant principles.

Access: Individuals must have access to personal information about them that an organization holds and be able to correct, amend, or delete that information where it is inaccurate, except where the burden or expense of providing access would be disproportionate to the risks to the individual's privacy in the case in question, or where the rights of persons other than the individual would be violated.

Security: Organizations must take reasonable precautions to protect personal

information from loss, misuse and unauthorized access, disclosure, alteration and destruction.

Data Integrity: Personal information must be relevant for the purposes for which it is to be used. An organization should take reasonable steps to ensure that data is reliable for its intended use, accurate, complete, and current.

Enforcement: In order to ensure compliance with the safe harbor principles, there must be (a) readily available and affordable independent recourse mechanisms so that each individual's complaints and disputes can be investigated and resolved and damages awarded where the applicable law or private sector initiatives so provide; (b) procedures for verifying that the commitments companies make to adhere to the safe harbor principles have been implemented; and (c) obligations to remedy problems arising out of a failure to comply with the principles. Sanctions must be sufficiently rigorous to ensure compliance by the organization. Organizations that fail to provide annual self certification letters will no longer appear in the list of participants and safe harbor benefits will no longer be assured.

To provide further guidance, the Department of Commerce has issued a set of frequently asked questions and answers (FAQs) that clarify and supplement the safe harbor principles.

How and Where Will the Safe Harbor be Enforced?

In general, enforcement of the safe harbor will take place in the United States in accordance with U.S. law and will be carried out primarily by the private sector. Private sector self regulation and enforcement will be backed up as needed by government enforcement of the federal and state unfair and deceptive statutes. The effect of these statutes is to give an orga-

nization's safe harbor commitments the force of law vis a vis that organization.

Private Sector Enforcement: As part of their safe harbor obligations, organizations are required to have in place a dispute resolution system that will investigate and resolve individual complaints and disputes and procedures for verifying compliance. They are also required to remedy problems arising out of a failure to comply with the principles. Sanctions that dispute resolution bodies can apply must be severe enough to ensure compliance by the organization; they must include publicity for findings of non-compliance and deletion of data in certain circumstances. They may also include suspension from membership in a privacy program (and thus effectively suspension from the safe harbor) and injunctive orders.

The dispute resolution, verification, and remedy requirements can be satisfied in different ways. For example, an organization could comply with a private sector developed privacy seal program that incorporates and satisfies the safe harbor principles. If the seal program, however, only provides for dispute resolution and remedies but not verification, then the organization would have to satisfy the verification requirement in an alternative way.

Organizations can also satisfy the dispute resolution and remedy requirements through compliance with government supervisory authorities or by committing to cooperate with data protection authorities located in Europe.

Government Enforcement: Depending on the industry sector, the Federal Trade Commission, comparable U.S. government agencies, and/or the states may provide overarching government enforcement of the safe harbor principles. Where a company relies in whole or in part on self regulation in complying with the safe



harbor principles, its failure to comply with such self regulation must be actionable under federal or state law prohibiting unfair and deceptive acts or it is not eligible to join the safe harbor. At present, U.S. organizations that are subject to the jurisdiction of the Federal Trade Commission or the Department of Transportation with respect to air carriers and

safe harbor principles might be considered deceptive and actionable by the Federal Trade Commission. This is the case even where an organization adhering to the safe harbor principles relies entirely on self-regulation to provide the enforcement required by the safe harbor enforcement principle. The FTC has the power to rectify such misrepresentations by seeking administrative orders and civil penalties of up to \$12,000 per day for violations.

**Under the Federal Trade
Commission Act,
for example, a company's
failure to abide by
commitments to implement
the safe harbor principles
might be considered
deceptive and actionable by
the Federal Trade
Commission.**

ticket agents may participate in the safe harbor. The Federal Trade Commission and the Department of Transportation with respect to air carriers and ticket agents have both stated in letters to the European Commission that they will take enforcement action against organizations that state that they are in compliance with the safe harbor framework but then fail to live up to their statements.

Under the Federal Trade Commission Act, for example, a company's failure to abide by commitments to implement the

Failure to Comply with the Safe Harbor Requirements: If an organization persistently fails to comply with the safe harbor requirements, it is no longer entitled to benefit from the safe harbor. Persistent failure to comply arises where an organization refuses to comply with a final determination by any self regulatory or government body or where such a body determines that an organization frequently fails to comply with the requirements to the point where its claim to comply is no longer credible. In these cases, the organization must promptly notify the Department of Commerce of such facts. Failure to do so may be actionable under the False Statements Act (18 U.S.C. § 1001).

The Department of Commerce will indicate on the public list it maintains of organizations self certifying adherence to the safe harbor requirements any notification it receives of persistent failure to comply and will make clear which organizations are assured and which organizations are no longer assured of safe harbor benefits.

An organization applying to participate in a self-regulatory body for the purposes of re-qualifying for the safe harbor must provide that body with full information about its prior participation in the safe harbor.

Source: US Department of Commerce. To view firms that are Safe Harbor certified go to <http://web.ita.doc.gov/safeharbor/shlist.nsf/webPages/safe+harbor+list>

Data Protection Laws

European Commission

Developments of a frontier free Internal Market and of the so called 'information society' increase the cross-frontier flows of personal data between Member States of the EU. In order to remove potential obstacles to such flows and to ensure a high level of protection within the EU, data protection legislation has been harmonized. The Commission also engages in dialogues with non-EU countries in order to insure a high level of protection when exporting personal data to those countries. It also initiates studies on the development on European and international level on the state of data protection.

Data Protection Laws in Effect (to access any of the following data protection laws go to www.PreemploymentDirectory.com and click on International Resource Center.

See Chartered Institute of Personnel and Development (CIPD) Fact Sheet at <http://www.cipd.co.uk/subjects/em-plaw/data-prot/dataprotec.htm?IsSrChRes=1> for introductory guidance on the law associated with data protection and privacy provides an action plan for employers.



- **European Union Data Protection Legislation**
- http://europa.eu.int/comm/justice_home/fsj/privacy/index_en.htm
- **Austria - Data Protection Act**
- **Belgium - Data Protection Act**
- **Cyprus - Data Protection Act**
- **Denmark - Data Protection Act**
- **Dutch - Data Protection Act**
- **Estonia - Data Protection Act**
- **Finland - Data Protection Act**
- **France - Data Protection Act**
- **Germany - Data Protection Act**
- **Data Privacy Protection in Germany from the perspective of Siemens AG**
- **Greece - Data Protection Act (unofficial translation)**
- **Hungary - Data Protection Act**
- **Ireland - Data Protection Act**
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- **Latvia - Data Protection Act**
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- **Slovak Republic - Data Protection Act**
- **Spain - Data Protection Act**
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- **United Kingdom - Data Protection Act**
- **Finland - Privacy Protection in Working Life**



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Canadian Privacy in the Workplace

Fact Sheet

Employers and employees are often subject to privacy laws. The Privacy Act, for example, applies to employee information in federal government institutions. The Personal Information Protection and Electronic Documents Act applies to employee information in federal works, undertakings, and businesses. See our fact sheet entitled Application of the PIPEDA to Employee Records. Several provinces have privacy legislation applying to employee information. In addition, employers often make a commitment in collective agreements to observe privacy practices.

But whether or not privacy is protected by law or contract, respecting privacy in the workplace makes good business sense.

People expect to have some privacy at work, even if they are on their employer's premises and using the employer's equipment. At the same time, it's normal that working for someone will mean giving up some privacy. Employers need basic information about their employees for things like pay and benefits, and they have to be able to ensure that work is being done efficiently and safely.

But the possibilities for infringing on privacy are greater than ever before. Psychological tests, web-browsing records, video surveillance, keystroke monitoring, genetic testing: the information an employer can have about employees is limitless.

Employers can balance their "need to know" with their employees' right to pri-

vacancy, if they ensure that they collect, use, and disclose personal information about their employees for appropriate purposes only.

Respecting employees' privacy

An employer's need for information should be balanced with an employee's right to privacy. For almost all personal information — including pay and benefit records, formal and informal personnel files, video or audio tapes, and records of

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web-browsing, electronic mail, and keystrokes — the following basic rules help to establish and maintain that balance:

- The employer should say what personal information it collects from employees, why it collects it, and what it does with it.

- Collection, use, or disclosure of personal information should normally be done only with an employee's knowledge and consent.
- The employer should only collect personal information that's necessary for its stated purpose, and collect it by fair and lawful means.
- The employer should normally use or disclose personal information only for the purposes that it collected it for, and keep it only as long as it's needed for those purposes, unless it has the employee's consent to do something else with it, or is legally required to use or disclose it for other purposes.
- Employees' personal information needs to be accurate, complete, and up-to-date.
- Employees should be able to access their personal information, and be able to challenge the accuracy and completeness of it.

Do employees' privacy rights conflict with an employer's right to manage?

Employers have legitimate requirements for personal information about their employees. They need to know who they're hiring. They need to address performance issues and ensure the physical security of their workplace. And they may see electronic monitoring and other surveillance as necessary to ensure productiv-

ity, stop leaks of confidential information, and prevent workplace harassment.

So sometimes employers have to delve into private matters. But they can keep those instances to a minimum, and limit the impact on personal privacy. The possibility that an individual employee might do something harmful doesn't justify treating all employees as suspects. The questionable benefit of knowing what every employee is doing on company time and equipment, at all times, needs to be weighed against the cost — including the cost to staff morale and trust. Preventing workplace harassment is an important goal, but it's best achieved through workforce training and sensitization, explicit anti-harassment policies, and appropriate remedial measures when harassment is reported or reasonably suspected, rather than by depriving everyone of their privacy rights.

Clear policies and clear expectations

At a minimum, employers should tell their employees what personal information will be collected, used, and disclosed. They should inform employees of their policies on Web, e-mail, and telephone use, for example. If employees are subject to random or continuous surveillance, they need to be told so.

Employers should also ensure that information they collect for one purpose isn't used for an unrelated purpose without the employee's consent.

Even if they're not required to do so by law, employers should give employees access to the personal information held about them, so that they can verify, and if necessary challenge, its accuracy and completeness.



What about employees who waive their privacy rights?

Employers may be tempted to advise employees or prospective employees that they have no expectations of privacy in the workplace — that the loss of privacy is a condition of employment. Someone who agrees to work under these conditions, it could be argued, has consented to unlimited collection, use, and disclosure of their personal information.

Whether this is really consent — clear, informed, voluntary consent — is questionable. And the general principle of collecting only the personal information that's required for appropriate purposes gets lost with this approach. A better alternative is to specifically ask employees to consent to explicit, limited, and justified collections, uses, and disclosures of their personal information.

A "privacy culture"

In many workplaces, practices like the ones outlined above are required by law, and employees have legal means to assert their rights. Employees may also have enforceable rights to privacy under collective agreements.

But good privacy practice is not just about avoiding complaints, grievances, or lawsuits. Whether or not privacy is protected by law or contract, fostering a workplace culture where privacy is valued and respected contributes to morale and mutual trust, and makes good business sense.

Source: http://www.privcom.gc.ca/fs-fi/02_05_d_17_e.asp

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Mexico

The Current Legal Framework of the Data Privacy and Personal Information Protection in Mexico



Since the enactment of the Federal Constitution in 1917, the post government administrations show no particular interest to implement neither a formal nor a comprehensive legislation and policies, regarding the protection of Personal Data of the citizens in Mexico.

This situation partially changed during the administration of President Fox (2000-2006), when bills governing the access and protection of personal data in credit bureaus and public government files, were introduced and passed by the Federal Congress.

The purpose of this paper is to describe the current legal framework of the Data Privacy provisions, established in an array of pieces of federal legislation, which will be analyzed hereinafter.

As will be noted, new federal legislation has also covered broader protection to consumers, both "on line" and "off line", as established in the recent amendments to the Federal Consumer Protection Act.

In spite of the opposing voices to the approval of data protection legislation, our conclusion is that in our globalized world, companies in Mexico, should implement corporate data privacy policies and procedures, in order to comply with foreign recommendations and local laws and regulations.

As follows, we will briefly describe a summary of the most relevant Mexican Federal legislation on this matter.

Current Related Legislation

1. Constitutional Provisions.

The bill of rights guarantees the privacy of

private communications including PTT's communications (post, telegraph and telephone). Likewise, the Constitution also protects the due process of law regarding to search and seizure procedures.

2. PTT's Confidentiality

Related Provisions.

The Federal Communications Act, establishes in Articles 383, 576, 577 and 578 that government and private citizens must keep in strict confidentiality the content of any messages, except by order of competent court. Severe fines and imprisonment can be imposed to infractors. Likewise, Article 49 of the Federal Telecommunications Act, establishes that any information transmitted through telecommunication networks, shall be confidential, except the information in public domain or by resolution of competent authorities.

3. Statistical - Census Information.

Under Article 5 of the law governing Geographical and Statistical Information (the Census Act), all statistical information collected as well as the data of the informants must be kept in strict confidentiality.

4. Federal Tax Records.

As per Article 69 of the Federal Tax Code, all employees and officers of the Mexican IRS (SAT), must keep in strict confidence all data concerning tax returns, tax payments, tax audits, etc.

Violations to the above will be sanctioned with fines which will run from

USDLLS\$4,500.00 to USDLLS\$6,000.00 per event.

5. The Federal Government Procedures Act.

Under Article 33, petitioners or any interested party, in any governmental matter, shall have the right to be informed about the content of the related and pertinent files, which otherwise must be kept in confidentiality. However, any information regarding to the national defense and security, or any other matter protected by industrial or trade secrets or by any other law, will be also kept in confidentiality.

6. Banking Secrecy.

The Credit Institutions Act, establishes in Article 117 the "Bank Secrecy", wherefore the financial institutions can not disclose any information related to the deposits or any other banking services of their customers to any person, except to the tax authorities or by judicial resolution issued by competent court.

Violation to the above shall be punished by imprisonment from 3 to 9 years, as per the provision of Article 112 Bis of the same law.

7. Insurance and Medical Records.

As per Articles 136, 137 and 138 of the General Health Act, patients have the right that all medical information and clinical records be kept in strict confidentiality and that such information must not be disclosed without his or her authorization, except in those cases under which doctors



and hospitals have the obligation to report to the Health Authorities. The same obligation is established in Article 36 of the law governing Professional Practice.

8. Foreign Investment Law and its Regulations.

It is provided that all information that must be disclosed under the law, by foreign investors, should be kept in confidentiality and the authorities shall not allow the access to any third party to the files and records in the Foreign Investment Office or in the Registry of Foreign Investment.

9. Copyright Law.

It protects the confidentiality of software products and data bases. Files at the Copyright Office regarding to software products should be kept in confidentiality and the access to such files will not be permitted, but only to the copyright-holders. Severe fines may be imposed by the Mexican Institute of Industrial Property.

10. Industrial Property Law.

Regarding to this law, it should be noted that disclosure of trade secrets or the unlawful access or the acquisition of such information by third parties shall be considered a crime and sanctioned with imprisonment up to 10 years.

11. Moral Damage - Civil Remedies.

When collecting, disclosing, transferring,

In spite of the opposing voices to the approval of data protection legislation, our conclusion is that in our globalized world, companies in Mexico, should implement corporate data privacy policies and procedures, in order to comply with foreign recommendations and local laws and regulations.

marketing, publishing, disseminating or the use personal data and in particular "Sensitive Data", if one person might suffer or be affected in his feelings, affections, beliefs, honor, reputation, private life, etc., which damages are protected by Article 1916 of the Federal Civil Code, a civil action can be instituted allowing to the affected party to claim the payment of damages, whether contractual or in tort. The amount of the damages shall be determined by the Judge, depending upon the injury caused, the degree of the liability or any other circumstances related to the case.

12. The Federal Criminal Code.

Post and Communications.

- Anyone who deciphers or decodes telecommunications signals or is engaged in the marketing or in the use of apparatus, devices or instruments permitting such activities, shall be punished by imprisonment up to 2 years, as per the provisions of Article 168-Bis of said Code.
- Anyone who opens or intercept any written communication without a legal reason, shall be punished with up to 380 of community working days.
- Anyone who trespass or obtain undue access to private communications without the proper judicial court authorization shall be punished with up to 12 years of imprisonment.

Child Pornography

- Child Pornography is punished with up to 16 years of imprisonment, including transmission by electronic means such as the Internet. Trade secrets disclosure and unlawful access to data processing equipment and systems.
- Disclosure of confidential information which is known as a consequence of the employment or labor relationship shall be punished with up to 200 of community working days.
- In the event of disclosure by a person rendering professional or technical services or in the event that the nature of the information disclosed is a confidential trade secret, then, the punishment will be

imprisonment up to 5 years.

- Access, disclosure or use of information or images obtained from a private communication shall be punished with imprisonment up to 12 years.
- Anyone who access or copy information contained in data processing equipment or systems, shall be imprisoned up to 1 year.

13. Workplace Environment.

The Federal Labor Law was enacted in 1931. Since then and as up to date, labor courts continue resolving claims in the most favorable manner to employees.

The employer must respect the dignity of employee's labor conditions at the workplace as established in Articles 3 and 56 of the Labor Law. Such principle can not be matter of a waiver by the employees. Any pact in contrary, shall be considered null and void.

As per Article 133 – VII, employers are forbidden to perform any act which restrains the labor rights of the employees.

In view of the foregoing, when implementing any employment data privacy or any surveillance procedures at the working place, including the access and search through electronic and computer technology, to collect, analyze, reproduce and disseminate information about employees, the above provisions must be taken into consideration. Likewise, it is important to point out that any of the above practices including monitoring e-mails or the company's intranets, should be clearly specified in both, the employment agreement and in the interior working regulations, as well. A clear written consent by employee to any company policy must be implemented.

The Personal Data Protection Pending Bills

Since January 2001, several legislators have sponsored in Congress, bills governing the protection of personal data priva-

cy, in particular regarding to personal data stored and disseminated by the private sector, including private corporations, advertising and other direct marketing organizations. Most of these bills were strongly opposed and lobbied by the private sector and industry chambers which finally obtained to stop the approval of said bills within the Congress.

However, it is quite foreseeable that the new Congress (2006-2012) will take again the initiative to promote the approval of this kind of legislation. Some sectors including several NGO's promoting the protection of data privacy, will encourage legislators to approve data privacy laws covering the creation of a data privacy authority to protect and enforce the following ("habeas data") rights:

- The right to access.
- The right to be informed.
- The right to oppose to data collection.
- The right to oppose to the disclosure, transfer or dissemination of personal and in particular "sensitive" information.
- The right to correct and update.
- The prohibition or restrictions to transborder data flows.

Private sector main opposition to the various introduced bills on this subject matter, argued:

- That the creation of a Data Privacy Agency, would generate more bureaucracy and unnecessary burden and costs to private companies.
- The imposition of fines and criminal sanctions by the Data Privacy Agency.
- Frivolous complaints by angry current or dismissed employees.
- The impact and effects of prohibition or restrictions to the free transborder data flows.

In addition to the above, direct marketing companies, advertising call centers, credit cards and other similar marketing organizations strongly opposed to the "opt-in" concept instead of the "opt-out" procedure, which was a bargaining condition to

the acceptance of the proposed bills.

The current trend is to expect that a data privacy legislation will pass, hoping that its provisions satisfy both public and private interests as well.

The Recent Data Privacy Legislation

As indicated in the beginning of this paper, it was only in recent years when specific data privacy legislation was proposed by the Executive Branch and/or sponsored by Congress.

The following pieces of legislation were approved by Congress:

- The Credit Bureaus Act.
- The Federal Law for the Access to the Governmental Public Records and Information.
- The Revised Federal Consumer Protection Act.

The first two above mentioned bills were approved by Congress in the year of 2002 and the last one in 2004.

As follows we will briefly discuss the above mentioned enacted statutes:

- The Credit Bureaus Act.
- This law permits consumers or users of the banking system and credit applicants, to obtain access to their own credit records and also to request and or to claim the pertinent corrections and information updates as relevant, including the elimination of their personal data from the data bases of the credit bureaus, when applicable, as per the provisions of this law.
- The Federal Law for the Access to the Governmental Public Records and Information.

This law was published on June 11, 2002. It was widely advertised by the Presidency of the Republic, as an outstanding achievement of the new democracy promised by President Fox. Under this law, all citizens are entitled and government officers are obligated to permit citizens the access to the federal government agencies records and files and also to be informed about other data such as remunerations of

public servants, government projects, government services, etc. This information may be accessed also by electronic means such as the Internet. However, under Article 13 of the law, certain information which is considered reserved, classified or which affects the national security or the national defense shall remain confidential.

Likewise, government officers are obligated to keep in confidentiality personal data of the citizens contained in public records. Citizens are entitled to access to their own information and to request correction, modification and updating of the individual's personal data.

Government officers are forbidden to disclose, distribute, disseminate or marketing the citizen's personal data both "on line" or "off line", without express written consent of the corresponding individual, with certain exceptions, including when such disclosure is decreed by resolution of competent courts.

It is created a new governmental body called the Federal Institute for the Access to Public Information, in order to handle and perform the proper compliance of the provisions of this law and to grant remedies and impose sanctions in the event of violation to its provisions.

Consumer Protection

We will now focus our attention to the Federal Consumer Protection Act, revised in February 4, 2004. Also, we will refer to the consumers protection in "on line" transactions, previously introduced in this law in the year of 2000.

Consumers "On Line" Protection provisions:

- The vendor is obligated to keep confidential the information provided by the Consumer, wherefore such information can not be disclosed, transferred or disseminated to other vendors, unless previous authorization is granted by the consumer.
- The vendor must inform to the con-

sumer the technology used to assure the safety and confidentiality of the information provided by the consumer.

- Before any transaction is concluded, the vendor must inform to the consumer its physical domicile, telephone numbers and pertinent information regarding its policies concerning warranties and the instructions to make effective such warranties.
- Vendor shall avoid deceptive marketing and advertisement practices.
- Vendors must clearly inform to the consumer whenever the products or services are addressed to the elderly, children or ill people.

The 2004 Amendment

Regarding to the new scope of the law, it is emphasized that it protect consumers in both, "on line" and "off line" transactions.

- The concept of consumer is modified to include corporations and not only individuals, wherever the transaction involved is not higher than USDLL\$ 30,000. Accordingly, now corporations which execute transactions with vendors, not exceeding the amount above mentioned, are entitled to file complaints before the Federal Consumers Protection Agency (FCPA).
- The FCPA is also entitled to monitor web sites in order to verify the proper fulfillment to the provisions of this law.
- Vendors and companies which collect, gather and use consumer's information are obligated to report to any person what information they keep and to provide a report on such information, including to mention if said information has been shared with any third party, identifying such third party. Consumers have the right to request corrections if appropriate and vendors or the third party must comply with such petition within the following 30 days.
- All advertising sent to consumers, both "on line" or "off line", should indicate

the name, address, telephone and the e-mail of the vendor. Consumers are entitled to request to vendors not to be annoyed whether in their domiciles, working place or e-mails with advertising (SPAM).

- Consumers may request to vendors and advertising companies that the consumers information may not be transferred or assigned to any third party.
- The FCPA shall keep a public registry of consumers in which will be listed the names and telephone numbers of the consumers which have decided not to receive information or advertising materials, both "off or on-line", including a "do not call" registry. Prior to send any marketing or advertising messages to consumers, vendors must consult the list of the consumers which have requested not to receive SPAM. The same applies to marketing call centers.
- Regarding to contract formation, it is established that any contract will be considered as concluded after five (5) days of the delivery of the merchandise or the execution of the agreement, whichever is later. During this five days period, consumer is entitled to revoke its consent without any liability.
- Vendors engaged in the repair or maintenance must use "new spare parts" unless written authorization of the consumer.
- Standard agreements (adhesion contracts), whether "on line" or "off line" in order to be valid, must be in Spanish language and in a clear and conspicuous manner.
- The FCPA is entitled to declare which standard agreements must be registered and approved by the FCPA. Article 90 establishes that certain contractual provisions can not be included such as the submission to foreign courts. The forbidden clauses shall be null and void.

Consumer Remedies

Consumers shall have the right at its

choice, to the replacement of the merchandise or the refund of the price paid, if the goods or services do not meet with the quantity or quality requested, the trademark or any other specifications of the products or in the event of services, the equipment is not properly repaired. In such cases, additionally consumers will be entitled to a compensation in an amount not less to the equivalent of 20% of the paid price, regardless of the following additional statutory damages:

- If the consumer has paid the price in full, it will be entitled to collect 30% of such price.
- If the consumer has paid more than 50% of the price, then he will be entitled to a compensation equivalent to the 25% of the price.
- If the consumer has paid up to the 50% of the price, he will receive a compensation equivalent to 20% of the contractual consideration.

In any other cases, such compensation will be no less than 20% of the total amount established in the contract.

In addition to the above, the FCPA will impose very expensive fines to the vendor depending upon the violation incurred. Such fines now has been increased to an average of USDLL\$ 50,000.00 to USDLL\$ 500,000.00, being the FCPA also empowered to shut down the premises of the vendor.

Corporate Data Privacy Practices

Although the Mexican Department of Commerce is trying to encourage industrial chambers and trade associations to formalize Ethic Codes and to promote self-industry regulations, as far as we know, such policy has not been successfully implemented. Accordingly, very few industry organizations have Ethic Codes such as the Mexican IT Association, the Mexican Internet Industry Association, the Mexican Advertising Council, the Bankers Association, among others.

Probably, the above is due to the fact that there is no formal enacted law governing

Data Privacy in the Private Sector

Due to the global nature of Internet, several multinational subsidiaries based in Mexico, have implemented their own Ethic Codes and Data Privacy procedures, in order to comply with parent global policies.

At this point in time, is difficult to ascertain whether or not the Personal Data Privacy and Information Protection Bills would be revived. However and under the likelihood of the near approval of legislation on this matter, industry needs to be prepared to comply with Data Privacy Policies and Procedures. In any case, since the impact of privacy is now a part of the corporate culture, Mexican companies and foreign local subsidiaries need to know how to avoid privacy risks and legal exposures.

For instance, it is highly recommended that such procedures include(2):

- Website privacy policies (and the extensive internal due diligence and procedures necessary to implement them);
- Online information collection, use, and dissemination practices;
- Cookies and other tracking technologies;
- Online profiling;
- Third-party databases and publicly available personal information;
- Privacy issues associated with digital signatures, smart cards, and other key technologies;
- Crossing virtual borders in transmitting data;
- Collecting and using certain types of sensitive information (e.g., financial, medical, from children);
- Privacy and data protection issues in the electronic workplace; and
- New laws and pending legislation on privacy at both the federal and state level.

Conclusions and Recommendations

As described in this paper, Mexico has enacted and put in force a variety of Federal Data Privacy statutes which were listed herein. The most important ones for the private sector, are those related to data privacy policies and procedures in the work place environment and also the newly revised Federal Consumer Protection regulations. Other statutes might also apply, in particular the provisions regarding to the access to the telecommunications facilities, labor and criminal legislation.

When implementing corporate policies, local companies need to take care on how to implement such policies in order to adapt them to the Mexican environment and current legislation, and also thinking in the near future possibility of new legislation protecting the treatment of privacy of data stored, managed and disseminated by the private sector.

Footnotes

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(2) Excerpts from the Article "E-Privacy Law Committee Targets the E-Commerce Legal Issue Facing Every Client", written by Ruth Hill Bro – The ABA E-Privacy Law Committee. The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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THE EARTH CALENDAR

*The Earth Calendar is a daybook of holidays and celebrations around the world.
<http://www.earthcalendar.net/index.php>*

Terrorist Search Information

United States

Specially Designated Nationals (SDN) and Blocked Persons

16 June 2004, revised 2 May 2005. The U.S. Treasury Department, Office of Foreign Assets Control (OFAC) publishes this list of individuals and companies controlled by targeted countries. The list includes "individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Collectively, such individuals and companies are called 'Specially Designated Nationals' or 'SDNs.' Their assets are blocked and U.S. persons are generally prohibited from dealing with them."

<http://www.treas.gov/offices/enforcement/ofac/sdn/>

The Excluded Parties List System provides integrated search access to several department lists. (et)

<http://www.epls.gov/>

List of Parties Debarred for Arms Export Control Act Convictions

21 June 2004. The Directorate of Defense Trade Controls of the U.S. Department of State provides two lists--one statutory and one administrative--of companies and individuals convicted of violations involving the Arms Export Control Act (AECA) or the International Traffic in Arms Regulations (ITAR). Both lists are alphabetical and include a Federal Register citation, although not a link to the relevant issue. (et)

Entry List

16 June 2004, revised 2 May 2005. The U.S. Bureau of Industry and Security (BIS) maintains this list of foreign individuals and companies, which "have been determined to present an unacceptable risk of diversion to developing weapons of mass destruction or the missiles used

to deliver those weapons." Changes to the list appear officially in the Federal Register.

<http://www.bis.doc.gov/entities/default.htm>

Foreign Terrorist Organizations -

<http://www.state.gov/s/ct/rls/fs/2004/35167.htm>

Terrorist Exclusion -

<http://www.state.gov/s/ct/rls/fs/2002/15222.htm>

Consolidated list of persons, groups and entities subject to EU financial sanctions -

http://ec.europa.eu/external_relations/cfsp/sanctions/list/consol-list.htm

Office of Foreign Asset Control (OFAC) of the U.S. Department of the Treasury

<http://www.ustreas.gov/offices/enforcement/ofac/sdn/>

United Kingdom

<http://www.crb.gov.uk> -

<http://www.crb.gov.uk/>

Bank of England Terrorist list

<http://www.bankofengland.co.uk/publications/news/2002/111.htm>

Child Protection: Criminal Background Checking of Staff in Schools

http://www.deni.gov.uk/circular_2006_09.pdf

Disclosure of Criminal Background of Persons with Access to Children -

http://www.deni.gov.uk/circular_2006_09.pdf

Department of Transport - Criminal Records check -

<http://www.dft.gov.uk/pgr/security/crc/>

Fit and Proper Test for Approved Persons - <http://www.fsa.gov.uk/pubs/hb-releases/rel27/rel27fit.pdf>

Financial and Services Market Act 2000

http://www.opsi.gov.uk/ACTS/acts2000/ukpga_20000008_en_1

The following lists may be relevant to your export or re-export transaction.

Denied Persons List

A list of individuals and entities that have been denied export privileges. Any dealings with a party on this list that would violate the terms of its denial order is prohibited.

<http://www.bis.doc.gov/dpl/default.shtm>

Unverified List

A list of parties where BIS has been unable to verify the end use in prior transactions. The presence of a party on this list in a transaction is a "red flag" that should be resolved before proceeding with the transaction.

http://www.bis.doc.gov/enforcement/unverifiedlist/unverified_parties.html

Debarred List

A list compiled by the State Department of parties who are barred by §127.7 of the International Traffic in Arms Regulations (ITAR) (22 CFR §127.7) from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required by the ITAR.

<http://www.epls.gov/>

Nonproliferation Sanctions

Several lists compiled by the State Department of parties that have been sanctioned under various statutes. The Federal Register notice imposing sanctions on a party states the sanctions that apply to that party. Some of these sanctioned parties are subject to BIS's license application denial policy described in §744.19 of the EAR (15 CFR §744.19).

<http://www.state.gov/t/isn/c15231.htm>

To easily access all the web sites listed in this article go to www.PreemploymentDirectory.com and clicking on International Resource Center

International Training Resources

The Background Investigator

Background Investigator's India Pre-employment Screening Conference,
August 28-29, 2008 New Delhi, India,
www.search4crime.com/Indiaconference

British Standards Institute

Understanding & Implementing BS 7858:2006 Security Screening of Staff (1 Day); Training Dates: 22/05/2008, 15/07/2008, 17/09/2008, 25/11/2008
<http://www.bsi-global.com/en/Shop/-Training-Detail-Pages/BS-7858-Training/>
This interactive one-day training course is designed as a practical introduction to BS 7858:2006 for all those who want to screen employees. Building from basic principles up to a comprehensive strategy, this course provides full details on how to screen staff in line with good practice. Originally for security firms, this British Standard is now used as the benchmark for good screening procedures. Delegates should leave equipped with a thorough understanding of BS 7858 principles and a screening plan ready to implement.

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<http://www.bfi.co.uk/>

UK Personal Data Integrity Summit 2008
London, Protecting personal data within your organization - A vital event for both private and public sector organizations.
<http://www.bfi.co.uk/>

Business Forums International's 11th Annual Pre-Employment Vetting & Screening Conference

London, England
<http://www.bfi.co.uk/>
European Pre-employment Vetting & Screening Summit 2008.
<http://www.bfi.co.uk/>

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<http://www.cipd.co.uk/subjects/emplaw/dataprot/dataprotec.htm?IsSrchRes=1>
Training Dates: 26 September and 26 November 2008; 23 Jan & 16 March 2009

Symposium Events

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Examining Screening Methods -
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How Web-based Technology Has Revolutionized Reference Checking

Leverage 360-Degree Assessments... Pre-Hire

ERIKA VON HOYER, MBA

The rationale behind reference checking is that past performance is the best predictor of future behavior. To truly understand a candidate's potential to succeed, employers must understand the candidate's past job performance in terms of the skills, values and behaviors that have been exhibited over time. The ultimate resource for this information is the candidate's current and former managers, peers, direct reports, and clients.

Developing a full picture through traditional reference checking has posed a challenge - it can take multiple attempts over several days to get hold of a reference provider, who may or may not offer useful feedback. Yet, employers must make the effort or risk being named in a negligent hiring suit.

With advances in technology, it is now not only possible, but practical, to collect useful and actionable information from references, using web-based reference checking software. As recruiters hang-up the phone in lieu of this automated approach, they quickly find themselves wondering how they had managed without it.

Reference Checking in the Form of a Pre-Hire 360

360-degree feedback is widely accepted as an effective employee development tool. It relies on the premise that the people who work closest to an employee, such as peers, direct reports, and clients, are able to experience

The ability to gain broader and deeper insight into a candidate's past job performance, skills, and behaviors brings employers closer to the ultimate goal of obtaining more complete information to support their hiring decisions.

the person's behavior in settings and circumstances that a supervisor will not. The concept of generating a 360 report pre-hire may seem impossible - particularly given the difficulties many recruiters have experienced when requesting feedback by phone from references.

Yet 360-degree feedback is exactly the methodology that web-based reference checking leverages and what makes it so effective.

Three attributes of this technological advance serve as keys to its success:

Confidentiality: references are assured confidentiality, which makes them more comfortable with providing candid responses.

Robust Set of References: feedback from

references representing a variety of work relationships with the candidate (multi-source feedback) ensures a more complete picture of the candidate.

Competency-Based Questions: references are asked to rate the candidate on skills and behaviors that are critical to the job, and that are best assessed by individuals who have observed the candidate in the work environment. The feedback complements what is gathered during the in-person interview.

Upon entering the candidate's name and e-mail address into the software (accessed online or through an Applicant Tracking System), the recruiter identifies the appropriate job survey from the embedded library. The reference check is officially underway with each step being managed through a personal yet automated e-mail providing necessary information. Candidates are provided a link by which to enter the minimum number of references requested by the hiring manager - typically not less than five—and given the option to either "consent" to being reference checked, or to opt-out of the process. Using contact information entered by the candidate, reference providers receive an automated e-mail from the candidate asking that they complete an on-line survey available through a link in the e-mail.

Monitoring activity through an on-line dashboard or electing to receive e-mail

update, the recruiter generates the pre-hire 360 once a sufficient number of references respond. Typically completed in less than 48 hours, the finalized report is not a simple consolidation of feedback, but rather, an in-depth report that utilizes a scoring model specifically tuned for external job candidates.

Conducting reference checks in the form of a pre-hire 360 ensures that the process is centralized, consistent and fully documented. The process enables the monitoring of detailed metrics on reference check completion, operational efficiency, and overall scoring results. For third-party users such as staffing agencies and screeners, these data can be provided to a client with a click of a mouse.

The value of pre-hire 360 extends beyond the decision to hire or not to hire. The higher volume of references captured through this approach enables users to build a robust database of passive candidate information with little to no effort. Additionally, the reports serve as valuable feedback for accelerating the on-boarding process of a newly-hired employee.

The table below summarizes the key differences between web and phone-based reference checking.

While all businesses can realize the benefits of automating the reference checking



process, the true value of a pre-hire 360 is most apparent when one considers the industries with the highest rate of adoption – financial services, recruitment and staffing services, healthcare and education – each operating in an environment that requires highly sophisticated risk management strategies. The firms that have incorporated pre-hire 360s into specific divisions or across the organization includes an extensive list of well recognized names including Citi, Scottrade, McKesson, Reebok, LL Bean, GlaxoSmithKline, St. Jude Children's Research Hospital, Cardinal Health, Mirant, Nutrisystems and Sylvan Learning Center. From start-ups to Fortune 500 companies, the efficiency and effectiveness of the pre-hire 360 make it an appealing option.

Conclusion

With the advent of web-based reference checking, organizations are able to deploy an efficient and effective process in the form

of a pre-hire 360. The approach benefits candidates by providing a fair and unbiased method of reference checking. For the reference provider, this approach assures anonymity coupled with 24/7 accessibility, and recruiters are conducting in-depth reference checks in minutes while simultaneously developing a passive candidate database and improving the company's on-boarding process for new hires.

While there is no silver bullet, the ability to gain broader and deeper insight into a candidate's past job performance, skills, and behaviors brings employers closer to the ultimate goal of obtaining more complete information to support their hiring decisions.

About the Author

Erika von Hoyer, MBA is the vice president of marketing for SkillSurvey, Inc., a leading provider of pre-hire 360 solutions. Erika may be reached at info@skillsurvey.com or by visiting www.skillsurvey.com.

	PRE-HIRE 360	PHONE REFERENCE
Standard and Uniform Process	Yes	No
Provides Candid, Confidential Data	Yes	No
Average Time to Complete	Within 48 hours	3 to 7 days
Recruiter Time per Candidate	5 minutes	30 to 60 minutes
Number of References Provided	5 - 9	2 - 3
Competency-Based	Yes	Usually Not
Number of Questions	About 20	Usually 6 - 10
24 X 7 Availability	Yes	No
Verbatim Audit Trail of Data	Yes	No



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Worker Substance Use

and Workplace Policies and Programs

Sharon L. Larsonmm. Joe Eyerman, Misty S. Foster, Joseph C. Groeper

Most of the nation's approximately 16.4 million current illicit drug users and approximately 15 million heavy alcohol users hold full-time jobs, according to a new study by the Substance Abuse and Mental Health Services Administration (SAMHSA).

The study, *Worker Substance Use and Workplace Policies and Programs*, shows that substance use can pose significant risks to workers' health and productivity. The report also says that workers who use illicit drugs are less likely than nonusers to be employed by companies that have drug or alcohol testing policies and programs.

Director of National Drug Control Policy John Walters said, "Employees who use drugs miss work more often, are less healthy, and are more prone to harming themselves and others in the workplace. We hope that employers will take note of this report and consider implementing workplace drug testing policies that can help prevent drug use before it starts, help identify drug-using employees who need drug treatment services and also reduce employers' liability from drug-related workplace accidents."

The report says the highest rates of current illicit drug use were among food service workers (17.4 percent) and construction workers (15.1 percent). Highest rates of current heavy alcohol use were found among construction, mining, excavation and drilling workers (17.8 percent), and installation, maintenance, and repair workers (14.7 percent).

Illicit drug use and heavy alcohol use are associated with higher levels of absen-

teeism and frequent job changes, the report said. For example, nearly twice as many current illicit drug users skipped one or more days of work in the past month compared with workers who did not abuse drugs. Drug users were also far more likely to report missing two or more work days in the past month due to illness or injury compared with workers who did not abuse drugs.

"The high rates of drug and alcohol use in hazardous industries is cause for concern," said Elena Carr, drug policy coordinator at the U.S. Department of Labor (DOL). "Clearly businesses can ill-afford the risk of having workers operating meat slicers, backhoes, or other dangerous equipment while under the influence of alcohol or drugs, which is one reason why DOL helps employers and employees work together to proactively prevent such safety hazards."

Substance users also had far higher job turnover rates. Among full-time workers who reported current illicit drug use, 12.3 percent said they had worked for three or more employers in the past year, compared with 5.1 percent of non-abusing workers.

Another major finding was that current drug users were more likely to work for employers who did not conduct drug or alcohol testing programs. Nearly a third of current illicit drug users said they would be less likely to work for employers who conducted random drug testing.

According to the study, unemployed people had higher percentages of current illicit drug use and heavy alcohol use

than those with full-time, part-time or other employment statuses. But because full-time workers constitute about two thirds of the 18-64-year-old population, the actual number of those using drugs was higher among the full-time workers.

The study is based on data collected during 2002, 2003, and 2004 from a nationally representative sample of 128,000 persons, ages 18 to 64, who participated in SAMHSA's National Survey on Drug Use and Health. Illicit drug use is defined in the survey as use of marijuana/hashish, cocaine, heroin, hallucinogens, or inhalants, or prescription psychotherapeutics used non-medicinally. Current heavy alcohol use was defined as drinking five or more drinks on the same occasion on five or more days in the past 30 days. The survey also identified whether respondents had a substance use disorder, meaning drug or alcohol dependence or abuse, based on standard diagnostic criteria.

The study showed that an annual average of approximately 9.4 million current illicit drug users, (including 7.3 million current marijuana users) and 10.1 million heavy alcohol users were employed full-time in 2002-2004. Among full-time workers using these substances, 3 million met criteria for illicit drug dependence or abuse, and 10.5 million were dependent on or abused alcohol.

Copies of the full report are available for free from SAMHSA's Health Information Network at 1-877-SAMHSA-7 (1-877-726-4727). Request inventory number SMA -07-4273.

What Employers Can and Should Do About Excessive Alcohol Use

Excessive alcohol use by employees and their family members has a substantial impact on the cost of doing business in the United States. Problems associated with alcohol use are not just confined to drinking during work hours. Excessive drinking boosts absenteeism, diminishes productivity, and contributes to skyrocketing health care costs. Analysis of recent government surveys related to substance use and the workplace reveals the true extent of hazardous alcohol use and the negative effect it has on the American workplace. A research team led by Eric Goplerud, Ph.D., the director of Ensuring Solutions to Alcohol Problems at The George Washington University Medical Center, has found that the burden of workplace alcohol problems is disproportionately distributed, with industries such as construction, hospitality, and manufacturing having higher than average rates of alcohol misuse and dependency.

For example, according to the research team's analysis, a hotel chain with 20,000 employees operating throughout the United States would accrue \$8.9 million in alcohol-related health care costs and absenteeism in a single year. Only a handful of employees and family members with alcohol problems ever get help. Ensuring Solutions' research finds that fewer than 10 percent of working people with serious alcohol problems receive any kind of treatment. Yet there is a relatively simple way to reduce alcohol-related costs. By working with health plans, health care providers, and employee assis-

tance programs, employers can initiate a proven method to identify and help people who drink too much alcohol. This method—called screening and brief intervention or SBI—has been demonstrated to reduce problems associated with excessive alcohol use in a variety of settings, including hospitals, universities, and primary care. If the Virginia-based construction company were to implement a workplace SBI program that identified and provided brief treatment for half of the employees and family members with an alcohol problem (an identification rate similar to depression), savings in lowered health care costs and improved productivity would amount to \$1.8 million. In the past, employers have played a significant role in promoting screening and treatment for illnesses like diabetes, heart disease, and depression—all of which were once significantly under-diagnosed. Alcohol problems have a similar impact on the quality of American life and the profitability of American business. Yet alcohol use disorders are significantly under-diagnosed. By promoting Workplace SBI, employers can improve productivity, reduce costs, and identify problems before they lead to tragic accidents or expensive health care interventions.

- Craving – A strong need or compulsion to drink.
- Loss of control – The inability to limit one's drinking on any given occasion.
- Physical dependence – Withdrawal symptoms, such as nausea, sweat-

ing, shakiness, and anxiety occur when alcohol use is stopped after a period of heavy drinking.

- Tolerance – The need to drink greater amounts of alcohol over time in order to get the desired effect.

Source: National Institute on Alcohol Abuse and Alcoholism

In late August 2007, the firefighters of Engine 30, Ladder 25 in the Boston neighborhood of West Roxbury were summoned to fight a kitchen fire at the Tai Ho Restaurant. The fire was significantly more potent than they expected—it had apparently been burning undetected in the ceiling long before they arrived. As the fire intensified, the ceiling collapsed. Two veteran members of the company—Paul Cahill and Warren Payne—lost their lives.

The death of Cahill and Payne was a shock to their families, fellow firefighters and the Boston area. But it was an even greater shock when autopsies revealed that both of the firefighters were working under the influence of alcohol and drugs.

Payne had traces of cocaine in his system. Cahill, the coroner said, had a blood alcohol level three times the legal limit for driving in Massachusetts.¹ Because cocaine traces remain detectable for many days after use, it is unclear whether Payne was impaired at the time of the accident. But it is quite clear that Cahill was significantly impaired and it is likely that his impairment contributed to the fatal accident.

This tragedy has trained a bright light

on the policies and practices that govern the use of alcohol and other drugs among firefighters in Boston. But the harmful consequences associated with alcohol problems are not limited just to Boston or firefighters. Excessive alcohol use is an important issue for American employers.

Alcohol Problems Defined

Most people who drink find alcohol to be a source of safe pleasure, but drinking becomes a problem when people use alcohol in ways that are harmful to themselves or others. People who are excessive drinkers may be addicted to alcohol—that is, suffer from alcoholism. But many more, although not addicted, drink in ways that lead to health or safety problems.

Alcoholism is a progressive disease. Less severe forms of hazardous drinking usually precede alcoholism. Health care providers can categorize various stages of alcohol use disorders. The amount, frequency and context of an individual's drinking make it possible to determine where an individual may fall on the problem drinking continuum. The spectrum ranges from light to moderate drinkers who consume too much alcohol on occasion to people with alcoholism. Alcohol problems have a far-reaching impact on families, communities and the workplace. Drinking can play a commanding role in the decline of an individual's health. Alcohol kills approximately 76,000 Americans annually; it causes serious injury, destroys families, and contributes to violent crime.³ In 2006, 19.5 million people age 12 or older had a treatable alcohol problem.⁴ Most are 18 to 49 years of age and employed full-time. Nearly 100 mil-



lion light and moderate drinkers also put themselves at risk if they drink too much in the wrong place or at the wrong time. Improved access to treatment can save lives and reduce the burden of alcohol use disorders. Better understanding of the chemical changes in the brain caused by alcohol has led to treatment approaches that have the same success rate as treatment for other chronic diseases such as diabetes. The earlier a problem is spotted and treated, the higher the likelihood treatment will succeed and patients will recover. Effective treatment varies widely from person to person, but medical experts have clearly identified the elements that make up effective care and the standards to which treatment providers should adhere. Treatment can include various combinations of talk therapy, medication and participation in peer support groups. Despite these advances in treatment, millions go without the help they need. In 2006, only eight percent of the people with a serious alcohol problem got the treatment they needed.⁵ This gap exists, in part, because access to care can

be thwarted by insurance policies. Some insurers limit the coverage available for mental health and substance use care to far less than what is available for treatment of other medical problems. But the gap also exists because alcohol problems are significantly underdiagnosed. Although approximately eight percent of the population has a diagnosable alcohol problem, less than one percent are diagnosed.

Conclusion

Like Boston firefighter Paul Cahill, thousands of other workers are killed, maimed or otherwise injured each year in on-the-job accidents related to alcohol misuse. Alcohol use disorders don't just cost lives—they pose enormous costs for employers as well. Employers must pay directly—spending millions for health care and workers' compensation bills that stem from problem drinking. They pay indirect costs because many thousands of employees experience lowered productivity resulting from their own alcohol problems or those of family members. Low-cost, easy-to-implement workplace SBI programs will save lives and money.

Source:

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Sustaining Your Drug Free Workplace Program

The successful drug-free workplace program is ongoing and evolving. Sustaining the program means integrating it well into the workplace culture and environment. Keeping the program alive and responsive to changing conditions involves several steps:

1. Ensure Good Communication

Effective ways to communicate include written materials, charts, meetings, question-and-answer sessions, and a suggestion box. Employers who are successful at this know it is important to repeat the message periodically.

2. Conduct Ongoing Review And Evaluation Of Program Results

Note how the program works on a day-to-day basis, invite feedback, and revise as necessary to meet the specific needs of the workplace. Evaluate specific results. If, for example, a program goal is to lower employee absenteeism, use employee absenteeism records to establish a baseline against which you can measure the results of your program (e.g., after the program has been in place for a year). Other types of data you might want to use include tardiness, health care benefit utilization, workers' compensation claims, theft, accidents, and turnover.

3. Stay Current

Drug-free workplace programs are being studied and improved all the time. Keep current by joining local drug-free advocacy groups or coalitions. Some trade and pro-



fessional associations also provide up-to-date information about drug-free workplace issues. Some employers ask an employee group to periodically review the program and suggest appropriate changes.

4. Involve The Mainstream

Some employers and unions survey their employees/members and families regarding their interest in and need for substance abuse programs as well as general wellness and health promotion education and services. Many EAPs also offer or arrange for both general and specialized employee education activities.

Other actions that employers can take to help sustain the drug-free workplace effort include the following:

- Hosting alcohol-free events that emphasize the organization's commitment to preventing injuries and deaths associated with drinking and driving, especially around the holidays
- Serving as a positive role model

consistent with your messages to your employees

- Sponsoring or helping with prevention services in your community that would benefit your employees and their families
- Including prevention/healthy lifestyle articles in your organization newsletter
- Appointing a corporate representative to serve on and support any local substance abuse prevention-oriented programs or community partnerships in your area
- Encouraging employees and their family members to ask for help
- Recognizing that treatment is more cost effective than unsafe working conditions and lost productivity caused by alcohol- or other drug-related problems

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National Criminal Background Checks

Myths, Realities & Resources

Jackie Walters, Technical Services Librarian, Wiley Rein LLP

A

nyone who has been asked to conduct a “national criminal background check” knows the sinking feeling that comes from facing the requestor’s confident assumption that such a request is reasonable, possible, inexpensive, and fast. When a Google search brings up dozens of hits containing words like comprehensive, instant results, free, and all 50 states, it is easy to see where that confident assumption comes from. Where to start to explain all the caveats, cautions, costs, and prohibitions?

Seven facts contradict the myth that a national criminal background check is even possible:

- No central repository exists for federal, state, and local (i.e., county, parish, municipal, etc.) criminal records.
- Not all states have automated systems for collecting data from reporting agencies and local jurisdictions. As of December 31, 2003, 49 states, the District of Columbia, and Puerto Rico had automated criminal history information systems, but only 25 of these were fully automated. The content, accuracy, quality and timeliness of the data vary considerably among the states.
- No federal law imposes standards for collecting, indexing, searching, and using criminal record data. Among the 50

Responding to the
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Social Security numbers,
in public records.

states, standards vary for collecting the four types of criminal records —arrest, criminal court (federal, state and local), corrections (federal, state and local), and state criminal repository records.

- On-site searches can be costly. Conducting an on-site county-level criminal court search in every location where an individual has lived for the previous seven years (the investigation industry’s standard time frame) could be prohibitively expensive.
- States are increasingly restricting personally identifying data in original public records. Responding to concerns about privacy issues and identity theft, states are passing laws restricting the inclusion of personally identifying data, such as birth

dates and Social Security numbers, in public records. Researchers and commercial vendors will no longer be able to link data across record types (judgments, liens, tax, property, etc.) using personal identifiers to verify identity and establish relationships.

- A variety of federal and state privacy statutes limit permissible use of and/or access to data on individuals. Any end user can purchase a search from a proprietary vendor or a government-maintained Web site. However, users are responsible for using the data in accordance with permissible purposes as defined by several federal statutes, notably the Fair Credit Reporting Act (FCRA) (15 USC § 1681), the Gramm-Leach-Bliley Act (15 USC §§ 6801-6809), the Driver’s Privacy Protection Act of 1994 (18 USC §§ 2721-2725), the Privacy Act of 1974 (5 USC § 552a), and corresponding state statutes. The most commonly-listed permissible purposes are preemployment screening, consumer-driven transactions, fraud detection, and law enforcement. To insure compliance, some companies, such as ChoicePoint and Accurant (Lexis), credential end users for certain products before issuing a subscriber agreement.

- So-called “national” databases are inaccessible to non-governmental users. The



National Crime Information Center (<http://www.fbi.gov/hq/cjisd/ncic.htm>) is maintained by the FBI and limited by federal law to law enforcement agencies. Similarly, the National Instant Criminal Background Check System (<http://www.fbi.gov/hq/cjisd/nics/nicsindex.htm>) is also maintained by the FBI to provide information on people desiring to purchase firearms. Access is restricted to agencies authorized by the FBI.

Steps & resources for conducting a "national" criminal background search

1. Get as much information as possible on the subject and try to ascertain the permissible use. The essential first step in any background investigation is to find the right person. Start with name (including middle name or initial, aliases, maiden, alternate spellings, and nicknames), date of birth, Social Security Number, any known addresses, names of family members, occupation, even skills and hobbies.

2. Find the right person and their addresses for at least the last seven years. Before searching criminal records, know who you are looking for. A good standard is to have at least two "unique identifiers," one of which should be a date of birth.

Unless you have reason to believe the

individual has moved around, searching by state may be most efficient and cost-effective. While the combined public records databases in Lexis and Westlaw make broad searching efficient and relatively inexpensive, many factors—a common name, lack of unique identifiers, variable spellings, etc.—could produce results that are timeconsuming to sort and may not identify the right person. Taking the time to find the most suitable database may save time and money, as could consulting the Information and Scope notes to ascertain what data is included and what restrictions apply. Restrictions can include statutory prohibitions on updating files with current data (military locator and motor vehicle records, for example). Depending on one's permissible use, certain sources may not be made available for the search (voter registration or motor vehicle records, for example).

Lexis and Westlaw products produce comprehensive reports that compile data from multiple sources and use unique identifiers to link an individual to various types of available data, such as adverse filings, real property records, and motor vehicle and drivers' license records. Westlaw's Person Profile Report (P-PROFILE) is intended to be "an inclusive and comprehensive starting point" for compiling information on a person. Transactional pricing applies; a name search is \$35, which is then applied to the \$75 for a Profile Report if one is ordered. LexisNexis® SmartLinx™ is accessible under the Public Records tab. A full comprehensive report costs \$105 (see <http://www.lexisnexis.com/literature/pdfs/LO17161-0.pdf> for a sample report) Since these resources all contain non-public data, they require permissible use designations.

Other one-stop sources for personal

information reports include Accurant and ChoicePoint. Accurant®, a LexisNexis product that requires a separate subscriber agreement, uses public records and non-public information to compile information on individuals, including linking them to businesses and workplaces, in a variety of report formats. A comprehensive report costs \$15. AutoTrackXP®, a product of ChoicePoint, Inc., requires that subscribers (including law firms) be credentialed. AutoTrackXP has a Web-based public records search tool that retrieves an immediate report and on-demand searching, for which ChoicePoint assigns an investigator to conduct on-site searching in a particular jurisdiction (for a sample report, see (http://www.choicepoint.com/sample_rpts/AutoTrackXPpdf)).

3. Search criminal records resources.

Professional investigators start locally and expand globally. Going back through seven years of addresses is the industry standard for professional investors. A good starting point is to search criminal dockets through Lexis or Westlaw, CourtLink or CourtExpress, Legal Dockets Online, or the U.S. Party/Case Index on PACER. On a nationwide basis, these resources cover all but a few federal courts, many state courts and some local courts. Coverage varies by vendor.

Good Web sites for locating Web-based resources include the following:

- **VirtualChase.com**

(<http://www.virtualchase.com>), maintained by the law firm of Ballard Spahr Andrews & Ingersoll LLP, has descriptions and links to free online resources for public records and criminal records research.

- **SearchSystems.net**

(<http://www.SearchSystems.net>) organizes public records by topic and jurisdiction. Within those areas, it provides free access

**Many databases
maintained by government
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to information about public records resources. Users may subscribe to SearchSystems Premium service or DirectPass to pay for information from those sources charging fees. This site is a good place to look to see what coverage is available. Delving into Birth and Marriage records, for example, reveals that, for many counties available, the records stop before the mid-20th century.

- **Public Record Sources**

(<http://www.publicrecordsources.com/>), powered by BRB Publications, provides a comprehensive list of free public record sites, including those for finding criminal records. Entries are specific and often include information about the source, including fees for access and/or reports, search tips, date coverage, etc.

- **Public Records Online Searches**

(www.publicrecords.onlinesearches.com) is a source for locating public records of all kinds at the national and state level. Although this directory is free, the listed resources may not be. To be comprehensive, a researcher should search resources from more than one directory. Although the distinction appears to be that Public Records Sources is a directory of free sites and Public Records Online Searches is a directory that includes fee-based sites, limiting a search based on that distinction has misleading results. For example, Cambria County, PA does not appear in the Pennsylvania listing under Public

Record Sources, but it does under Public Records Online Searches—with access to information on the inmate population, a sex offender registry, and court dockets, some of which appears to be free to the public.

Vendors like Legal Dockets Online, Lexis, and Westlaw sell the convenience and efficiency of conducting broad searches across several types of criminal records. Dozens of Web-based proprietary vendors purport to provide nationwide or worldwide comprehensive searches through public records and to use the same records government agencies use. The truth is that there are a few commercial data aggregators compiling data from public records (without editing) and selling that data to proprietary vendors as well as to government agencies. Many databases maintained by government agencies are now posted on the Internet and are accessible to the public for no or little cost. Wherever it lodges, the data is often suspect for a variety of reasons, may not provide timely or accurate information on an individual, and is subject to statutory restrictions on use. There is a trade organization for the public records industry that sets professional standards and ethics for members: the Public Record Retriever Network (PRRN). A source for finding record vendors, including PRRN members, is <http://www.brbpub.com>.

Numerous government and commercial resources are available for finding criminal record information:

- **Federal Bureau of Investigation**

(<http://www.fbi.gov>) —In the Crimes Against Children portion of its Web site, the FBI maintains a link to all available state sex offender registries: (<http://www.fbi.gov/hq/cid/cac/states.htm>).

There is a link to the National Sex Offender Public Registry (NSOPR)—(<http://www.nsopr.gov/>)—maintained by the U.S. Department of Justice. FBI

“most-wanted” information is at (<http://www.fbi.gov/wanted.htm>).

- **Federal Bureau of Prisons**

(www.bop.gov) —Maintains an inmate locator for inmates of federal prisons incarcerated from 1982 to the present as well as pre-sentenced offenders from the U.S. Marshal's Service and the U.S. Immigration and Naturalization Service.

- **U.S. Marshals Service**

(<http://www.usmarshals.gov>) —Includes lists of most-wanted and captured fugitives.

- **Drug Enforcement Administration**

(<http://www.dea.gov>) —Contains information on crimes involving controlled substances, including the DEA's most wanted fugitives and criminal cases against doctors.

- **Office of Foreign Assets Control, U.S.**

Treasury Department—Publishes a list of Specially Designated Nationals (SDNs) and Blocked Persons (<http://www.treasury.gov/offices/enforcement/ofac/sdn/>), including countries, individuals, and organizations whom the U.S. government believes are engaged in terrorism, international narcotics trafficking, or providing weapons of mass destruction.

- **VINE (Victim Information and Notification**

Everyday) (www.vinelink.com) —A free service funded and provided by local and state agencies for the purpose of notifying victims of crimes of the current custody status of their offender.

- **Legal Dockets Online**

(<http://www.legaldockets.com/>) —A portal to criminal records, this site claims to link to “all available sources for inmate, booking, warrant, most-wanted and sex offender registries and maps.”

The National Crime Information Center: A Review and Evaluation

August 3, 2005

Problems with the accuracy and validity of the information contained in the state criminal history depositories are summarized below:

- **Many states do not report information concerning dispositions, declinations to**
- **prosecute, failure to charge after fingerprints have been submitted, and expungements.**
- **Inconsistency in the various states' reporting requirements and criminal codes impacts the completeness and accuracy of the records.**
- **The timeliness of transmission by the local jurisdictions to the state criminal history repositories remains problematic.**
- **There are still significant time lags between the time information is transmitted to the state repository and entry into the criminal history records.**
- **The process used to linking data to the proper individual and case is still ineffective.**
- **Serious problems remain in the process to link dispositional information to the proper case and charge.**
- **The format and terminology used by the various states creates problems of interpretation for individuals in other states who are using the information.**
- **The use of name checks has been proven create serious identification problem.**
- **Differing laws related to dissemination of criminal history records pose significant problems for the implementation of the III program.**

It cannot be overemphasized that the deficiencies in state criminal history records present serious problems for the various agencies and organizations that are dependent upon the information they provide. Continued efforts are needed in order to insure that the problems discussed in this report are addressed and the reliability of these records improved.

Source: This report was prepared for the National Association of Professional Background Screeners (NAPBS) by Craig N. Winston. Its purpose was to review the National Crime Information Center and the Interstate Identification System to evaluate its effectiveness in maintaining accurate and complete criminal history records. For more information go to: www.NAPBS.com

- **Lexis**

The FINDER/CRIMNL database contains selected criminal record data from 37 states, in many cases back to the year 2000. For some states, researchers must conduct searches using specific criteria in order to retrieve information on an individual. The FINDER/ INMATE combined file contains inmate information from five states. The GENFED/MILTRY file contains cases from the United States Court of Appeals for the Armed Forces and the Courts of Criminal Appeals for the Air Force, Army, Coast Guard, and Navy-Marine Corps from June 1951.

- **Westlaw**

The CRIM-ALL database contains records derived from U.S. District Court filings, state repository information (Departments of Corrections and Public Safety), state court filings, the U.S. Office of Foreign Assets Control, and sex offender registries. Data from 41 states and the District of Columbia are included, but not all jurisdictions provide all types of data. ARREST-ALL contains arrest data from county-level reporting agencies, for those counties and states reporting data. CRIM-FED contains U.S. district court criminal docket information from all but five states, Guam, the Virgin Islands and the Northern Mariana Islands. Usually, the data is updated within 45 days. The combined Sex Offender Registry file is CRIM-SOR.

Conclusions

1. Proprietary fee-based databases offer geographical breadth at reasonable cost to criminal records research that would be time-consuming and prohibitively expensive using local, on-site research.

2. Online searches and on-site research risk missing information for a variety of reasons, and the industry stan-

**Proprietary fee-based
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dard maintains there is no substitute for searching court records at the local level. The diligent researcher will pursue every available avenue to search down to the lowest possible local level in conducting criminal background searches—and will recognize there still can be no guarantee of 100% certainty.

3. Given the inconsistency of data collection among and between local and state jurisdictions, varying standards for updating data and for insuring its accuracy, the lack of any standard for collecting information on criminal offenses, and increasing restrictions imposed on information in public records by jurisdictions concerned about privacy rights, a nationwide criminal records search remains a goal, not a given.

Suggestions for Further Reading

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- Also Part 2, originally published in Law Office Computing (December/January 2005) under the title, "Hide and Go Seek." http://www.virtualchase.com/articles/background_checks_part2.html.

- Tyburski, Genie. "To Catch a Thief." Originally published by Law Office Computing (December/January 2004) under the title "It's Criminal." http://www.virtualchase.com/articles/criminal_records.html.

Privacy Organization Web Sites

- American Civil Liberties Union: <http://www.aclu.org>
- Electronic Privacy Information Center (EPIC): <http://www.epic.org>
- Privacy Rights Clearinghouse: <http://www.privacyrights.org>

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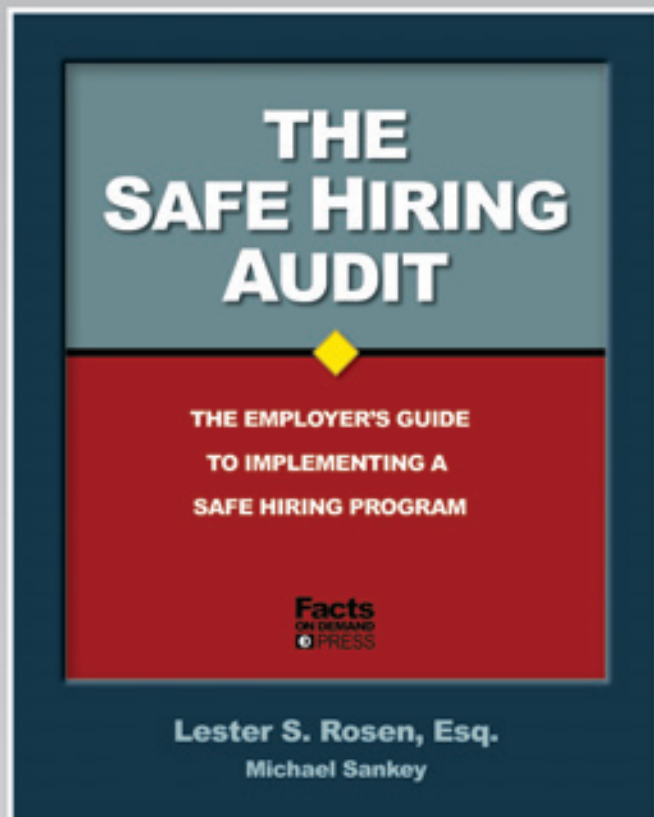
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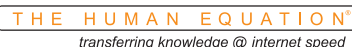
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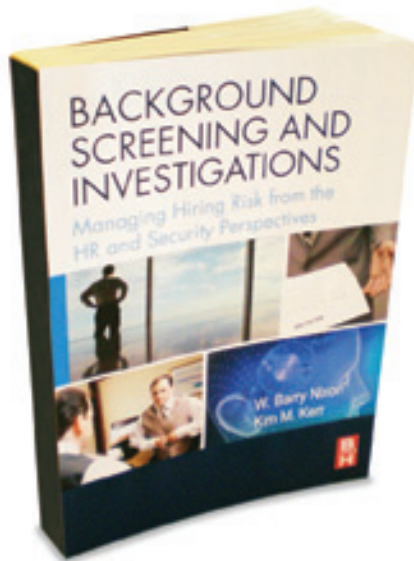
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British Standards Institute

Understanding & Implementing BS 7858:2006 Security Screening of Staff (1 Day); Training Dates: 22/05/2008, 15/07/2008, 17/09/2008, 25/11/2008
<http://www.bsi-global.com/en/Shop/-Training-Detail-Pages/BS-7858-Training/>
This interactive one-day training course is designed as a practical introduction to BS 7858:2006 for all those who want to screen employees. Building from basic principles up to a comprehensive strategy, this course provides full details on how to screen staff in line with good practice. Originally for security firms, this British Standard is now used as the benchmark for good screening procedures. Delegates should leave equipped with a thorough understanding of BS 7858 principles and a screening plan ready to implement.

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corporate and public sector drug and alcohol policy makers - get up-to-the-minute policy and practice,
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Business Forums International's 11th Annual Pre-Employment Vetting & Screening Conference
London, England
<http://www.bfi.co.uk/>
European Pre-employment Vetting & Screening Summit 2008.
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Chartered Institute of Personnel and Development

Understanding Data Protection Law
Course overview: This practical 1-day

course enables participants to understand the law that applies to the collection, storage and use of personal data in the workplace, from the beginning to the end of the employment relationship. For More Information Go To:
<http://www.cipd.co.uk/subjects/emplaw/dataprot/dataprotec.htm?IsSrchRes=1>
Training Dates: 26 September and 26 November 2008; 23 Jan & 16 March 2009

Symposium Events

Employing and Vetting Non-UK Nationals 2008

Examining Screening Methods -
Checking Documentation -
Understanding your Legal Responsibilities - Avoiding Litigation.
Training date: Wednesday 2nd July 2008, London
<http://www.symposiumevents.co.uk/pages/attending/HR072/overview.htm>

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Taking Screening to the

W. BARRY NIXON, SPHR

Most large corporations understand the importance of preemployment screening. But few recognize the need to periodically rescreen the work force. They presume that a person who had a clean criminal, credit, or driving record when they were hired will continue to have a spotless record. But people change, and so do their circumstances. Consider the case of one woman who checked out perfectly when hired as a bookkeeper. After ten years with the firm, however, she found herself overwhelmed with debt due to large medical bills incurred by her sick child. She saw a loophole in the company's financial tracking system and exploited it to embezzle funds so that she could pay off her bills and continue to fund her child's medical care.

In this case, the firm had a policy of conducting biannual screens on all individuals in sensitive jobs, including those working with the company's books. The policy called for examining the credit history, bankruptcy filings, and financial records of these employees. A routine posthire screening uncovered the worker's serious credit problems. This led to an audit of her files, which revealed that the books were being falsified.

The case shows the potential power of rechecking employees after employment, a process sometimes called infinity screening. The practice is emerging as an important weapon for fighting internal fraud, property and information theft, workplace violence, and even terrorism. It's easier to conduct continuous screening thanks to advances in data-collection techniques, but companies must tread carefully and be sure to address all the relevant legal issues, such as privacy and employment regulations.

Policy

The first step is to develop a comprehensive policy that sets the tone and provides the

framework for how infinity screening will be handled in the organization. The following are among the key points to be addressed.

Identify positions. The company must first determine which positions will be screened. The decision should be based on the nature of the work to be performed. Jobs should be classified according to their sensitivity or the risk factor associated with the position. Set frequency. The policy should specify how often screenings will be conducted. If a third party has been directed to alert the company whenever there is activity, such as a driver's license infraction, the policy should explain how that affects the frequency of screens.

Set search parameters. The policy should also list the types of information that will be sought as a part of the screening. Companies must be mindful of the legal restrictions that apply.

While it is well established law that a company has the right to check a person's criminal record before making a job offer, the legal landscape is murkier when it comes to checking that information and other off-duty behavior, such as credit history and driving record, after a person is employed. Some businesses are pushing the envelope here, but employers must be cautious, because monitoring such information could be considered an invasion of privacy and might invite litigation. The company's legal counsel should ensure that the policy conforms to relevant state laws, which are fairly clear on what type of screening is prohibited.

With regard to off-duty conduct, the employer should limit screening to information that it can show has a clear relationship to job performance. Checking the driving

record of a person who operates a company car should be legally defensible. But the connection to the job need not be that direct. It may also be relevant to examine an employee's off-duty conduct if it could jeopardize the company's business or reputation.

Consent. The policy must state how employees will receive notification of the screening and how they will grant consent. Companies should notify affected employees when they are hired that the organization plans to conduct posthire background checks. These new hires should be asked to sign a written authorization and consent form as part of the hiring process. If the process is implemented later, all affected employees should be asked to sign the form when the policy is activated. However, companies may also want to have a consent form signed just prior to each new check, depending on the law in that jurisdiction.

Consent requirements vary by state. Les Rosen, president of Employment Screening Resources notes that to fully comply with state law in California, it is arguable that a new consent form is required every time a search is done. There has yet to be a test case. It is possible, however, that if a company does not obtain the required consent from employees, a court could decide—if a case were brought by an employee—that the company had no right to use any information gleaned from those searches.

Contract staff. Companies have many people in their buildings who are not direct

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Next Level

Taking Screening to the Next Level

employees. Outsourced staff may include administrative assistants, cleaners, security officers, and IT consultants. The company should have an infinity screening policy for these positions as well. In this type of situation, the screening should be among the obligations listed in the service contract for each provider. These organizations should be required to have both preemployment screening and periodic screening that meets the standards the company imposes on its own direct hires.

Response. The company's infinity screening policy must lay out the process for handling and responding to negative information uncovered during any new search. Key issues include who needs to know about the information and who needs to be part of the decision making.

Due to the highly sensitive nature of the information involved, and also the possibility that a negative hit will taint future decisions regarding the employee, it is crucial that a minimum number of people be involved. That might typically include legal and security personnel. Supervisors and managers should specifically be excluded until the negative information is verified. Because human resource personnel are frequently involved in career mobility discussions, and because their view of the individual could inadvertently be tainted by access to raw screening data, it is better for security to handle the information-verification process. Once the negative hit is affirmed as accurate, human resources should be brought into the discussion.

EEOC. A company must be mindful of many issues as it reviews information that may surface in a background check, especially after employment has begun. For example, the Equal Employment Opportunity Commission (EEOC) warns against using criminal records to automatically disqualify an individual from consideration without a legitimate business reason for doing so.

A case that illustrates this point is *Wright v. Home Depot* (Hawaii Supreme Court,

2006) in which the court ruled that an employee's conviction must bear a rational relationship to the employee's job before a company can take action.

Wright, a Home Depot employee who had been with the company for about a year, applied for a promotion to department supervisor. During the review period for the promotion, Wright was tested for illegal drug use twice. Both of the tests were negative.

Home Depot also conducted a criminal background check on Wright as part of the review. The check uncovered that Wright had a prior drug conviction, and Home Depot fired him. Hawaii's high court ruled that the company wrongfully terminated Wright based on his prior criminal record.

FCRA Compliance. Other legal issues associated with infinity screening relate to compliance with the Fair Credit Reporting Act (FCRA) as amended by the Fair and Accurate Credit Transaction Act. FCRA provides the requirements for using consumer reporting agencies, as defined by the law, which includes background screening firms. If a business does its own background screening using internal staff and does not use a consumer report in any part of the process, FCRA does not apply. State laws with similar requirements may, however, come into play. In any case, businesses should still follow the FCRA requirements to avoid even the appearance of unfairness. Doing so will also put companies in a solid position should the process be challenged.

Industry requirements. The company's screening policies should address whatever special requirements may apply to its particular industry. For example, in the medical and healthcare fields, facilities are required to make sure that medical licenses and certifications are current and meet established standards. Banks and brokerage firms have their guidelines as well.

Negligent Retention

Negligent retention is a legal doctrine that

has evolved out of numerous court cases. The underlying premise is that if an employer is aware that an employee has been violent or has violent tendencies—or should have been aware of the problem and did not take reasonable actions to address the situation—the employer can potentially be held liable for the actions of that employee. This concept has been applied to many employment situations.

Infinity screening programs can help employers avoid negligent retention lawsuits. If, for example, a company finds that one of its drivers was convicted of driving while intoxicated, the company can decide whether to allow the driver to continue deliveries, change that employee's assignments, or take other appropriate actions. Without this information, the company would have difficulty defending itself in the case of a lawsuit if the driver had an accident while making a delivery and injured someone. The company might only discover during the trial that the driver had a suspended license and had been convicted of a DUI.

In such a situation, several questions are likely to arise in court. They may include whether it is reasonable to expect that the company should have been aware of the employee's driving record, whether there were reasonable steps that the employer could have taken to have current information on the employee's driving record, and, if the company had known of the incident, what action could have been taken? Companies could avoid this situation altogether by conducting infinity screening.

Infinity screening helps a company continually re-assess the risk an employee presents to the company over that employee's work lifecycle. Infinity screening can help improve the organization's risk-management posture. Businesses should embrace this opportunity to better manage their risk.

Barry Nixon is executive director for the National Institute for Prevention of Workplace Violence, Inc. He is a member of ASIS International and serves on the ASIS Council on Crime and Loss Prevention.

Liars Index® Trend Is Moderating

2007 “Lyin’ King” Is Chosen

Jude M. Werra, CMC

The Liars Index® trend appears to be moderating, as the two year rolling average declined from 14.17% to 13.85% in the second half of 2007. The percent for the last six months dropped by a third, to 10.34%.

Jude M. Werra & Associates, the Brookfield, WI Executive Search Consulting firm, has been tracking the percentage of executives who misrepresent their education claims on their resumes for over a dozen years. Jude Werra reported that the volatility in the percentages does not appear to parallel any particular economic measures. “It seems more likely that the more notoriety given to a prominent case, the numbers seem to decline, but never do they reach zero,” he said.

**The Liars Index trend
appears to be
moderating, as the
two year rolling average
declined from
14.7% to 13.85% in
the second half of 2007**

“The rolling average has moved between 9% and 18% since 1995, so you can assume that one or two of every ten resumes will have false education claims.”

The “Lyin King” for 2007 was chosen for the most outrageous claims encountered during the year. He is a global sourcing executive who claimed a Bachelor’s

degree with a double major in the Sciences.

Stating on his resume that he was particularly proud of his earning 100% of his tuition and expenses, it turns out that the University he listed as his Alma Mater has no record of his ever having attended there at all. It appears that his “paying his own way” obviously never stretched his budget... only the truth.

Jude M. Werra & Associates, LLC updates its “Liars Index®” on a semi-annual basis. The firm is dedicated to bringing clarity to Directors and Officers executive assessment, search and selection nationwide, and has affiliates serving Latin America and Europe.

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Our Latest Data

Data Point	1st Half 2004	2nd Half 2004	1st Half 2005	2nd Half 2005	1st Half 2006	2nd Half 2006	1st Half 2007	2nd Half 2007
Semi-annual Percentage	9.82%	11.88%	10.73%	11.61%	16.07%	13.86%	15.15%	10.34%
Prior Two Year Average	9.41%	9.59%	9.62%	11.01%	12.57%	13.07%	14.17%	13.85%

2004 Reference and Background Checking Report

SHRM Research Key Findings, January 2005

Mary Elizabeth Burke

In

spite of the importance of reference checking to a complete and thorough hiring process, only 96% of HR professionals said that they always conduct reference checks, even on candidates for executive and upper management positions. Additionally, a small number of respondents indicated that their organization does not conduct any form of background or reference checking, including verification of information provided by the applicant, communication with others regarding the applicant and/or documentation regarding a job applicant. Just over half of organizations that conduct reference checks outsource some or all of their background and reference checking and verification. Few HR professionals report always finding inconsistencies in any area; however, more than half say they sometimes find inconsistencies in a number of types of information, such as criminal record check and dates of previous employment. More than half of respondents indicated that the HR staff at their organization is primarily responsible for conducting reference checks, and more than eight out of 10 said the HR staff is primarily responsible for providing reference check information. HR professionals indicated that reference checks are primarily conducted by telephone, though organiza-



tions where some positions may require a security clearance are somewhat more likely to conduct checks by mail or in person. More than two-thirds of HR professionals indicated that they are always able to obtain information on dates of employment, but less than one-quarter said they are always able to get adequate information in other areas.

Most respondents believe reference checking is very or somewhat effective in identifying potentially poor performing employees, though just over a quarter believe it is not very effective, and a small number believe it is not at all effective. Just over one-fifth of HR professionals

indicated that their organization has implemented new or different reference or background checking policies or procedures as a direct result of the September 11, 2001, terrorist attacks. Organizations where some positions may require security clearance are more than twice as likely as other organizations to have implemented new measures.

More than half of respondents indicated that their organization has a policy not to provide any references or information about current or former employees.

Additionally, more than half of respondents reported that they are aware of someone in their organization refusing to provide information for fear of legal action, though few said their organization had actually faced various legal issues regarding reference and background checking in the last three years. Three-quarters of HR professionals believe laws shielding those who provide references in good faith from legal liability would lead to their organization sharing more information about current and former employees.

Excerpt from Key Findings, 2004 Reference and Background Checking Survey Report, by Mary Elizabeth Burke, January 2005. Reprinted with Permission of SHRM

Council Surveys Screening

The ASIS International Banking and Financial Services Council

The ASIS International Banking and Financial Services Council has conducted a survey of how financial institutions conduct preemployment screenings. The survey asked which management function owned the preemployment screening process, which group conducted the process, and the size of the prescreening staff. The survey found that in all cases, human resources (HR) owned the preemployment screening process, but partnered with the security team for the background investigation. Security managed the process and the investigation, especially in the case of adverse information.

All respondents said they used a com-

bination of outsourced information, such as the FBI database or vendors such as Choice-Point, and internal resources to complete investigations and fill in the gaps. Security ensures compliance with the established standards and reports results of further investigation of exceptions to HR. As to the final say on whether an offer should be made if the results of the screening are less than sterling, it was generally found that security gives HR a recommendation on whether to hire based on the results of the investigation and compliance with established standards. If the hiring manager or HR disagree, higher management makes the decision. One response notes that securi-

ty recommends directly to the hiring manager but informs HR.

The average size of investigative staff that handled the screening fell within a range of one to eight people. Lastly, the survey found that the security team generally contacts previous employers and other references, especially if vendors are unable to do so or if there appear to be issues. One respondent considered it the responsibility of the hiring manager.

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2005 Employers Background Screening Practices Survey Results

PreemploymentDirectory.com

In

June of 2005, Preemployment Directory.com conducted a survey on the current practices that businesses were using to conduct background screenings. The survey explored in depth the full realm of checking applicants backgrounds ranging from the types of checks conducted, to the content contained in background screening policies to key selection factors in choosing an outsourced background screening firm.

The following is a summary of the results. A detailed in depth analysis with full survey response can be obtained by going to www.PreemploymentDirectory.com (scroll down to 2005 Employer Background Screening Practices Survey Results) or read chapter 4 in 'Background Screening & Investigations: Managing Hiring Risk from the HR and Security Perspective' by W. Barry Nixon and Kim Kerr, published by Butterworth-Heinemann an imprint of Elsevier.

The number of responses were 273 which based on conventional statistical methods did not meet our defined criteria to be statistically significant. While we believe the data is informative and presents a picture of employer practices readers are advised to be cautious in drawing definitive conclusions based on this data alone.

In today's turbulent work environments employers are challenged by identify theft, fraud, workplace violence, theft, sabotage, negligent hiring, terrorism, etc. to name a

few of the issues. This may be the 'Interesting Times' that Charles Dickens famous quote 'Shall You Live in Interesting times' was meant for. Due to concerns about the above issues background checking has skyrocketed to record levels and is continuing to grow annually. The number of firms that provide outsourced back-

**It was interesting to see
that while 80% of employers
conduct background checks
on applicants only 58%
conducted them on current
employees.**

ground screening services has leaped to well over 2,000 and is growing daily.

In parallel with the unprecedented growth of the background screening industry we have seen more concerns about privacy and security of the data obtained. ChoicePoint recently settled an issue surrounding a breach of their data for 10 million dollars. This case along with numerous others will inevitably lead to new data protection laws.

Many are predicting the days of using birth date and social security numbers as identifiers are numbered and will give

way to biometric solutions, some of which border on science fiction. Consequently, the landscape of background screening will continue to evolve and employers will need to keep up. A very promising trend that has emerged in background screening is that we are increasingly seeing stand alone screening feeds being integrated into firm's human resource information systems.

A pressing issue that is confronting background screeners is the proliferation of the fake diploma and degree mills. Simply verifying educational background is no longer sufficient. Screeners must now verify that the source of the education is legitimate and for foreign degrees their equivalency.

There are also clear signs that background screening is increasingly going global as the economies in India, China, Europe, etc. continue to prosper and recruiters span national borders to find people. The international marketplace is likely to be the brave new world that background screening must master.

Despite the challenges that will be faced there is no question that background screening has become an integral part of the hiring process. Driven by the need to know whom they are hiring and to discover the best information possible to make quality hiring decisions will continue to make a background screening valuable for years to come.

Key Findings

It was interesting to see that while 80% of employers conduct background checks on applicants only 58% conducted them on current employees. At one level this is understandable since it is easier to implement a program focused on job candidates versus having to tangle with the complexity of screening employees. From our experience we believe the trend is towards doing more internal screening, however, we will have to see what results in future surveys.

It was also interesting to note that less than 50% of responding firms conduct background checks on applicants from other countries. Given the increasing focus on globalization juxtaposed on top of concerns about terrorism and the viewpoint that many of these individuals are from countries outside of the US it would appear that our background screening processes are out of sync with this perspective. Or perhaps this reflects the challenges and complexity of conducting international background investigations or vetting with the myriad of legal, privacy, political, cultural and language issues. Either way, this may be an issue that senior management may want to take a closer look at to ensure that their background screening practices are consistent with their risk management profile.

The most prevalent types of background checks were criminal records, previous work history and references and 85% of companies conduct background screenings for all open positions.

Overwhelmingly firms are using Authorization & Disclosure forms with 90% of respondents stating they use them. Despite this high number this potentially means that 10% of responding firms are apparently operating outside of established Fair Credit Reporting Act procedures.

Two Thirds of businesses outsource



their background screening to an external service provider and 66% of these firms were either 'extremely or very satisfied' with the level of service provided by background screening firms. In addition, 25% were moderately satisfied with the services they were receiving. These findings support indicators that the professional background screening industry is experiencing rapid growth and the number of background checks being conducted continues to grow.

The survey results clearly indicated

It was also interesting to note that less than 50% of responding firms conduct background checks on applicants from other countries.

that Human Resources was the discipline primarily responsible for overseeing background screening. 83% of respondents indicated that Human Resources was the responsible function and 11% indicated Security held this responsibility.

63% of firms responding have a formal background screening policy contrasted with 74% having a workplace violence pre-

vention policy. This was interesting given that a progressive workplace violence prevention policy should include background screenings as one of the tools that must be used in the battle to prevent workplace violence. So either there are some problematic workplace violence prevention policies that need tightening up or our line of questioning did not account for firms that have background screening provisions within their workplace violence prevention policy.

With regards to the demographics of firms responding to the survey:

- 56% were from employers with less than 500 employees
- 69% from private sector employers
- 32% had revenues of less than 10 million, 28% more than 10 million and 41% had revenues of more than 50 million

About PreemploymentDirectory.com

Preemployment Screening Directory is the largest and most comprehensive web based directory of background screening firms designed to make it easy for employers to quickly find a company to meet their screening needs. The Directory consist of four sections to guide employers quickly to the company that will serve them best.

The Directory has over 1,000 firms listed and is continuously growing. Visit us at www.PreemploymentDirectory.com

2007

Background Screening Trends

Kress Employment Screening

Background Screening: A partial solution to an increasingly disconnected society

Background screens are no longer a means to prevent criminals from entering the military as they were at their inception in the 1980s; they have now become a means for savvy companies to protect their personnel and financial security. A modern battery of background screens, including criminal records checks, employment verification and education verification, help employers detect applicant falsifications and enable the promotion and hiring of the best employees. Background screens have become an integral component of the hiring process, and they are often used immediately prior to hiring to ensure a better employee for the position.

Public acceptance of background checks is growing due to the advantages they provide, including:

- Helping to ensure a safe workplace and environment
- Aiding in efforts to protect homeland security and the U.S. economy**
- Helping companies comply with state and federal hiring regulations

However, there are some background screening concerns, such as identity theft, privacy issues and discrimination charges.

As HR professionals outsource their non-core services (background screening primary among them), they are dependent upon their providers for high-quality services, specific industry knowledge and legal protection. However, many screening providers have yet to increase their quality because most inadequacies go unnoticed

until a lawsuit appears on their customers' desk. HR professionals have matured in their understanding and evaluation of background screeners in recent years, but they are still willing to entrust tremendous legal responsibility to a provider.

Topline Findings of "Background Screening Trends" Survey Launched in July 2007, the "Background Screening Trends" survey includes online responses from 277 HR professionals and executives who interact with the background screening process regularly.

Key Findings

- More information leads to better hiring decisions 66.1 percent of respondents agree with this statement. In addition, most respondents are willing to wait for the most accurate information on each of their applicants, a change from previous years when companies demanded a complete screen in a 24- to 48-hour window.
- Better background screens yield better employees 88.4 percent of respondents agree with this statement and 51.6 percent completely agree.
- The intricacies of the laws affecting background screening are not fully understood 64.2 percent of respondents are aware of the privacy and discrimination laws that affect background screens, and 69.7 percent of respondents entrust this to their screening providers.

Background Screening Leads Outsourced HR

Background screening is the HR service out-

sourced most often, and the majority of HR professionals have discovered the potential impact of it on the quality of employees. Seventy-five percent of respondents indicated that the percentage of those activities outsourced by their companies would remain the same in the next year. Background screening is the most outsourced service (79 percent), followed by payroll (58.3 percent) and HRIS (33.6 percent). See the following chart for an analysis of HR outsourcing based on percentage of activities outsourced rather than the types of activities.

Background Screening Value

Employers value background screening, not only because it reduces their legal liability and protects their employees, but also because it leads to better hiring decisions, yields better employees and lowers overall HR costs.

Across the board, respondents agree that more information leads to better hiring decisions (66.1 percent), that better background screens yield better employees (88.4 percent of respondents agree and 51.6 percent completely agree) and that background screening can lower overall HR costs (84.5 percent of respondents agree and 50.9 percent completely agree).

In addition, a significant portion of respondents whose companies do not conduct background screens agree that it lowers HR costs (47.5 percent).

Selection Criteria

HR professionals value three components of the background screening process: accuracy, turnaround times and customer service. This is a significant change from the past,

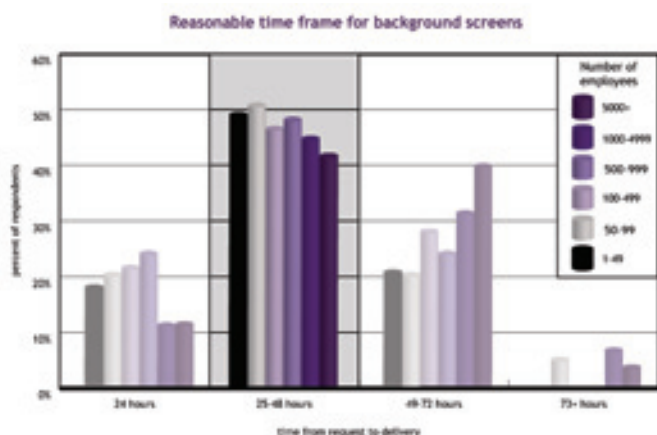
when the primary selection criterion was cost. This is evidence of a maturation of the background screening industry in that HR providers are evaluating quality. Accuracy, turnaround times and customer service are the top selection criteria for respondents from all company sizes, selected by 90.6 percent, 87.4 percent and 69.3 percent, respectively.

Accuracy

Accuracy was ranked as the single most important criterion by 64.8 percent of respondents, and 94.2 percent of respondents completely agree that the accuracy of each screen is important. Respondents also indicated that accuracy is worth the time it takes; 77.3 percent of respondents said they believe further research is necessary to locate complete and accurate information in case of a discrepancy.

Turnaround Times

Less than 1 percent of respondents said that turnaround time was not important. While 25-48 hours is the mean acceptable turnaround time (indicated by 48 percent of respondents), smaller firms are far less patient with their screens. The preceding chart offers an analysis of preferred turn-



around times by company size. This is a dramatic shift in the past few years—in the past, it was only the big companies that demanded and had become accustomed to short turnaround times. This is indicative of two potential trends in the background screening industry: smaller companies are using basic screens to keep costs low and

thus have grown used to the instantaneous delivery of database screens and larger companies have come to value the verification of information from reputable sources (such as courthouses) and are thus willing to wait longer for a quality screen.

Background Screening Use

Although HR professionals value background screens, they do not want to spend time on the screens. Those HR professionals most unwilling to spend time on a background screen are those at companies with less than 500 employees. Typically, these companies have a small team of HR generalists expected to accomplish all HR activities—they just do not have time to deal with a process they can outsource.

Most HR professionals are unwilling to invest a significant amount of time in background screening. The majority of respondents (84.9 percent) agree that the time spent on screens is acceptable when the average time investment is less than one hour per week.

Companies of 500 employees or less are the most rigorous about the time they are willing to spend on background screening. However, this group is also the most reluctant to outsource background screens, with only 70 percent outsourcing, compared with the 78 percent average for all companies.

Background Screening Process

Most HR professionals choose a battery of screens for their incoming employees, with criminal record checks being the most important, but a significant portion of respondents do not have

full insight into the data collection method of their providers. While each type of screen is used by more than half of the respondents, respondents from larger companies report that they more commonly use a battery of screens with an emphasis on criminal and drug screening. According to more than half of all respondents (60.3 percent),

criminal background checks are the most important type of background screening. Credit checks are the least important, selected by just 39.5 percent of respondents.

Sources of Information

There's a 50/50 split between respondents about the usefulness of the types of criminal checks: half believe that database information is as useful as information from courthouses. There is no significant opinion change by company size; instead, we believe this is a function of the respondents' previ-

Most Common Uses For Each Screen:

- **Criminal record check**—protects against legal liabilities the company may assume by hiring a candidate with a criminal record
- **Employment verification**—ensures that the candidate had the jobs they claim to have had in the past
- **Education verification**—ensures that the candidate has the education they claim to have received
- **Driving record search**—protects against liability in a company car, etc.
- **Credit check**—protects against financial fraud

ous experience with background screening.

While respondents are split evenly on the issue of courthouse versus database, an overwhelming majority of respondents (93.9 percent) believe that it would be beneficial for criminal records to be checked at the county, state and federal court levels.

Background Screening Process

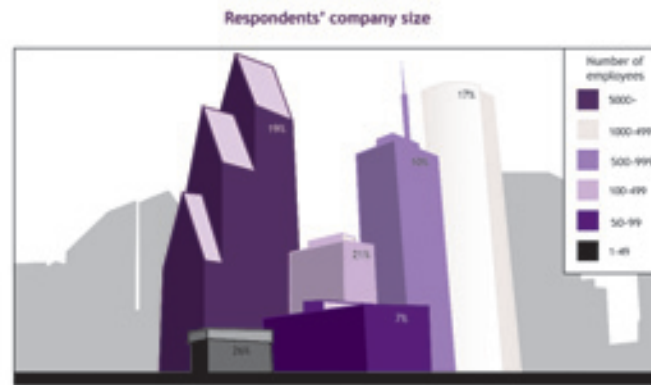
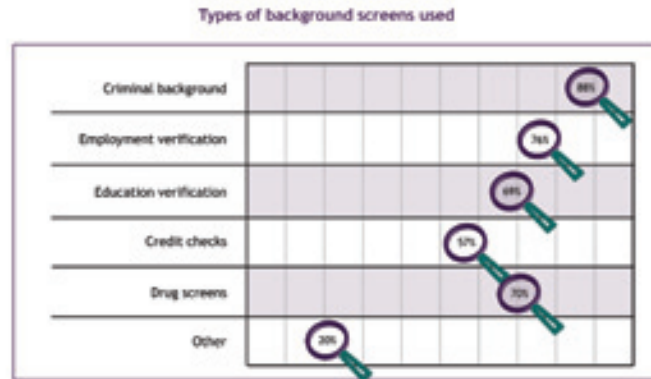
Most respondents trust their background screener to mitigate their legal risks associated with background screening. Slightly more than half of respondents (64.2 percent) are

A Partial Solution to an Increasingly Disconnected Society

aware of the privacy and discrimination laws that affect background screens, and 69.7 percent of respondents entrust this to their screening providers. In addition, only slightly more than half of respondents (59.9 percent) are concerned with the origination point of the information in their background screens. These findings are significant because they indicate a tremendous reliance on the background screening provider... which is often undeserved. A provider without any credentials or professional organization associations is unproven and often sells based on a great website or a few testimonials.

A large number of respondents are uncertain of their providers' licensing status; 32.9 percent said they are unsure if their provider is licensed, and 1.4 percent acknowledged that their provider is unlicensed. However, only 19.4 percent of respondents whose companies perform background screens said that the status of their pro-

A database search can be a quick and easy way to locate surface information about the candidate, but only a courthouse search will reveal complete and accurate criminal records. If you want to know if the applicant has a criminal history, require a courthouse search. Courthouse information is "straight from the horse's mouth." It provides a larger amount of content with regard to sentence information, dates of offense information and post-judgment activity and warrants. The dates will be more accurate, and it is easier to comply with state and federal (Fair Credit Reporting Act) regulations and get the applicant on the job. Because many courthouses are now providing data via a website, it is easier to get accurate information more efficiently than in the past.



background screening providers will protect themselves from the legal risks and liabilities associated with negligent hiring and the federal and state requirements for background screening procedures—as well as enable themselves to find and hire the most qualified and highest-quality candidates while lowering overall HR costs.

Appendix Methodology

Because of the large number of respondents who participated in this survey, we are 99 percent confident that the responses of the population to the survey questions would be ± 7.75 percent from the figures stated herein.

The survey was sent via email to nearly 56,000 professionals. The survey was live for 10 business days, and a total of 277 respondents were considered to drive the results and conclusions of this report. Each respondent answered the questionnaire via an online survey tool and was assured of their confidentiality. Their responses will be used only in this aggregate analysis.

Demographics

The demographic data, in conjunction with the high confidence level in the accuracy of these findings, has facilitated an understanding of the background screening process and current use in a large segment of the business community. Respondents come from a variety of industries, company sizes and positions, as is demonstrated in the following graphs. This also increases the relevance of the findings as a tool for better understanding the competitors' use of background screens for a majority of HR professionals and executives.

The Kress 2007 Background Screen Trends has been reprinted with the permission of Kress Inc. A full description of the survey results can found at <http://www.kressinc.com/>

Conclusion

With the recent influx of negligent hiring lawsuits, increasing concerns about homeland security and heightened scrutiny of the corporate world, companies are eager to hire the highest-quality candidates available, to comply with federal and state hiring laws, to ensure a safe work environment for employees and clients and to protect themselves from legal liability. Professionals generally agree that more information about candidates leads to better hiring decisions and that better background screens also yield better employees. With all of the privacy and discrimination laws that affect the background screening process, the majority of HR professionals are choosing to entrust the responsibility of compliance to their background screening providers.

Those companies that utilize background screens conducted by licensed

Driver Monitoring Proving Valuable

In Ongoing Management of Post-Hire Risk

Billie Lee, President, First Advantage ADR

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or employers, reviewing a driving record is no longer merely a one-time pre-hire screening action item that needs to be checked off. Instead, today many employers are recognizing the benefits of driver monitoring—as measured by change in driving record status—and an increasing number of employers are adopting ongoing, post-hire driver monitoring as a best-practice to manage the risk associated with employee drivers.

Driver Monitoring - Not Just for CDL Holders

Many categories of employers are required by law to both screen prospective employees that may drive a vehicle for work, and then monitor those employees' driving records on annual basis. There are a number of state programs to facilitate this, including programs in Arkansas, California, Illinois, Michigan, Nebraska, New York, North Carolina, Oregon, Virginia, and Wisconsin. Some programs, such as the California Employer Pull Notice Program (CA-EPN) are mandatory, while other programs are not. They may also vary in other ways, such as whether the program is paper based or electronic, whether a full record is returned or only a notification, and in the determination of the enrollment process and costs.

Driver Monitoring programs are not just beneficial for employers with 'professional drivers'; they are also advantageous for many kinds of drivers since employers are also held accountable for those drivers who conduct company related business with employee owned vehicles—even if that employee is just driving to the post office to mail a compa-

ny letter! Even companies that are not legally required to monitor their employees have realized that regularly reviewing the driving records of their employee drivers on a more frequent basis, generally twice a year, increases driver safety, reduces the companies' exposure to lawsuits, results in an overall reduction of risk and decreases both hard and soft costs.

Technology Delivers Clear Advantages

The ongoing monitoring of employee drivers can be a very manual process that involves keeping and copying paper files that can be lost or misplaced. Driver Monitoring programs can help alleviate the complexities around taxing record keeping requirements. They ease the workload of managing releases and driver compliance, and in obtaining driver histories. This is particularly important as technology has improved efficiencies to the point where employers can benefit from real-time notification of driving record changes. In addition, Driver Monitoring programs support the Company decision process in the identification and disposition of high-risk drivers. Finally, these important programs provide the employer with the information and tools necessary to reduce the risk of "Negligent Entrustment" and meet state and federal requirements

Finding the Right Vendor

To ensure your complete needs are addressed, it is important to identify a service provider that has strong relationships with state departments of motor vehicles which will allow them to return driving record reports on-line, offer paperless

driver monitoring to their customers and help mediate the relationship between the state and the employer. You also want to identify a firm that has significant experience in providing driving record services and that can set up a Driver Monitoring program that allows employers (with the proper authorization) to track the driving records of employees by:

- 1) Scheduling the periodic (monthly, quarterly, annual) ordering of a current driving record on a roster of employees
- 2) Receiving notification of changes to the employees driving record (violations, suspensions, revocations) as they occur on a roster of employees (i.e. California Employer Pull Notification (CA-EPN) program.)

If your company has locations nationwide, you also want to choose a supplier that can provide driving records on a national basis. You may also want to consider choosing a vendor that provides additional services such as ongoing background screening, driving record scoring, criminal and credit monitoring.

Summary

Whether or not they may be compulsory for an employer, Driving Monitoring programs are increasingly understood to be a critical component of managing the risk of employee drivers. With the important ramifications of Driving Monitoring programs only continuing to expand even as the technology around the programs contributes to operational efficiencies, employers are embracing Driver Monitoring as an important risk mitigation tool in a quickly progressing area of post-hire screening.



10%

of the total completed
background checks
contained a record

SEE WHAT ELSE ADP's
**BACKGROUND
CHECKS REVEALED**

Know the whole story behind every candidate.



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About the Screening Index

ADP's Screening Index is your premier source for relevant, up-to-date background screening statistics. It gives you an accurate portrayal of the hiring risks present in today's workplace. Since 1997, employers, like you, have consulted the Screening Index to stay informed about important industry trends and assess the value of their background screening programs. Information presented in the Screening Index is based on computerized calculations of background checks completed by ADP in the 2007 calendar year.

About ADP Screening and Selection Services

Screen. Select. Comply. For more than 20 years, ADP has helped employers solve the hiring puzzle. Our extensive background screens, including Criminal Court Records, Driving Records and Reference Verifications, help you learn the whole story behind your candidates.

What's more, ADP's state-of-the-art selection technology helps you make rapid background screening decisions based on standard compliance best practices or hiring policies you define. Your candidates are rated as "Meets Policy," "Indeterminate," or "Does Not Meet Policy," making the decision of who to hire an easy one.

In addition, throughout your entire hiring process, ADP helps your company stay compliant with on-demand HR assistance when you need it the most. Discover people selection made easier with ADP's Screening and Selection Services.

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2008 Background Screening Statistics

Total completed background checks performed by ADP Screening and Selection Services in the 2007 calendar year: **5,757,648**

10% of the total completed background checks contained a record

Criminal Records

Total Completed: 1,777,076

6% had a criminal record in the last seven years

Credit Records

Total Completed: 243,063

44% had credit records showing a judgment, lien or bankruptcy, or had been reported to a collection agency

Workers' Compensation Claims Records

Total Completed: 58,712

8% had a previous workers' compensation claim

Driving Records

Total Completed: 498,167

- 36%** had one or more violations or convictions on their driving record
- 5%** had four or more violations or convictions on their driving record
- 2%** had one or more drug or alcohol violations on their driving record in the last seven years
- 1%** had one or more "at fault" accidents on their driving record in the past three years
- 10%** had one or more suspension, revocation or withdrawal of their driver's license within the last seven years
- 4%** had a driver's license that was currently invalid, suspended, revoked or expired

Reference Verifications

Total Completed: 453,320

- 45%** of employment, education and/or credential reference checks revealed a difference of information between what the applicant provided and the source reported
- 5%** of the information differences were received with negative information from the source in regard to the applicant

Background Screening Statistics by Industry

What are the hiring risks associated with specific industries? View the chart below to find out.

TYPE OF CHECK	INDUSTRY							
	Manufacturing	Healthcare	Hospitality	Construction	Retail	Auto Dealer	Business Services	Transportation
Criminal	7%	3%	6%	9%	8%	7%	5%	4%
Credit	42%	48%	58%	54%	55%	56%	40%	40%
Workers' Compensation	9%	6%	9%	8%	8%	8%	4%	6%
Driving (one + violations)	35%	29%	39%	40%	43%	42%	36%	34%
Driving (four + violations)	5%	4%	6%	7%	8%	9%	5%	4%
Reference (info difference)	57%	54%	57%	49%	53%	56%	54%	41%
Reference (negative info)	7%	4%	14%	5%	9%	10%	3%	5%

Background Screening Statistics by Employer Size

Listed below are background screening results for three common size ranges.

TYPE OF CHECK	NUMBER OF EMPLOYEES		
	1-49 Employees	50-999 Employees	1000+ Employees
Criminal	4%	7%	5%
Credit	41%	48%	44%
Workers' Compensation	11%	8%	6%
Driving (one + violations)	40%	37%	34%
Driving (four + violations)	7%	6%	5%
Reference (info difference)	37%	41%	43%
Reference (negative info)	4%	6%	5%

Know the whole story behind every candidate.

SCREENING INDEX

2008

Preemployment Background Screening Guidelines

ASIS International

The scope of the Preemployment Background Screening Guideline is to aid U. S. employers in understanding and implementing the fundamental concepts, methodologies, and related legal issues associated with the preemployment background screening of job applicants. (This guideline is focused on U. S. employers. The variables existing within the international community on preemployment background screening are not addressed in this guideline.)

This guideline presents practical information concerning the value of preemployment background screening, the importance of the application form, important legal issues and considerations such as the Fair Credit Reporting Act, privacy issues, state laws, rules, and regulations, the key elements of preemployment background screening, the types of information to utilize in verifying the key elements, the use of credit reporting agencies in preemployment background screening, and an appendix of a sample preemployment background screening flow chart. Additional preemployment background screening resources are listed in the References/Bibliography section.

Employers, from the smallest to the largest, understand the dual benefits of hiring the best people and providing a safe and secure workplace, both physically and financially, for their employees, customers, shareholders, and the community in which they operate. A key factor is to know as much as you can about the people you want to hire and to know that before hiring them. Hiring a new employee is an important responsibility for any organization. An employer who has performed a thorough

preemployment background screening on its applicants is more likely to bring into the organization a highly skilled person who will prove to be a tremendous asset. Unfortunately, absent a sufficient preemployment background screening, that same employer runs the risk of exposing his or her organization to someone who could ultimately become the organization's greatest liability.

The guideline should also serve as an educational and practical tool that organizations can use as a resource in understanding the reasons for preemployment background screening, understanding the legal principles surrounding the issue of preemployment background screening, and assistance in developing policies and procedures that will enhance an organization's hiring policy.

Key Words

The terms defined below are for the purposes of understanding their usage within this guideline.

- **Adverse Action Notice:** This notice, which is a letter or other document informing the job applicant he or she has been denied employment, is necessary when using the services of a consumer reporting agency and the employer is making an adverse employment decisions on the basis of the consumer report provide by the consumer reporting agency. This document must contain the name, address, and phone number of the employment screening company, a statement that the employer, not the background screening company, is responsible for making the adverse decision, and a notice that the individual has the right to

dispute the accuracy or completeness of any of the information in the report. The Adverse Action Notice must be preceded by a "Pre-Adverse Action Notice."

- **Arrest:** The taking or keeping of a person in custody by legal authority, especially in response to a criminal charge; specifically, the apprehension of someone for the purpose of securing the administration of the law, especially of bringing that person before a court.

- **Background Screening:** An inquiry into the history and behaviors of an individual under consideration for employment, credit, access to sensitive assets (such as national defense information), and other reasons.

- **Bankruptcy:** A statutory procedure by which a debtor obtains financial relief and undergoes a judicially supervised reorganization or liquidation of the debtor's assets for the benefit of creditors.

- **Civil Records:** Official records related to civil cases, i.e., when one party sues another.

- **Consumer Report:** In general, the term means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (a) credit or insurance to be used primarily for personal, family, or household purposes; (b) employment purposes; or (c) any other purpose authorized under section 604 of the FCRA.

- **Consumer Reporting Agency (CRA):**

Any person or entity which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing Preemployment Background Screening Guideline consumer reports. Some CRA's may also, on request, prepare investigative reports not just on consumers' creditworthiness but also on personal information gathered from various sources, including interviews with neighbors, friends, and co-workers. It is also important to bear in mind that, while all credit bureaus and credit reporting agencies are CRA's, not all CRA's are credit bureaus or credit reporting agencies.

- **Conviction:** The act or process of judicially finding someone guilty of a crime; the state of having been proved guilty.

- **Credit Bureau:** See Consumer Reporting Agency.

- **Credit Report:** A detailed report of an individual's credit history prepared by a credit bureau including: (1) personal data (current and previous addresses, social security number, employment history); (2) summary of credit history (number and type of accounts that are past-due or in good standing); (3) detailed account information; (4) inquires into applicant's credit history (number and type of inquiries into applicant's credit report); (5) details of any accounts turned over to credit agency (such as information about liens, wages garnishments via federal, state, or county records); and (6) information on how to dispute any of the above information.

- **Credit Reporting Agency:** See Consumer Reporting Agency.

- **Criminal Records:** Official records related to criminal cases. A crime is an act or omission that is prosecuted in a criminal court by a government prosecutor and can be punished by confinement, fine, restitution, and/or forfeiture of certain civil rights.

- **DD Form 214:** The term "DD-214" is often used generically to mean "separation

papers" or "discharge papers," no matter what form number was used to document active duty military service. A DD-214 is issued to military members upon separation from active service and was issued to separated service members beginning in the 1950's.

- **Decision-Making:** The process of evaluating and judging information gathered and relating it to the specific requirements of the position for which the applicant is applying.

- **Due Diligence:** The attention and care that a reasonable person exercises under the circumstances to avoid harm to other persons or their property. Failure to make this effort is considered negligence.

- **Employment Verification:** The process of contacting an applicant's past employers to confirm dates of employment, title, salary, and eligibility for rehire.

- **Fair and Accurate Credit Transactions Act (FACTA):** The Fair and Accurate Credit Transaction Act of 2003, Pub. L. 108-159, 111 Stat. 1952, (FACTA) added new sections to the federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., (FCRA) intended primarily to help consumers fight the growing crime of identity theft. Accuracy, privacy, limits on information sharing, and new consumer rights to disclosure are included in FACTA.

- **Fair Credit Reporting Act (FCRA):** The FCRA (15 U.S.C. 1681 et seq.) established specific requirements and rules that apply when an employer uses a third party to help conduct a preemployment background screen and generate a consumer report for the employer. The FCRA addresses the rights and obligations of four groups: consumer reporting agencies, users of consumer information, furnishers of consumer information, and consumers. The FCRA does not pertain only to credit reports but to the entire consumer report.

- **Felony:** A serious crime usually punishable by imprisonment for more than one year or by death. Examples include burglary, arson, rape, and murder.

- **Incarceration:** The act or process of confining someone; imprisonment.

- **Investigative Consumer Report:** A consumer report or portion thereof in which

information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or whom may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

- **Jail:** A local government's detention center where persons awaiting trial or those convicted of misdemeanors are confined.

- **Judgment:** A court's final determination of the rights and obligations of the parties in a case.

- **Lien:** A legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied.

- **Misdemeanor:** A crime that is less serious than a felony and is usually punishable by fine, penalty, forfeiture, or confinement (usually for a brief term) in a place other than prison (such as a county jail).

- **Negligent Hiring:** The failure to use reasonable care in the employee selection process, resulting in harm caused to others. Employers have a legal duty not to hire people who could pose a threat of harm to others, which can include everything from slight to fatal bodily injury, theft, arson, or property damage. The definition of "reasonable care" depends on the degree of the risk of harm to others. The greater the risk, the higher the standard of care required.

- **Pre-Adverse Action Notice:** A letter or other document informing the job applicant that the employer intends to take an adverse action against the applicant based upon information contained in a consumer report. The notice will provide the applicant with a copy of the consumer report, a sum-

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mary of the applicant's rights under the FCRA, and is Preemployment Background Screening Guideline intended to provide the applicant a meaningful opportunity to review, reflect, and respond to the consumer report if the applicant believes it is inaccurate or incomplete.

- **Prison:** A state or federal facility of confinement for convicted criminals, especially felons.
- **Social Security Number:** A nine digit number resembling "123-00-1234" that is issued to an individual by the U. S. Social Security Administration. The original purpose of this number was to administer the Social Security program, but it has come to be used as a "primary key" (a de facto national ID number) for individuals within the United States. The nine-digit Social Security number is divided into three parts.

The first three digits are the area number. Prior to 1973, the area number reflected the state in which an individual applied for a Social Security number. Since 1973, the first three digits of a Social Security number are determined by the ZIP code of the mailing address shown on the application for a Social Security number. The middle two digits are the group number. They have no special geographic or data significance but merely serve to break the number into conveniently sized blocks for orderly issuance. The last four digits are serial numbers. They represent a straight numerical sequence of digits from 0001-9999 within the group.

Why do Preemployment Background Screening

There are a number of reasons why an employer should perform preemployment background screening. The most compelling reasons are:

- **Making the best hiring decision**
 - Gaining a competitive advantage
 - Reducing turnover
 - Increasing productivity
 - Increasing morale
 - Reducing risk of business disruptions
 - Complying with mandates created by state or federal law for certain industries (health care, child care, etc.)
 - Fulfilling other legal or

contractual obligations

- **Providing a safe work environment**

- Protecting organization's assets
- Fostering peace of mind
- Reducing risk of legal liabilities, including failure to perform due diligence, negligent hiring, and equitable treatment of applicant pool.

Making the Best Hiring Decision

It has been said that some applicants will only tell you what you want to hear. A good writer and storyteller can invent a good resume. The Society for Human Resource Management (SHRM) conducted two separate online surveys on resume inaccuracies. In August 2004, SHRM reported that sixty-one percent of the human resource (HR) professionals surveyed said they find inaccuracies in resumes after carrying out Preemployment Background Screening Guideline background checks. An April 2006 article in the New York Times reports that a study conducted by ResumeDoctor.com, a resume-writing service based in Burlington, Vt., found that 43 percent of the more than 1,100 resumes examined had one or more "significant inaccuracies," while 13 percent had two or more. Michael Worthington, the co-founder of ResumeDoctor, said the most common transgressions could be found in three areas: education, job titles, and dates of employment.

By thoroughly verifying information given during the employment process, a company can improve the chances they are hiring an individual who has portrayed his or her background, experience, and skills honestly and accurately. Using preemployment background screening to verify an applicant's history helps employers make decisions based upon facts.

Providing a Safe Work Environment

An employer's obligation to maintain a safe place to work also arises from the legal principles that exist in most states under common law (the body of law derived primarily from judicial decisions based on custom and precedent, rather than from statutes, codes, or constitutions). These legal principles include:

- Premises liability (the duty of a

property owner to take responsible steps to guard against reasonably foreseeable violence)

- Respondent superior (an employer's indirect liability for the wrongful acts of an employee committed within the course and scope of employment);
- Sexual and other forms of harassment prohibited under discrimination laws (when threats or violence are motivated by a victim's protected status); and
- A collection of negligence theories, including negligent hiring (the failure to properly screen job applicants, particularly for sensitive positions involving a high degree of interaction with the public); negligent supervision (the failure to supervise employees and to discipline violators of anti-violence rules), and negligent retention (the failure to terminate employees who have engaged in behavior in violation of company policies).¹

In the April, 2002 edition of Occupational Health and Safety magazine, attorney-at-law and author of The Safe Hiring Manual, Lester S. Rosen points out that the statistics on the consequences of even one bad hire are significant. Industry statistics suggest the cost of even one bad hiring decision can exceed \$100,000, taking into account the time spent recruiting, hiring, and training, and the amount of time the job is left undone or done badly by an unqualified applicant. In addition, the financial cost from theft, violence, etc. can be enormous. Additionally, there are other costs that are hard to measure, such as the harm to employee morale or the entity's reputation.

Legal Risks and Liabilities

The value of an objective, fair, and competent preemployment background screening is that it will permit determination of facts not otherwise verifiable or known.² As such, employers should pay particular attention to the legal implications associated with the employment screening process. While employers do not have the duty to

provide an impenetrable island of safety, every employer has the obligation and duty to take reasonable precautions against preventable harm to employees, customers, and anyone else visiting the workplace. Under the federal Occupational Safety and Health Act and corresponding state statutes, employers have a “general duty” to protect employees against “recognized hazards” that are likely to cause serious injury or death. Specifically, Section 5. Duties

(a) Each employer:

(1) Shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees;

(2) Shall comply with occupational safety and health standards promulgated under this Act.²

Appropriate due diligence is necessary to ensure that the applicant hired does not pose a foreseeable risk to others with whom he or she might interact while on the job. The failure to properly screen out dangerous applicants may give rise to a negligent hiring claim, if the individual intentionally harms someone in the course of his or her employment.

Another legal risk arises from the inequitable treatment of individuals in the applicant pool. A properly crafted preemployment background screening program gives all applicants of equal qualifications equal consideration and does not impose disparate treatment on anyone or any group. Employers are encouraged to objectively evaluate each applicant. To the extent it is possible, objective methods should be used to determine each applicant's qualifications and suitability for the job. Such fairness not only provides the employer a legal defense if faced with a claim, but also helps ensure that the best applicants are consistently selected.

Documented Program for Preemployment Background Screening

Having a Documented Program for Preemployment Background Screening

Preemployment background screening should be an integral part of an employer's policies, practices, and procedures established for the recruiting, hiring, and training of employees. Carl R. Ernst, author of “The Uniform Commercial Code Filing Guide,” describes Policies, Practices and Procedures³ as follows—

- **Policy:** A policy is a general statement of a principle according to which an organization performs business functions. An organization does not need to maintain policies in order to operate. However, practices and procedures that exist without the underpinnings of a consistent policy are continually in jeopardy of being changed for the wrong reasons, with unintended legal consequences.

- **Practice:** A practice is a general statement of the way the organization implements a policy. Good practices support policy.

- **Procedure:** A procedure documents an established practice. Use of forms is one of the useful ways procedures are documented. For an organization that has a practice of checking past court records for criminal records, the procedures would be the documentation on how it is done, as well as the documents showing it was done.

It is important that policies, practices, and procedures be in writing. To the extent that policies, practices, and procedures are documented in writing, it is possible to independently verify from the procedure whether employees are conforming to the practice, and therefore to the policy. This kind of documentation makes it easy to perform reliable audits. Equally important, an employer needs to demonstrate with documentation that there was training, implementation, and auditing to ensure the programs were followed.

The employer needs to develop, train, and maintain committees or teams charged with the creating and updating of screening policies and procedures that are applicable to the employer's business, security, recruiting, hiring, and training needs. The committees or teams should be comprised of professionals with knowledge of those needs. A person or department charged with administration or ownership of the screen-

ing program should lead or chair the committees or teams. The program should include all of the steps identified by a committee or team that are required in the screening process. In most instances, this will include but not be limited to collection of personal information from the subject, proper authorization to conduct the background screen, how the results of the screen are analyzed and reported, and the intended use by the employer. The key components of the practices and procedures should identify the use of employment applications and resumes, forms, and letters used including disclosure forms, waivers, a conditional job offer, and job denial. In addition, the procedures should address both internal and external alternatives, including measures used to outsource any screening to be performed by a third party.

People, committees, or teams tasked with decision-making should also be assigned. In addition and where applicable, it should be ensured that no conflicts exist between union agreements and the employer's screening policies.

The policy, practices, and procedures should be viewed as living documents to be updated as requirements change, additional programs or products become available, programs or products become unavailable or change, or laws affecting hiring are updated or amended. For employers who span multiple states or cross into various industries, the document must separately address all the issues inherent to such situations.

Finally, regular assessment of program results and metrics should be undertaken to measure the benefits of the program, opportunities to improve program outcomes, and overall benefit and value to the organization's financial performance and culture.

Who is Typically Involved in the Preemployment Background Screening Process

Involvement in the preemployment background screening process will depend on many factors, such as the size and structure of the organization and the level and role of the position the applicant is applying for within the organization. It will also depend

■ Preemployment Background Screening Guidelines

on the organizational culture defining how individuals are hired.

Whatever the process, the most frequent participants tend to come from the following functional groups of the organization.

• Human Resource Personnel

Human resource personnel are often the first line of defense in the recruitment and selection of quality and risk free applicants for the organization. In most organizations the human resources department has the responsibility of recruiting applicants. This begins with the writing of approved position descriptions, the advertising of such positions, and the collection and initial screening of the applications. Human resources may also have the responsibility for conducting initial testing as part of the application process.

During the interview stage, human resources should take an active role to evaluate the applicant and gather information that will facilitate the applicant's background investigation.

• Security Personnel

Security personnel may include a proprietary security director or an internal or external investigator charged with investigating the applicant's background. If security personnel are used, the role of the security function should include the investigation and verification of all information provided by the applicant in his or her signed application and/or resume. The results should include a documented investigation of any discrepancies that may arise during the preemployment background screen.

• Business Owners and Managers

Business owners and managers may need to take part in the process especially if it is a small organization. In many cases, the business owner and direct manager of the applicant will make the final hiring decision. The business owner and managers may wish to be considered a part of the interview process in which they make an evaluation of the applicant and look for information which may influence the direction of the preemployment background screen.

• Legal Personnel

Legal personnel, whether in-house or on a contract basis, play a vital role in ensuring that all position postings, application forms, and the preemployment screening practices and procedures meet union or bargaining unit requirements (where appropriate), as well as comply with local, state, and federal employment laws, rules, and regulations. They also play a key role in the approval and writing of the employer's forms and letters.

Legal Issues and Considerations

Employers who decide to implement a background screening process for job applicants, or engage the services of a third party to do it for them, will immediately discover an assortment of challenging and involved statutes, laws, and regulations. In the United States, legal issues and considerations exist at the federal, state, and local levels. U.S. employers who also operate internationally must further comply with the laws of the countries in which they operate or from which they obtain information, and also the international conventions and treaties that regulate them and their activities.

At the same time, employers should be aware that the legal landscape that affects preemployment background screening practices is constantly changing. As such, it is imperative that the employer and those they hire to assist them remain aware and knowledgeable of the evolving law in all of the jurisdictions in which they operate. The following examines several of the significant legal concepts and U.S. statutes confronting employers conducting preemployment background screening. Please note that this material is not all-inclusive, should serve only as a guide, and does not constitute legal advice. Consult your organization's legal counsel for specific guidance.

Legal Compliance

In conducting preemployment background screens on prospective employees, both federal and state laws need to be considered, depending upon whether an individual employer is conducting the background screen or a third party consumer reporting agency (CRA) is engaged to do so. The Fair

Credit Reporting Act (FCRA) does not preempt any state law that regulates the use, collection, or distribution for the prevention of identity theft, as long as the state law is consistent with the FCRA (FCRA § 625; 15 U.S.C. § 1681t). Wage considerations, job descriptions, federally regulated industries, level and scope of offenses, etc. all need to be held up to the light of the law.

Fair Credit Reporting Act (FCRA)

A primary legal consideration for employers is the FCRA (Web site: www.ftc.gov/os/statutes/fcrajump.htm). The FCRA regulates more than just credit reports. It establishes specific requirements for compilation and handling of an preemployment background report, whether designated as a Consumer Report or Investigative Consumer Report. The FCRA applies to employers that use the services of a third party in preparation of an employment screening report. If a third party prepares or provides any portion of an employment screening report, such as criminal records, employment references, or education verifications, then the FCRA will apply. The FCRA was most recently amended by the Fair and Accurate Credit Transaction Act (FACTA or FACT Act) of 2003. Strict adherence to the FCRA is required when utilizing Consumer Reports.

Employer Requirements Under the FCRA

1) Prior to receiving a consumer report, an employer must certify to the CRA in writing that it will do the following:

- Use the information for employment purposes only,
- Not use the information in violation of any federal or state equal employment opportunity law,
- Obtain all the necessary disclosures and consents as required by the FCRA,
- Give the appropriate notices in the event an adverse action is taken against an applicant based in whole or in part on the contents of the Consumer Report, and
- Give the additional information

required by law if an Investigative Consumer Report is needed.

2) Employers must provide a clear and conspicuous disclosure in writing to the applicant before the report is obtained. Also, employers must obtain a written authorization before obtaining a consumer report (FCRA § 604(b); 15 U.S.C. §1681b(b)). The disclosure and authorization can be combined in a single document, but should contain nothing more than the authorization and disclosure. (See FTC Opinion letter, from Cynthia Lamb, FTC Investigator, to Richard Steer, October 21, 1997).

3) Employers need a disclosure form for an Investigative Consumer Report (FCRA § 606(a); 15 U.S.C. §1681d(a)) that is different from the disclosure form needed for an ordinary consumer report. The applicant must be notified within three days that an Investigative Consumer Report has been requested and that he or she has the right to obtain additional information as to the nature and scope of the investigation requested. Additionally, the applicant must receive a copy of the FTC document, "A Summary of Your Rights Under the Fair Credit Reporting Act."

4) The adverse action rules apply to decisions not to hire, suspend, or terminate an individual based in whole or in part on a consumer report. If adverse action is intended and before it is taken, an employer must provide the applicant with a copy of the report and the FTC document, "A Summary of Your Rights Under the Fair Credit Reporting Act" (FCRA § 604(b)(3); 15 U.S.C. §1681b(b)(3)). This is the first notice, also called the Notice of Pre-Adverse Action.

5) If, after sending out the first notice and related documents, the employer intends to make a final decision not to hire, then the employer must send the applicant a second notice, also called the Notice of Adverse Action. This Notice will inform the applicant of the employer's final decisions and will provide a copy of the FTC's form "A Summary of Your Rights Under the Fair Credit Reporting Act." Additionally, the notice must provide the CRA's contact information (name, address, and phone num-

ber), must advise the individual that (1) the CRA did not take the action and cannot provide specific reasons why it was taken, (2) the individual has a right to dispute the accuracy or completeness of the information, and (3) the individual has a right to another free copy of his or her consumer report within 60 days (FCRA § 615; 15 U.S.C. §1681m).

The FCRA does not indicate how long an employer must wait after sending the preadverse action notice before taking adverse action. However, according to the FTC, employers should, "keep in mind the clear purpose of the provision to allow consumers to discuss reports with employers or otherwise respond before adverse action is taken." (See FTC Opinion letter, from William Haynes, FTC Staff Attorney, to Harold Hawkey, December 18, 1997.) Thus, the applicant must have a meaningful opportunity to review the material and to respond.

Note: The FTC has stated that CRA's may fulfill an employer's ministerial duties under the FCRA, and a CRA may send the adverse action letters for an employer. However, the employer remains responsible for any duty imposed by the FCRA and may be subject to liability if the duties are not performed by the CRA. (See FTC Opinion letter, from William Haynes, FTC Staff Attorney, to Michael Rosen, June 9, 1998.)

Federal Trade Commission (FTC)

The Federal Trade Commission (Web site: www.ftc.gov) regulates and oversees, among other things, the Fair Credit Reporting Act (FCRA), which encompasses CRA's, employers, information sources, as well as establishing rights for consumers themselves.

Preemployment background screening reports (Consumer Reports) must comply with all aspects of the FCRA that apply to the acquisition of information on a consumer.

Previously, the FTC published "Opinion Letters" that are not law but are very helpful when interpreting the FCRA.

FCRA Document Destruction Rules

The Federal Trade Commission has promulgated regulations effective June 1, 2005 for the proper destruction of "consumer information." The rules (FCRA § 628; 15 U.S.C.

§ 1681w) do not require that documents be destroyed; they merely set up parameters should a decision be made to destroy documents. Because these FTC regulations are limited to requiring the proper disposal of "consumer information," they have been referred to as "the Disposal Rule." Consumer information includes (a) consumer reports and (b) information derived from consumer reports, provided that the information is individually identifiable. As applied to the employment context, "consumer information" would include not only a report obtained from a Consumer Reporting Agency but also, for example, notes prepared by a supervisor or human resources manager based upon information contained in the report. "Consumer information" encompasses information in both paper and electronic form.

The regulations require employers to take reasonable steps to prevent unauthorized use of, or access to, consumer information during the disposal process. While the regulations do not require any specific disposal methods, the regulations provide examples of the types of disposal processes that would be reasonable. Paper documents containing consumer information, for example, could be placed in locked trash bins while awaiting disposal and then shredded or burned. The regulations suggest that for consumer information stored on electronic media (hardware, floppy disks, CD's, etc.) it would be reasonable for an employer to develop procedures to render the information irretrievable before disposal. While not specifically required by the regulations, the FTC suggests that businesses relying on third parties for the disposal of records containing consumer information should engage in due diligence before selecting, or continuing to use, a third party.

State Consumer Reporting Statutes

Many states have laws similar to the FCRA and regulate reporting of criminal records, the disclosure and authorization process, and notices to consumers.

Regulated Industries

Both federal and state laws regulate many

■ Preemployment Background Screening Guidelines

industries, mandating that specific preemployment background screening searches be conducted for applicants applying for positions within certain industries. If an employer is engaged in one of these industries, it must be aware of both the federal and state requirements. Industries for which there are specific requirements include, but are not limited to, transportation, securities, nuclear, banking, healthcare, and education.

State Licensing Requirements

State specific licenses and/or forms are mandated by certain states in order to obtain information. These requirements may apply to employers, researchers and/or CRA's. State licensing agencies must be consulted for such things as Motor Vehicle Reports and Private Investigator Licenses.

Note: Certain searches, although available to obtain, can only be done "post-offer." These searches will not be addressed in this guideline, but deserve mention. These include, but are not limited to, Workers' Compensation and Citizenship Verification (I-9).

USA Patriot Act

The USA Patriot Act (Web site: thomas.loc.gov/cgi-bin/bdquery/z?d107:h.r.03162), officially titled "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism," and signed into law October 26, 2001, addresses terrorist threat issues within the financial industry in the wake of the September 11th attack. Although this law does not specifically address preemployment background screening (with the exception of hazardous material drivers), the due diligence requirement imposed on financial institutions in terms of screening clients can be helpful in advising employers on steps to take to screen employees as well.

Bankruptcy Act (11 U.S.C. §525(b))

The Federal Bankruptcy Act (Web site: www.doney.net/bkcode/11usc0525.htm) prohibits discrimination in employment solely on the basis of bankruptcy. (Reviewed cases indicate that the law was not violated, where the employment decision involved factors other than bankruptcy. In other

words, to violate the statute, bankruptcy must have been the single reason for the employment action.)

Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 (Web site: thomas.loc.gov/cgi-bin/query/z?c107:H.R.3763.ENR:%20) requires that publicly traded companies adhere to new standards for accountability in corporate governance and financial reporting.

Guidelines for compliance with Sarbanes-Oxley recommend a background investigation be conducted on any individual considered for employment or for promotion in a public company to "certain positions of trust," including accounting professionals, anyone in a financial reporting oversight role, and any other individuals with direct access to corporate assets, trade secrets, and information systems. Some recommended areas for preemployment background screening include the individual's educational background, employment history, any criminal past, and interviews with independent references.

Fair Treatment and Discrimination

Much of the regulation relating to preemployment background screening encompasses fair treatment issues. These laws prohibit discrimination on the basis of religion, national origin, age, marital status, gender, medical condition or disability, or financial condition.

Some of the laws that relate to fair treatment issues include:

• Title VII of the Civil Rights Act of 1964

www.eeoc.gov/abouteeo/overview_laws.html

Discrimination in any phase of hiring can lead to claims against employers for violations of Title VII of the Civil Rights Act and violations of the Equal Employment Opportunity Commission (EEOC) (www.eeoc.gov) guidelines.

To ensure fairness of treatment of applicants, recruitment and hiring should be conducted in a manner that is impartial, objective, and legally defensible. Fair hiring practices include a consistent selection criteria and evaluation of candidates for simi-

lar positions. The selection criteria must be properly related to established job requirements. Finally, there must be consistent treatment of applicants in all phases of the process including preemployment screening, interviews, rating processes, and assessment techniques.

• Americans with Disabilities Act (ADA)

www.usdoj.gov/crt/ada

With respect to preemployment background screening, the ADA provides legal guidance that prevents employers from asking medical questions before a conditional offer of employment is made, and that are not considered bona fide occupational qualifications. Because "current illegal use of controlled substances" is not covered by the ADA, employers can do drug testing and screening at the applicant stage. So-called psychological, "honesty" testing, etc., is not prohibited, as long as it does not have a medical dimension. The EEOC has issued guidance on how to distinguish "psychological" testing (permitted) from "medical" testing (not permitted at the pre-hire stage).

• Civil Rights Act of 1991

www.eeoc.gov/policy/cra91.html

Caps or limits monetary damages for intentional acts of discrimination in hiring.

• Age Discrimination in Employment Act of 1967

www.eeoc.gov/policy/adea.html

Protects individuals who are 40 years of age or older from employment discrimination based on age.

• State Employment Laws

Many states (and even some counties and cities) have passed fair employment laws that are generally analogous to federal laws, but may contain specific differences. For example, several states regulate the use of arrest records, and some states limit the reporting of conviction records to seven years. Be sure to research state law for the states in which you operate.

Privacy

Privacy issues have always been a funda-

mental concern for those dealing with sensitive information. Those issues are increasing in both public visibility and impact on employment screening practices. One issue employers must consider is that of confidentiality. Whether using a CRA or not, the preemployment screening process inherently allows the employer (and its employees) access to personal information of a confidential nature. As such, the employer's process must contemplate the proper management of that information and under what circumstances its employees (i.e., applicant screeners and interviewers) may access and use that information. Employers need to establish policies for record storage and security. Data security and access control are key responsibilities of employers that perform background screens when such screens involve the use of personal information of a confidential nature. (See also Section 13.5, FCRAA Document Destruction Rules above.)

Increasing concerns about identity theft and identity fraud are causing state and federal legislators to pass more laws that regulate what personally identifiable information is available, and impose new security requirements on what holders of that information, including those who collect or use preemployment background screening reports, must do to safeguard such information against unauthorized access. Some of those laws include:

- **Driver's Privacy Protection Act (18 U.S.C. §2721 et seq.)**

www.iix.com/dppa_act.htm

Establishes that a driver's license information needs to be protected against unauthorized disclosure, and establishes permissible purposes for authorized disclosure.

- **Financial Modernization Act of 1999, also known as the Gramm-Leach Bliley (GLB) Act**

www.ftc.gov/privacy/glbact

Protects customers' nonpublic personal financial information held by financial institutions. The GLB Act gives authority to eight federal agencies and the states to administer and enforce the Financial Priv-

acy Rule and the Safeguards Rule. The Safeguards Rule requires all financial institutions to design, implement and maintain safeguards to protect customer information. The Safeguards Rule applies not only to financial institutions that collect information from their own customers, but also to financial institutions – such as credit reporting agencies – that receive customer information from other financial institutions.

- **Health Insurance Portability and Accountability Act (HIPAA)**

www.dol.gov/ebsa/newsroom/fshipaa.html

If the employer is a Covered Entity or Business Associate, as defined in HIPAA, it establishes that particular identifiable health information is "protected health information" and may not be used without permission.

- **Applicable State Laws and Compliance**

Considerable variations exist among state laws and federal laws, and among states themselves, in the areas of consumer protection, employment, workers' compensation, sealed or expunged records, juvenile records, use of arrest and conviction records, and other related laws.

Practitioners must be well versed in all the geographic spheres in which they operate and in all applicable regulations in which the above issues are addressed.

- **International Privacy and Data Transfer Laws**

www.export.gov/safeharbor

International privacy and data transfer laws also impact the definition, availability, and transfer of personal information used in screening. The U.S. Department of Commerce tracks international privacy laws, and for those companies involved in the transfer of private information from the European Union (EU), can assist them in getting certified as a safe harbor in compliance with EU data protection laws.

Record Retention

Because background screens disclose highly sensitive information about individuals, it is essential that the employer appropriately and strictly secure the confidentiality of the

information both internally and externally. In reality, an employer may maintain multiple files on employees. The employer should retain relevant documents in a secure manner for a period that complies with applicable state and federal laws and regulations and the employer's records' policies.

With respect to the period of time in which to keep records, it is important to keep in mind the FCRA's statute of limitations. An individual may bring a claim not later than the earlier of (1) two years after the individual discovers the basis for liability, or (2) five years after the date on which the violation occurs. (15 U.S.C. § 1681p.) In other words, an individual must make a claim within two years after he or she learned of the violation.

If the violation is not discovered within five years of the violation date, then the statute bars an action. The following examples may be helpful:

Example 1. Ms Smith learns of a violation on 08/16/06. The violation occurred on 08/01/06. Ms. Smith must make a claim before 08/16/08.

Example 2. A violation occurs on 08/01/06. The violation goes undetected. A claim for said violation must be brought before 08/01/11 or the statute will prevent the claim.

Example 3. A violation occurs on 08/01/06. Mr. Jones learns of the violation on 07/15/10. Mr. Jones must make a claim before 08/01/11 or it will be prevented by the five-year rule in the statute. Mr. Jones cannot claim that he has two years from the date he discovered the violation, since the statute provides it is the earlier of the two-year date or five years from the violation date.

Criminal Records

The use of criminal records in the screening process raises some specific legal issues.

- **FCRA:** The FCRA, discussed above in 13.2, prescribes limits on the criminal information that can be released by a CRA for use in preemployment background screening.

■ Preemployment Background Screening Guidelines

(Keep in mind that the FCRA regulates information obtained from a consumer reporting agency, and its restrictions do not apply to employers conducting their own preemployment background screening without the assistance of a third party.) The FCRA limits the time period to seven years in which arrest information may be reported as part of an employment related background screen. The FCRA limitation of seven years does not apply to conviction records, which may be reported regardless of the time frame. In addition, the seven years limitation does not apply in the employment of an individual at a salary level of \$75,000 or more.

- **State Laws:** In addition to the FCRA, some states have laws that restrict the use of criminal records. Some states grant exceptions for jobs at certain salary levels. In addition, some states do not allow employers to consider or use arrest information as a basis to deny employment. In some states, the rules apply to both employers and CRAs.

An employer should be familiar with and consult with legal counsel concerning state laws that limit the use of information and the applicable exemptions. For example, some state regulations may restrict the reporting of criminal records beyond seven years.

- **EEOC Considerations with Criminal Records:** The EEOC has published specific guidelines related to the use of criminal records in the employment screening process.

However, exclusion of applicants based on criminal behavior is permissible if the employer can demonstrate business necessity. To establish business necessity, an employer must be able to show that it considered: (1) the nature and gravity of the offense or offenses; (2) the time that has passed since the offense; and (3) the nature of the job held or sought. (See EEOC Notice N-915, February 2, 1987.)

With respect to arrest records, the EEOC states that it is acceptable to consider an arrest record as evidence of conduct upon which the employer makes a decision. An arrest record may raise a suspicion that an

applicant has committed a crime. However, when considering an arrest, the EEOC directs an employer to take an additional step to consider “whether the applicant is likely to have committed the alleged conduct.” To do so, employers should examine the circumstances, offer the applicant an opportunity to explain, and make follow-up inquiries if necessary. Likewise, the EEOC does not prohibit the use of misdemeanor information in the hiring process. The gravity and nature of the offense should be considered in the context of the job sought (See EEOC Notice 915.061, September 7, 1990).

- **Interpreting Criminal Dispositions:** One final consideration in the use of criminal records is determining the status of a criminal record. The increased case load in the criminal justice system has led to a host of new ways to resolve cases, such as plea bargains, probation, treatment programs, deferred adjudication, community control, and other state specific dispositions. Records may be sealed or expunged, and thus may be prohibited under the FCRA and state laws. A deferred adjudication might indicate criminal behavior, but in some instances it may not be considered a conviction, and may be prohibited under state law, depending upon the jurisdiction. Users of background reports need to be familiar with these terms, and consider whether the information indicated on a criminal report may be used in the context of all applicable laws and guidelines.

Additional Important Considerations

While there are numerous statutes, laws, and regulations that dictate how background screens are conducted and what information is available, employers should be reasonable in how they use and collect the information that may be available to them. Some CRAs monitor their reports to ensure that information given to an employer does not violate various rules concerning what employers can and cannot use in making hiring decisions.

A CRA may take the position that it is primarily a data conduit to the employer, and it

is the employer's duty to not use any information an employer should not have. It is equally important that employers not use “confidential sources” with access to non-public information or data brokers offering information from illegal or questionable sources.

A new trend is the use by employers of online searches on applicants. Searches can be conducted on search engines such as Google or Yahoo. In addition, it has been reported that some employers have begun accessing social networking sites such as Facebook or MySpace. Other online sources that could potentially be checked are Web sites, blogs, chat rooms, sales activities, trading of electronic files, sharing of computer programs, personal social listings, posted writings, media reports, school activities, interest group activities, email dissemination, digital photographs, and others.

Employers should approach the use of these tools with caution for the following reasons:

- (a) Social networking sites, blogs, chat rooms, and other Internet information may contain information that a person did not intend for an employer to view. Some sites may have privacy notices limiting use; or, passwords may be needed to gain access and, there may be conditions on obtaining passwords. An employer needs to consider if the manner of getting such material is consistent with privacy policy and privacy laws. Although it may be argued that anything on the Internet is “public,” these sites may contain commentary, pictures, or other material clearly intended for a private use only and use of the material may unduly invade privacy.
- (b) If employers or recruiters utilize the Internet directly without engaging the services of a CRA, the federal FCRA is not involved. That means that employers are not required to send an adverse action letter if they come across material that they find objectionable. As a result, applicants may be denied employment and not know why.
- (c) An employer can potentially face allegations of unlawful discrimination if the online research reveals information that

may not be used directly or indirectly to limit a person's employment opportunities, such as race, color, religion, national origin, ancestry, medical condition, disability, marital status, or sex (including pregnancy).

- (d) An employer should consider where such online content is reasonably related to the requirements for the job. The consideration of extraneous information that is not a valid predictor of job performance can create a source of liability.
- (e) There can also be an issue of whether the online information was in fact posted by the applicant. In cyberspace, virtual identities can be shared. In addition, there is the possibility that an employer is looking at material that is a name match only and does not in fact belong to the applicant, or material that was incorrectly attributed to the applicant or even placed on the Internet maliciously.

How to Structure a Preemployment Background Screening Program

The Importance of the Employment Application

The preemployment background screening process begins with the employment application. The employment application is the "window" to information about a candidate and his or her qualifications and its use is considered a best practice.

Applications help to ensure uniformity, the obtaining of all necessary information, and a place for applicants to sign certain necessary statements.

Employment applications provide the following benefits:

- **Standardization:** The format and content remain the same, making it easier for the user to compare and contrast applicants.
- **Ease of Legal Review:** the uniform series of questions and instructions aid in ensuring the applicant meets all applicable state and federal laws and industry requirements. (Note: Periodically review and update applications.)
- **Information Useable in Hiring Process:** unlike a resume, applica-

tions contain information that can be used in the hiring decision. The use of an application helps prevent employers from having impermissible information.

- A signature line for the applicant indicating agreement to the statement that untruthfulness or omissions may be grounds for termination or grounds to not extend an offer of employment. This area is important if information becomes known that the subject did not divulge on the application. (FDIC: FIL-46-2005: Guidance on Developing an Effective Preemployment Background Screening Program. Page 2.)
- Provides space for other necessary statements and signatures.

Applications should include, at minimum, the following information:

1) Applicant's Current Information: name, address, and contact information. The name should include first, middle, last, and suffix. Additional names should also be included if they may be part of the background scope. For example, if a criminal history search is to be conducted in Puerto Rico, the maiden name of the applicant's mother should also be required.

2) Residence Address History: specified residence address history should be requested according to the organization-defined years to be searched (recommendation: seven to ten years). The address history is often used to conduct county criminal record checks and to cross check against other information provided in the application, such as the employment history.

3) Social Security Number

4) Date of Birth: Many employers have chosen to ask for an applicant's date of birth on the consent form an applicant signs that permits the employer to conduct preemployment background screening. A request on the part of the employer for information such as "Date of Birth" on an employment application form is not, in itself, a violation of the Age Discrimination in Employment Act of 1967. Employment application forms that request such information need to assure

that the request is for a permissible purpose and not for purposes prohibited by the Act. The application form should therefore contain a reference to the statutory prohibition by means of the following example or by other means: "The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age with respect to individuals who are at least 40 years of age."

5) Driver's License Number and State (if conducting Motor Vehicle Check). If special licenses are required, list the type of license. Some companies also ask the applicant to list any recent motor vehicle violations.

6) Employment History should include name, address, and phone number of employer, position, department and job responsibilities, salary, supervisor's name and title, start and end dates, reason for leaving, and permission to contact the employer. Employment history should be requested according to the company-defined years to be searched.

Note: A growing number of individuals are employed by temporary agencies. Applicants often list either the temporary agency name or the company where they were placed. It is recommended that instructions be given to indicate that the temporary agency employment be listed.

7) Prior criminal history: provide enough space for the subject to explain complete information on the incident(s) and the disposition(s).

8) Educational History should include name, address, and phone numbers of the educational institutions, start and end dates, major or course of study, and completion status. It is recommended that the applicant provide his or her name used while attending the institution. This practice will aid in the retrieval of records.

9) License, Certification, or Registration Information, to include state of issue, license number, and status.

10) International Search Requests may require additional information, defined by each country.

Additional Documents to supplement the Application:

- **Waivers or Authorizations for Information:** These forms should be regularly reviewed by legal staff.

Federal, state, and local laws, rules, and regulations may require changes to waivers or authorizations.

- Disclosure and written authorization (if the preemployment background screen is to be processed by a Consumer Reporting Agency).

Sample applications, waivers, and authorizations can be obtained from a variety of sources, such as attorneys specializing in employment law and the Privacy and Personnel Information Management Council of ASIS International.

Critical Items Every Application Form Should Contain

1) Application forms should contain a clear statement that a background screen will be conducted.

2) Application forms may include the question “Have you ever been convicted of a crime?” The form should also indicate, however, that a criminal conviction is not automatic grounds for rejection. A state may have particular requirements regarding time lines and convictions. An employer should verify that this question is permitted in the state where a candidate applies for employment.

It is also permissible to ask such questions as “Would any conditions of current probation or parole prohibit you from completing the tasks of the job for which you are applying?” Some court-issued conditions may be a violation for the applicant (i.e., operating a motor vehicle, working in an unsupervised capacity with women, etc.)

3) Application forms should include a statement that untruthfulness or material omissions are grounds to terminate the hiring process or employment, no matter when discovered.

4) Applications forms should indicate the applicant consents to preemployment background screening, including verifying educational and personal credentials, past employment, and court records. If an employer uses an outside service to perform a preemployment screening, the federal Fair Credit Reporting Act requires there must be a disclosure and written consent form separate from the application form. Make sure the applicant has signed the authorization form.

5) It is suggested that the consent portion of any release form used for a background screen should indicate the release is valid for future screening for retention, promotion, or reassignment (unless revoked in writing).

6) At a minimum, the application form should indicate that all employment for the past seven to ten years be listed. Such a listing will make it easier to spot unexplained gaps in employment. Ideally, criminal checks should be conducted in each county where the applicant has lived, worked, or gone to school.

7) The application form should ask about addresses for the past seven to ten years.

This is important to determine the scope of any criminal record search.

8) The application form should allow the applicant to indicate whether the current employer may be contacted for a reference.

9) The application form may cover other standard matters. Examples include an employment at will policy and the requirement for an applicant to provide original documents to verify identity and right to work in the United States, etc.

Criminal History Questions to Avoid

When asking a question about prior criminal history, use the broadest possible language for felony and misdemeanor convictions and pending cases. Employers should avoid the following common mistakes:

- “Have you ever been convicted of a felony?” Since misdemeanors often can be serious, a mistake an employer may make is to only ask about felonies on an employment application. Employers should inquire about misdemeanors to the extent allowed in their state, listing any exceptions that may apply.
- “Have you ever been convicted of a serious crime?” Use of this question asks an applicant to offer an opinion as to what is serious. If an applicant indicated he or she was not convicted of a serious crime, but he or she does have a criminal conviction, then the employer would have a difficult time showing the applicant intentionally lied.

Application Review

Simply filling out an application should not be the end of the application process. The next step is for an interviewer to review the application.

The first area of review should be for completeness. At the very least, a cursory review for missing information should be conducted in the presence of the applicant. This would allow the interviewer to point out the missing information to the applicant, with a request to complete the application. (Note: This section may not be applicable to online applications. Online applications typically will not allow the applicant to submit an application without fully entering information into each required section. However, the information entered may not be valid information, as the subject may have entered erroneous information in an effort to continue the process.)

The next step should be a review of the minimum requirements of the position and information from the application in support of the applicant's ability to meet these minimum requirements. (Note: An employer may conduct a minimum requirement review at the very beginning of the application process, even before the subject fills out an application form. Such a process, when done uniformly and consistently, can save time and effort on the part of the applicant and the employer.)

Interviews

The interview is usually the first opportunity for an employer to meet face to face with applicants. A well-planned and executed interview can accomplish three goals:

- 1)** Convey critical information to the applicant in order to discourage inappropriate applicants and to encourage honesty.
- 2)** Allow for the transfer of missing information from the applicant to the employer.

The interview is when an employer has an opportunity to fill in any gaps in an applicant's employment history and to make sure the employer has all the needed information to begin the screening process. Also, the employer has the opportunity to ask additional specific questions if the employer suspects the candidate has attempted to

omit or lie about unfavorable information.

3) Permit an assessment of the candidate. The interview provides the employer a chance to assess the skills, qualifications, and credentials of the applicant in person. In so doing, the employer should try to use a consistent set of questions to allow for a uniform process.

Applicant Screening Process

The goal of this section is to identify and define key elements of the preemployment background screening process for all employers in all industries.

Prior to beginning any preemployment background screening process, it is important to have already established company policies on the scope of the preemployment background screens and the handling of results. As with any part of the hiring process, consistency and relevance to the position are vital. Policies should be defined for the following:

- **Depth of background verifications:** Depth refers to how far back in time to check information provided and generally affects criminal record history, employment, and education verifications.
- **“Other” or alias names:** Companies should set a standard for checking additional names, such as maiden names. Identification of such names is very important when conducting criminal record searches and educational verifications. Criminal record searches should be conducted for both felonies and misdemeanors under all names used by the applicant.
- **Levels of background verifications:** Levels of background verification refer to the specific checks to be conducted on each position. An employer may maintain a single level of preemployment background screening, while others conduct more intensive preemployment background screening according to the sensitivity of the position.
- **Decision making process:** the decision making process refers to how

the results will be judged.

- **Exception handling:** Exception handling refers to how results outside the norm will be managed. An employer may have procedures in place to allow an appeal process of a background result.

Scope of the Preemployment Background Screen

The scope of the preemployment background screen should contain the following three key elements:

- 1) Identity Verification**
- 2) Personal History Verification**
- 3) Credentialing**

A preemployment screening process should consist of background searches to determine if the applicant meets the employer's requirements in each of the three elements.

The employer needs to determine which searches in each element constitute the best method to conduct the search. Business factors to consider are:

- Business necessity
- Nature of the position
- Industry specific requirements
- Cost
- Time sensitive hiring needs

Description of the Elements

Identity Verification

Every preemployment background screening process includes a verification of the “real” or “personal” identity. Real identity means that the employment history, education, credentials, court records, and other data associated with a person does, in fact, belong to the person who is physically applying for the position. In other words, a person's real identity is based on the notion that the personal history being presented belongs to the person who is physically present. All other preemployment background screening efforts are dependent on that certainty.

An employer may perform a preliminary identity check utilizing some form of a Social Security trace database. The advantage of such a preliminary screen is that it saves the employer from having to proceed further if there is a fundamental discrepan-

cy (also referred to as “no match”). However, the preliminary step is typically not the end of the inquiry when it comes to identity verification.

A good level of identity verification can be accomplished by using two or more of the following methods:

- **Document Review:** This can be a credential or paper containing descriptive information specific to that individual. Common documents include a driver's license, a passport, a birth certificate, and a military or school ID card. Such documents should be compared with the information as shown on the application form and with the applicant.
- **Social Security Number Check and Validation:** A Social Security Number is unique to each individual. The Social Security Number Check provides information about the names and addresses associated with a given Social Security Number. In addition to providing name and address information for comparison against what is provided on the application, a Social Security Number Check is used to derive addresses in order to conduct the personal history information search. Social Security Number Validation does not tie the Social Security Number to the applicant. It only provides an indication that the number may be accurate. Information can also be obtained on the Social Security Administration's Web site at www.ssa.gov.

To obtain information about Social Security Numbers that are currently assigned, go to www.socialsecurity.gov/foia/highgroup.htm.

To obtain information about the Social Security Death Master list, go to www.ntis.gov/products/ssa-dmf.asp?loc=4-0-0

- **An application review and interview:** As stated earlier, a review of the application form may indicate discrepancies. During the interview asking the subject personally identifying questions only that person would know, such as information

■ Preemployment Background Screening Guidelines

about previous addresses, payment and loan history, and identity information may indicate discrepancies.

Personal History Verification

Personal history searches provide insight and information regarding, but are not limited to such areas as:

- A) Home addresses
- B) Criminal court record history
- C) Sexual offender indices
- D) Motor vehicle records
- E) Credit reports
- F) Regulatory sanctions and terrorist lists
- G) Industry specific record history
- H) Civil court record history

A. Home Addresses: Such searches are often initially based upon the applicant's address history. The address history is typically obtained from the application; however, this information has not been validated, and may be falsified by the applicant. For this reason, many employers validate the address history from a Social Security Number check.

B. Criminal Court Record History: There are two entirely separate court systems in the United States – federal courts and state/county courts – and a search of one system does not include a search of the other system. Each system operates under its own sets of rules and has its own courthouses, clerks' offices, indexes, and judges. As such, criminal history records are contained as follows:

- **Local/County Court:** Also known as a "court record search," this search requires a direct search of the digital records of a county courthouse to determine if the applicant has a record at that court. Most often a court record search requires physical access to obtain information or simply to obtain copies of dispositions for review. Although most courts contain both felony and misdemeanor records in the same courthouse building, some jurisdictions maintain records or information in different locations within the courthouse or even in separate buildings.
- **Statewide Criminal History Informa-**

tion: There are two varieties of statewide information. The first is a state repository managed by a division of state law enforcement. The second is actual court data from a statewide case management system provided under the auspices of the state's administrative office of the courts. When available and not all states make either access publicly available, both types of sources have limitations and advantages. The advantages are a single point of access for an entire state with one search. If that state has many courts with statutory access fees, a single access fee may be less expensive than a search of indicated counties separately. A disadvantage, with respect to a case management system, is that not all counties may have become activated on the system at the same time and there may be inconsistencies in how the system is used from county to county. Many law enforcement repositories have been shown to lack current case updates or dispositions. Both types may suffer from delays in entering information, high access fees, or very long turnaround times for results. Additionally, it may not be clear what data is included and what is not. The site may provide conviction records only or may provide non-conviction records as well. In response to increased use and heightened privacy concerns, many records will not be publicly available if mandated internal documentation is missing, and useful identifiers,⁴ such as a date of birth, a driver's license number, and a Social Security number, are often redacted rendering the data useful only as an initial index search. The most accurate, current, and reliable criminal history information is found at the court of origin, not in any repository. Nevertheless, statewide criminal history information may have a place in an employer's background program. (Florida, for example, provides an employer a measure of protection against negligent hiring lawsuits if that employer specifically included a check of the state repository as one element of a background screen.) As with all aspects of preemployment background screening, the decision to use statewide criminal history information should be considered in the context of an employer's complete preemploy-

ment background screening program and the advice of counsel. See Section Criminal Records, for additional information.

- **Federal Court (District, Nationwide):**

This is a search for a record of a federal offense in one or more of 94 U.S. federal district courts.⁵ Federal offenses include crimes committed on federal property (government office, national park, etc.) and violations of the US Federal Criminal Statutes.

Usually, a search is conducted through the Public Access to Court Electronic Records (PACER) system. PACER is run by the Administrative Office of the United States Courts. (Web site: www.pacer.psc-uscourts.gov) (Note: Every federal court is not included in PACER.) Through PACER, a user accesses the "U.S. Party/Case Index." This index contains certain information from the court files, such as case numbers, and the names of those involved in the case.

For an employer trying to determine if an applicant has a federal criminal record, the system is beneficial since it allows one to search by name. PACER shows all federal cases, including convictions and dismissals, pending, and even cases with incomplete docket information. This database does not typically have any identifiers except for a name. It is imperative the user obtain additional identifiers on the result prior to making any decision. Additional identifiers are found on a Judgment and Conviction page. If the federal offense did not result in a conviction, there will be no identifiers, and the result should not be used.

Certain types of criminal history searches are not available to all employers in all states and jurisdictions. They may lend themselves to only certain types of businesses and caution should be used when reviewing them for employment purposes:

- **International Criminal History Search-**

es: To the extent available within a country, this search involves checking that country's criminal system. This search may not be available in all countries; therefore, an employer is urged to seek legal guidance before seeking criminal history records from other countries.

- **Fingerprinting:** The submission of fingerprints to an agency for comparison

against federal, state, and/or local criminal fingerprint records. Fingerprinting is not available for all employers or all industries, nor is it always uniformly available in all states for a particular industry. Additional information can be found on the FBI's Web site at www.fbi.gov/hq/cjisd/fprequest.htm.

There is a growing requirement by some state licensing agencies to require fingerprints during the license and registration process. These are often seen in professions such as health care, elder care, childcare, education, and security officers. Fingerprinting may also be required for some volunteer positions. It should be noted that state licensing requirements may be less stringent than individual organizational requirements and additional criminal history screening may still be recommended in order to perform proper due diligence.

- **Propriety databases:** These databases are offered and run by specific Consumer Reporting Agencies and contain negative history information about subjects. They tend to be confined to specific industries, such as the retail and mortgage industries, and report specific behaviors, such as internal theft, shoplifting, or industry sanctions and violations. Some information provided in a negative database may also be present in the criminal court system. However, these databases may also provide information not found in the court system, since not all employers prosecute subjects who have been involved in negative activity.

- **Incarceration records:** A check of all types of incarceration records, which may include but not be limited to, Federal Bureau of Prisons, state incarceration records, Department of Correction records, municipal jails, and various Departments of Probation records. These records typically contain information on individuals who are or have been incarcerated or supervised by a governing body of incarceration. Information may include current inmates, released inmates, and parolees and probationers. Records primarily contain felony convictions, but depending on the state, they may contain deferrals, adjudication withheld, first offender probation, pretrial intervention, and serious misdemeanors. An

incarceration record search is ultimately used to enhance other types of criminal searches.

The following are additional types of Personal History Verifications that should be considered based upon the applicant's position and security sensitivity.

- **C. Sexual Offender Indices:** State listing of sexual offender registries. (Not available in all states.) Individuals who are listed in these registries have typically been convicted of a felony or misdemeanor sexual offense and are required to register in the state in which they reside. Many states have created web access for their Sex Offender Indices and employers can easily access the information. The sites may not have complete identifiers and caution should be taken to verify the match with the applicant to be screened.

A National Sex Offender Public Registry also exists. The Registry, available on the Internet at www.nsopr.gov, is coordinated by the U. S. Department of Justice and is a cooperative effort between the state agencies hosting public sexual offender registries and the federal government. The Web site, a search tool allowing a user to submit a single national query to obtain information about sex offenders through a number of search options,⁶ provides access to participating states' Web sites' public information regarding the presence or location of sexual offenders.

Because the criteria for searching are limited to what each individual state may provide, employers need to be aware that many states categorize offenders into different risk levels: Level 1 representing low, Level 2 representing moderate, and Level 3 representing high. Some states consider only certain levels of sexual offenses to be public record. Consequently, that may mean that in some states the names of sexual offenders only within Levels 2 and 3 may be searchable within the state's sexual offender registry.

Employers in industries requiring a search against all levels of sexual offenses must go to the local police or state police for non-public sexual offender registry searches. This option is generally only available to certain regulated industries. Employers

should also note that a sexual offender registry may be available to the public but through a different format, such as a telephone hotline. State sexual offender sites on the Internet often explain the access options.

- **D. Motor Vehicle Search:** These searches are normally conducted on applicants in which driving is a component of employment. Driving for work, however, is broadly defined in most jurisdictions and may not be limited to positions that specifically involve operating a vehicle. For example, an employee who drives to different facilities as part of his or her employment may be considered a "driver" as well. MVR data is maintained by each state. There is no national MVR search, with the exception of some specialized databases related to commercial drivers licenses (CDL) and these are not databases containing a driver's history. An MVR search will cover any driving records from the state searched. Information provided includes personally identifying information (which can be used in Identity Verification), and the presence of fines, violations and/or convictions related to the use of motor vehicles. Additionally, an MVR search may reveal a conviction that may not be present in a criminal history search, such as the use of alcohol or illegal drugs in a DUI (Driving Under the Influence) conviction. Some states limit the information available for use in employment background screening. Other states may have additional consent requirements or contractual requirements. An employer may need to determine the specific requirements for the states being searched.

- **E. Credit Reports:** The credit reports used in the hiring process are reports specific for employment purposes. For example, it will not contain spousal information or a credit score. Credit reports provide name and address information similar to that provided in the Social Security Number Check, in addition to information about the applicant's financial history. Although account numbers are not mentioned, the person's payment history, high and low credit amounts, and any negative activities associated with that account, are indicated.

■ Preemployment Background Screening Guidelines

Typically, credit reports are used as a background screen for applicants with fiduciary responsibility.

F. Regulatory Sanctions and Terrorist

Lists: This series of searches involves accessing a variety of federal, state, and industry sanctions lists or Terrorist Watch Lists.

In addition to federal lists, several states and some industries maintain lists of individuals or organizations that have been sanctioned or barred from providing services in that state or industry. Regulations may prohibit the hiring of individuals on designated sanctions or terrorist lists in certain positions or industries. Employers should ensure they have checked in all lists required for that industry, including all federal, state, and industry lists.

Below are some common lists. This list is not exhaustive of all lists available or required:

- **Office of Foreign Assets Control (OFAC):** OFAC, an arm of the U.S. Department of the Treasury, administers and enforces economic and trade sanctions, based on U.S. foreign policy and national security goals, against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.

OFAC maintains a Specially Designated Nationals and Blocked Persons (SDN) list that contains the names and descriptor information of those persons identified to pose a threat to the interests and security of the U.S. Individuals on this list include narcotics traffickers, terrorists, and businesses and organizations supporting threatening activities. An SDN list search may be required for positions involved in government contracts and those involved in particular industries. Web site: www.treasury.gov/offices/enforcement/ofac/

- **International Criminal Police Organization (Interpol):** Interpol was created to assist international criminal police cooperation. Its work centers primarily on public safety and terrorism, organized crime, illicit drug production and drug trafficking, weapons smuggling, trafficking in human beings, money laundering, child pornography, financial and high-tech crimes, and

corruption. Interpol maintains a small proportion of its "Most Wanted Fugitives" list for public dissemination. Web site: www.interpol.int

- **GSA:** The List of Parties Excluded from Federal Procurement and Nonprocurement Programs identifies those parties excluded throughout the U.S. Government (unless otherwise noted) from receiving federal contracts or certain subcontracts and from certain types of federal financial and non-financial assistance and benefits. A search of this list may be required for positions involved in government contracts.

www.epls.gov/

- **Health and Human Services Office of Inspector General (HHS OIG):** (Also known as Department of Health and Human Services (DHHS) Cumulative Sanctions List.) Provides information regarding individuals and entities that are excluded from participation in Medicare, Medicaid, and other federal health care programs.

www.oig.hhs.gov/fraud/exclusions.html

- **National Practitioner Data Bank (NPDB):** Information on medical malpractice payments, adverse licensure, clinical privilege, and professional society memberships actions. Hospitals are required to report professional review actions that adversely affect or restrict a physician's clinical privileges for more than thirty days. NPDB is generally used when screening health care positions.

www.npdb-hipdb.hrsa.gov

- **Federal Drug Administration (FDA) Sanctions List:** Lists names of investigators who have at one time been disqualified, restricted, or have made assurances in their use of investigational products for FDA trials. The FDA Sanctions List is generally used in health care and pharmaceutical positions. www.fda.gov/ora/compliance_ref/bimo/dis_res_assur.htm and www.fda.gov/ora/compliance_ref/debar/default.htm

- **G. Industry Specific Record History:** Several industries require specific searches for licensing or for practicing within an industry. Some of these searches are covered in detail in this guideline, such as criminal record checks and sexual offender indices. Other searches are very specific to a particular industry and may not be covered in this

guideline due to their limited availability. Some states require searches for specific occupations, such as child and elder care. In some cases, specific abuse or sanction database searches may be required. It is best to check with state licensing boards or industry associations to obtain the requirements by industry and by location. Some information sources are specific to industries but are not required for practicing in the field or for licensing. Generally, these sources are from private companies and are only available for a fee. Examples of these sources are negative databases containing subject information specific to an industry, such as insurance, retail, and healthcare.

- **H. Civil Court Record History:** A civil case is a non-criminal action in which one party sues another for compensation for damages or monies owed. Civil cases can be initiated for torts or contracts. A contract case involves one party suing another party for a violation or enforcement of an agreement. A tort case involves one party suing another party for an injury in civil court for actions other than breach of contract. Tort cases can involve both intentional conduct and unintentional conduct. An unintentional tort is typically a negligence action, such as an auto accident.

Some states have a separate upper and lower court. In some states the courts are combined. A civil search is traditionally conducted for high-level positions.

- **Civil Lower Court:** Involves lesser dollar amounts, typically less than \$10,000.
- **Civil Upper Court:** Involves larger dollar amounts, typically \$10,000 or more.
- **Federal Civil Court:** Involves cases heard by the U.S. District Courts. They typically involve very large dollar amounts, class action lawsuits, lawsuits initiated by the federal government, or lawsuits that cover several state jurisdictions.

While similar to obtaining criminal records, obtaining civil records is, however, more complicated. Records are located at the county courthouse level in state court. The rules for jurisdictions are somewhat

broad for civil cases and the records may be more geographically diverse. Civil records also have very few identifiers.

Credentialists

Credentialing involves verifying the experience and qualifications that are presented by the applicant. As part of the credentialing process, employers should also review the chronological order of employment history, education, military history, and volunteer service to determine if gaps or inconsistencies exist. The employer should look for unexplained gaps in time and determine if the reason for the gap meets the minimum employment standards.

Credentialing provides insight and information on, but not limited to, such areas as:

- A) Education Verification**
- B) Employment Verification**
- C) Licensure/Certification/Registration Verification**
- D) Personal References**
- E) Supervisor/Co-Worker Interviews**
- F) Military History Verification**

A. Education Verification: This search verifies the dates and attendance at a given facility as stated by the applicant and can be conducted by a company or through a Consumer Reporting Agency. An increasing number of educational facilities are contracting with outside agencies to handle education verifications, for a fee. (Note: The applicant may have attended the educational institution under a different name, such as a maiden name. It will be important to have the additional name available when searching for records at that institution. Also, educational facilities are moving away from categorizing their records by Social Security Number. The most common identifiers used to verify education history are (a) name used while attending, (b) dates of attendance, (c) graduation date or month and year, (d) type of degree, and (e) date of birth.)

B. Employment Verification: This search verifies the information provided by the applicant about their employment history. Typical areas that are verified include dates of employment, position, job duties, salary,

type of employment (full, part time, temporary, seasonal), reason for leaving, and rehire status. Note: The policy in some organizations may require a release form, signed by the applicant, in order to release this information.

C. Licensure/Certification/Registration Verification: This search verifies the specifics of the applicant's stated license, certification, or registration with the granting authority.

Also included should be a review of the status (such as active / inactive) and any sanctions that may be associated.

D. Personal References: A personal reference check is a subjective inquiry into an applicant's behaviors from sources provided by the applicant. Applicants may provide the names and contact information for friends, co-workers, former co-workers, relatives, or others whom they believe will provide positive information. These are considered primary sources. Contacting personal references may assist in the development of secondary sources of information, i.e., a personal reference could be asked to provide the name and contact information of another person who might be acquainted with the applicant's behaviors and personal history.

E. Supervisor/Co-Worker Interviews: These differ from employment verifications in that the interview is of a former or current supervisor or co-worker. These interviews frequently focus more on job performance, personality, the applicant's work quality, work ethic, attitude, and previous negative behaviors, such as theft or threats. As in the use of employment verifications, some organizations may require written permission from the applicant in order for their current employers to be interviewed.

F. Military History Verification: This search involves verifying an applicant's military history with the National Personnel Records Center. (www.archives.gov/facilities/mo/st_louis/military_personnel_records.html) (Note: Turnaround time is typically very long, in excess of six weeks.)

- Another method of verifying an applicant's military history is to review his or her

DD Form 214 (Report of Separation) and compare it against the stated military service.

- Employers should be careful before attempting to draw conclusions from various codes on the DD Form 214 when making hiring decisions. Using the codes on the DD Form 214 to infer conduct in order to make a hiring decision could result in claims of discrimination or decisions being made based upon irrelevant or unsubstantiated criteria.
- A good practice is to use the basic DD Form 214 to confirm an applicant was in fact in the military, and then ask for the names of references from such military service to obtain job related information that would be relevant to an employment decision.

Preemployment Drug Screening

For workers in regulated and safety sensitive industries, such as trucking, aviation, rail, transit, maritime, pipeline, etc., employers are legally required to screen employees for drugs and alcohol. Some employers are required to conduct drug testing as part of a government contract. Employers that are not legally required to test for drugs or alcohol sometimes choose to do so as a risk management tool to reduce workplace issues, such as lost time, absenteeism, accidents and on the job injuries, health care costs, and workers' compensation claims. Many employers opt to screen employees in particularly safety sensitive positions, such as any employee who works with children, the elderly, or the disabled; has extensive unsupervised contact with the public; is required to operate a vehicle or heavy machinery; handles money or valuables; or has access to weapons, drugs, or dangerous substances. Preemployment drug testing is generally done with consent from the applicant. Post employment drug testing, such as random testing, postaccident testing, or testing based on reasonable suspicion of drug use has legal implications, and employers should consult their legal counsel concerning any legal issues involved with drug testing. The U.S. Department of Labor provides a helpful guide to the laws of

the 50 states that is available online at <http://said.dol.gov/StateLawList.asp>. Other state and federal laws, such as the American with Disabilities Act (ADA), can also impact drug testing.

Screening Criteria Appropriate for Position Levels

An employer needs to use preemployment background screening consistently, however a single scope may not be appropriate for all positions. An employer should consider the types of positions it fills, each position's level of authority, and any specialization that may impact screening, such as security, finance, or professional licenses. Generally, more thorough screens should be used for positions of greater authority. If an employer, however, fills certain positions from labor markets where it has experienced problems, it may choose to use a more thorough screen for those positions. Below are examples of screening criteria for an employer with three position levels. Modifications to this list can easily be made and should be carefully evaluated by an employer. For example, an employer may want to add a credit report for any position with financial responsibility.

LEVEL I BACKGROUND

General Employee

- Social Security Number Verification
- Address History
- County-wide Felony/Misdemeanor Records Search
- Drivers License Search (if driving is a component of position)
- Education Verification

LEVEL II BACKGROUND

Professional

- Level I Background (above) plus
- Credit Check (if fiduciary responsibility is a component of position)
- Employment Verification

LEVEL III BACKGROUND

Supervisor

- Level I & II Background (above) plus
- Federal District Criminal Search

Decision-Making Process

Decision-making is the process of judging and evaluating the information gathered and relating it to the job requirements. Federal and state laws must be considered during this process. Decision-making can be accomplished in many ways, including matrixes, guidelines, or a personal review of the results. Typically, the individual search is reviewed to determine if it meets or does not meet minimum employment standards. And then the entire applicant profile is subject to the decision making process.

Some areas to consider with respect to the decision making process:

• **Consistency:** When subjecting a result or applicant profile to a decision, it is imperative that the employer be consistent in the hiring practices. For example, with respect to a credit report, it is not acceptable to indicate a "person with a bad credit report will not be hired." The standard of "bad credit report" should be defined before using the results of a credit report in the hiring process.

• **Outsourcing does not absolve a company of responsibility.** Some employers who use third parties, such as a Consumer Reporting Agency, or an employment service, such as a Recruiting Service, may provide the third party with the employer's decision-making guidelines. The third party's judgment of the background verification results should be considered preliminary. The accountability for the final evaluation of the background search remains with the employer.

Audits and Business Reviews

Employers should conduct auditing in order to ensure proper procedures and security measures are being followed. This would include audits of CRA's if utilized. Third party providers should also be auditing clients, as well as their own internal processes.

The purpose of the audits is to demonstrate compliance with stated procedures and laws and accuracy of information.

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1 See Speer, R. Workplace Violence: A Legal Perspective. Clinics in Occupational and Environmental Medicine, 3:733-749 (2003).

2 OSH Act of 1970, 29 USC 654, §5 (a)(1).

3 C. R. Ernst, Uniform Commercial Code Revised Article 9 Alert A State-by-State Guide to Searching and Filing under the New Revision. Ernst Publishing Co., LLC.

4 Identifiers are identity tags that researchers use to link a named applicant to a found record. Some examples of identifiers are correctly spelled name, middle initial, date of birth, Social Security Number, former addresses, and residential time lines. The number of identifiers available to researchers improves the accuracy of the research.

5 There are 89 district courts in the 50 states. District courts also exist in the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands.

6 One of the search options is by name. If a common name is searched, potentially many results will be returned. The party doing the search will need to go into each returned record to verify the identifiers against the subject's information.

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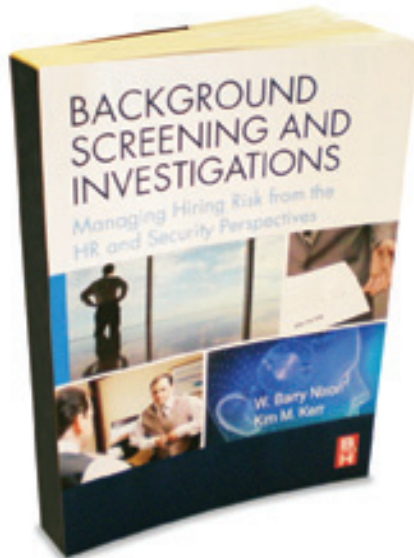
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Background Screening and Investigations: Managing Risk from the HR and Security Perspectives

W. Barry Nixon and Kim M. Kerr

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This outstanding book answers these questions:

- Where do HR and security perspectives differ on hot topics like hiring convicted felons, data protection, and sexual predators?
- What does state law allow when screening job candidates?
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Having competent and professional employees is a crucial aspect of any company; as such, *Background Screening and Investigations* is an essential guide for every business. Comprehensive measures to carefully guide employee selection must be used by corporations and agencies, so that businesses can minimize hiring criminals and others who will deplete financial resources. An essential part of any hiring process should involve employment background screening, pre- and post-hire, which gives hiring personnel a glimpse into a persons' past behavior pattern, propensities, reactions and, thus, their likely future behavior.

Background Screening and Investigations describes all aspects of the employment background screening processes - including how the field has evolved, its history, the imperative for implementing employment screening, key areas involved in conducting them, and the creation of a comprehensive policy. As a result, readers will gain essential knowledge about the challenges and processes involved in conducting employment screenings, and will also learn how to establish their own background screening program.

The book focuses on the role security plays in helping to make a background screening process successful, and addresses the fundamental security elements that are required to support the effort. Models based on methods and processes that have been successfully implemented provide an integrated "how to" approach to establishing a background screening process. By giving the reader the security knowledge to quickly and cost-effectively implement a background screening program, this book establishes itself as an essential addition to every business person's library.

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