SUGGESTED PREPARATION, IMPLEMENTATION AND LEGAL CONSIDERATIONS TO FORTIFY YOUR BACKGROUND CHECK AND DRUG TEST PROGRAMS

INFORMATION YOU NEED. PEOPLE YOU CAN TRUST.

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Introduction: Why background checks and drug tests

Today's workplace is becoming more competitive due to the increased globalization and growing mobility of the workforce. Employers are challenged with identifying qualified applicants, and applicants are seeking to differentiate themselves. Background checks and drug tests are one way applicants can demonstrate they are ready to work for a particular position. Research by the Aberdeen Group1 has found organizations that complete background screening secure a higher percentage of talent that meets an employer's hiring criteria.

Aberdeen Group research results

- **Better retention rates.**
  The first year retention rate of new hires that are screened is 89% compared to 58% when no screening is completed.[1]

- **Better hires.**
  87% are rated as "top-ranked candidates" compared to 46% rating their hires as "top" who don't screen. Screening provides a comprehensive picture that helps verify if the applicant meets the hiring company's criteria.

- **Better business.**
  To protect your business interests, ensure the reliability of their workforce and to protect current employees, customers, members of the public, brand name, trade secret Information.

The Risks of Not Screening

From the Society of Human Resources, the average jury award for negligent hiring now exceeds $1M.

http://www.shrm.org/legalissues/stateandlocalresources/pages/costlyclaims.aspx

Companies LOSE negligent hiring cases 79% of the time.

http://www.iso.com/Research-and-Analyses/ISO-Review/Negligent-Hiring-Employer-Risk.html

Only 35% of companies report screening contract workers–leaving them at risk for negligent hiring lawsuits.

http://www.careerbuilder communications.com/pdf/SRG-Q22013-report.PDF

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Consider the following statistics that show the impact of drug use and crime on employers. Screening can help mitigate liability and financial exposure when completed for all workforce members including contingent or temporary workers such as cleaning crews, facility maintenance workers, ground crews, auditors, inventory stockers and others who have access to property or represent your brand by performing work in homes or in the field. Negligent hiring risk applies equally to temporary workers as it does to full-time employees.

Drug abuse

- There were 13.3 million illicit drug users in the workforce in 2010–or about 10 percent of the U.S. workforce[3]

- 65.9 percent of total illicit drug users are employed either full time or part time, compared with only 34 percent who are unemployed[3]

- In 2010, 10.6 million persons or 4.2 percent of the population aged 12 or older reported driving under the influence of illicit drugs during the past year[3]

- In 2012, amphetamine positivity rates in commercial drivers more than doubled from 12 percent to 26 percent[4]

Crime

- Shoplifting, employee or supplier fraud, organized retail crime and administrative errors cost the retail industry $41.7 billion in the United States in 2011[5]

- Of that, 44%–$18.4 billion–was attributed to employee theft[5]

- Internal shrink appears to be a more significant issue–697,000 employees were caught in 2011 after having stolen an average of $1,764.76 per incident[6]

* 2012 First Advantage Commercial Driver Report

Most frequently used drugs found in those tested by 2012

1 Marijuana

2 Non-medical use of pain relievers

3 Cocaine

4 Non-medical use of tranquilizers

5 Hallucinogens

6 Stimulants (Amphetamines, etc.)

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Preparation: The key to a successful candidate screening experience

Even in a post-recession environment, employers are having difficulty attracting, hiring, and retaining the most qualified candidates and contractors. Because of this, many companies are actively working to provide a world-class candidate experience. Engaging the applicant earlier in the process improves efficiencies and turnaround times and also provides applicants with transparency into the screening process. Such a process would follow these steps:

- **Front load:** Help your applicants supply needed information to make the screening process smooth.

- **Automate:** Move to an enhanced process to achieve faster report turnaround and demonstrate compliance.

- **Build for future growth:** Create a scalable process to meet global possibilities.

Front load: Help your applicants supply needed information to make the screening process smooth

Clearly communicate to potential applicants what items are necessary and what prerequisites are required to properly qualify for employment prior to application. This step will streamline your processes by allowing applicants to prepare the necessary paperwork in advance and self-select themselves out of the application process should they discover they cannot comply with your hiring requirements. This is a critical piece of the proactive pre-screening process that ensures applicants who submit their information will pre-qualify based on information that will be verified later on in the process. The following are examples of information that might be needed in the application process for a delivery or customer service representative position:

Example 1:

Position:	Delivery Person
Qualifier:	Applicant must have a valid driver's license
	Applicant must have a valid Social Security card
	Applicant must be at least 18 years old
	Applicant must be able to pass a drug test

First Advantage Customer Usage Statistics:

69%
of customers use National Criminal File (NCRF)

34%
of customers use Federal Searches

79%
of customers use County Searches

27%
of applicants show a misrepresentation on their education history

23%
of customers drug screen with 13% conducting ongoing random drug tests.

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Example 2:

Position:	Financial Customer Service Representative
Qualifier:	Applicant must have a Social Security card
	Applicant must have a high school degree
	Applicant must have at least two professional or personal references
	Applicant must not have a criminal record conviction that violates section 19 of the Federal Deposit Insurance Act
	Applicant must be able to pass a drug test

Why front load: To create a world-class candidate experience

You create a world-class candidate experience when you make it easier and more appealing for prospective job applicants to interact with your organization. Companies are paying closer attention to the candidate experience, understanding that first impressions are equally important to applicants. One of the many ways employers can improve this experience is by leveraging new technologies to automate the outdated and time-consuming processes of manually completing applications and other paperwork. Through applicant tracking systems and online applications, candidates can quickly and easily search and apply for jobs online from the convenience of their own homes. These technologies can include resume upload functionality as well as pre-population of employment and background screening applications.

What does this mean for you? Apart from making your organization an attractive option for candidates, improving the candidate experience accelerates turnaround time, reduces manual errors and allows you to hire and on-board the most qualified talent before your competitor. Additionally, this paperless candidate-centric experience positions your company as a technology leader in the eyes of the applicant, and also provides them with transparency into the hiring and background screening process–further differentiating your organization.

Automate: Move to an automated process to achieve faster report turnaround and demonstrate compliance

Automation allows access to fast background screening results. These timely results are critical in helping organizations efficiently move through the hiring process–particularly now as we emerge from the recession. Where it previously took days to obtain the results of a county-level criminal background check, employers can now receive quick results from a nationwide search. In short, databases and file transfer technologies have forever changed the landscape of employment screening. As a result, a greater number of organizations are integrating instant and automated employment screening products into their hiring process to help them gain a competitive edge when it comes to quickly hiring the best candidates. The instant criminal database searches should be used to complement address-based county court searches.

- Instant searches can help you efficiently move forward in the hiring process by quickly confirming or validating basic information such as a Social Security number or name and address history.

- Automated searches quickly move the screening process along by providing electronic delivery of process updates and results,

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eliminating time delays often associated with manual follow-up on important screening components such as employment or education verifications.

- National Digital rapid response drug testing provide same day drug test results for candidates who pass their drug screening.

In addition to automation, engaging the employees early on in the process can also help expedite the screening process– particularly candidates who have an international background. As we see growth in global screenings, we will also see a move toward screening transparency. Verifying an international candidate's education can take up to 14 days in some cases, since a copy of the diploma or transcript is often required. Educating the candidate in advance on what will be required for verification could decrease this turnaround time considerably.

Build for future growth: Create a scalable process to meet global possibilities

Due to many trends impacting large organizations in the broader marketplace such as global expansion and corporate mergers, it is crucial to build scalability into the employment screening process.

First, a scalable screening solution can help ensure your process has the bandwidth to handle sudden spikes in search volume. Such spikes can occur during holiday periods, when there is an increased demand for staffing, or after an acquisition, when employees must be re-screened by the parent firm.

Second, as more firms expand abroad and tap into the global workforce, a truly scalable process can accommodate international employment screening and maximize your efficiencies. By consolidating your domestic and international screening with one provider rather than managing multiple providers, you will likely increase your buying power and minimize accounting hassles. Scalability also applies to other solutions. A scalable screening process can seamlessly evolve with your business by easily incorporating additional products such as drug testing or monitoring services, without complicating your program by introducing new vendors and/or processes.

Third, choose a service provider who will act as your partner, enabling you to uncover answers in a timely and reliable fashion. A host of trusted sources should be tapped within the countries that you specify to deliver pertinent information, customized for your organization or industry. Whether you need to screen applicants from India or China, you need to find a service provider who will help you mitigate risk and perform due diligence.

Reduce your overall risk

An efficient, thorough employment screening process that includes leading-edge technology can, above all else, help reduce your overall workplace risk. Identifying risk early, prior to hiring an employee, helps better protect your broader organization from risk related to:

- Physical safety
- Financial security
- Damage to corporate brand or reputation
- Legal non-compliance

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Best Practices Feature	Benefit
World-Class Candidate Experience	• Automation = The ability to attract more candidates • Simplicity = Best experience for a good candidate pool • Process = Simple process to expedite hiring
World-Class Experience for Customers (employers)	• Safety = Selecting the best candidates to create a safer environment for your employees and customers
World-Class User Experience	• Smart System = Intuitive interface • Data = Logical data presentation • Flexibility of systems = User controlled settings and multiple user profiles • Hiring = Minimizes risk of investing in the wrong candidate
Quick Turnaround	• Faster results = Faster hiring decisions • Competitive edge = Hiring the best applicants
Scalability	• Merger / Acquisition = Quickly screen new candidates • Evolving business needs = Easily expand / modify your program
Reduced Overall Risk	• Protect your brand = Promote a safe and desirable workplace • Lower your risk = Protect your bottom line

Implementation: Job-specific screening packages for best results

The following four-step process provides a high-level overview of general areas that should be addressed in your employment screening process.

Step 1. Determine initial candidate communication: When your candidates submit their applications, resumes or other required pre-employment forms via the Web, it is important to determine the most efficient method of communicating with these prospective employees. This is your first chance to make an impression as a potential employer.

• If you currently use a Human Resource Information System (HRIS) or Applicant Tracking System (ATS), it is recommended that you work with an employment screening provider that can integrate background screening products into your application. This eases the burden on your Human Resources staff because they only work within one system.

• If you're not currently using an HRIS or ATS, contact your current or prospective employment screening provider to inquire if such a solution is available. Otherwise, be sure you are working with a provider who can provide electronic, web-based services.

• Another best practice is to use automation as much as possible, or leverage candidates to enter their own data through a candidate capture system to save time and money for your organization.

Step 2. Choose your screening components: A comprehensive screening process will include several components, each of which is discussed below.

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Description of the products:

Criminal history

Screening candidates for criminal conviction records can help you promote a safe, secure workplace by reducing job-related risk linked to a criminal history. In order to have the most comprehensive criminal search, the following services are recommended dependent upon the type of position the candidate is seeking. It may be hard to believe given today's prevalent and ever-expanding technology, but many public records are still only on paper and have yet to be converted to instant digital access. When comparing sources for your information, be sure to include all possible avenues. A search that checks Web-based court records and sends a trained investigator to check records at the appropriate court jurisdiction is recommended. The goal is to search a broad area of criminal record repositories in order to protect your company, your reputation and your most valuable assets, your employees and clients.

NOTE: It is recommended that all criminal background checks return seven years of conviction history information regarding an applicant's past; however, results will be dependent on the laws and guidelines that govern the state in which the search is being performed.

- **National Criminal File Search:** Most background screening providers offer access to a proprietary national criminal records database. Although the scope of coverage will vary depending on the provider, some vendors can offer access to a nationwide database of criminal records gathered from across all 50 states. A variety of sources are utilized including Sex Offender Registries, state and county criminal courts and state-level departments of corrections. This search can provide instant access to criminal conviction records to identify a criminal history in unreported addresses.

- **Felony and Misdemeanor Search:** This county courthouse search includes a search of all felonies and misdemeanors on all indexes available at the main county seat court location. There are different product options available depending on how in-depth a search you wish to perform.

- **Motor Vehicle Report:** A Motor Vehicle Report (MVR) reveals the status of an applicant's driver's license and any violation history. This search should be conducted on all candidates who will have driving responsibility for a company, including those who will not only drive a company vehicle but will also drive a personal vehicle on company time or for company purposes. In certain industries, conducting a MVR search at pre-employment and annually is a federal requirement if the driver holds a commercial driver license or drives a commercial motor vehicle.

Verification and qualification solutions

These products and services help you quickly and efficiently validate crucial information provided by your potential employees so that you can move forward in the hiring process and make informed hiring decisions.

- **Credit Check:** This search matches the candidate's information to information held by the credit bureaus, and returns the candidate's credit report. An employment credit report does not contain credit scores. Note that many states have restricted the use of credit reports in employment decisions. Before using a credit report in an employment decision, employers should review all applicable laws in the jurisdictions in which they operate to ensure compliance.

- **Employment Verification and/or Education Verification:** These two products are used to verify the employment and education information provided by your candidate on their job application.

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- **Web-based Employment Eligibility Verification (EEV) Services:** Due to changing immigration laws, federal and state governments are placing a higher burden on employers to prove that their workforce is eligible to legally work in the U.S. A web-based employment eligibility verification service can assist you in streamlining your Form I-9 and electronic E-Verify process so you can proactively stay ahead of the curve. These systems also help employers ensure they are tracking and facilitating Form I-9 and E-Verify compliance, consistency in process and adherence to the required retention guidelines for their documents across the organization. The EEV solution allows you to manage the process electronically by uploading required documents into the system and having one single, secure database of all I-9's and supporting documents. Employers can also be notified when certain documents, such as work visas, are set to expire so that you can proactively ensure your workplace stays legally eligible for employment.

Several states have already passed laws requiring certain businesses to participate in the federal government's E-Verify program. If your state or your organization requires Federal Contractors to E-Verify for employees working under the Federal contract, the E-Verify program mandates that employers confirm every new hire's employment eligibility. Utilizing a web-based EEV Services solution allows you to electronically transmit the employee's I-9 data through the E-Verify Program, which verifies a new hire's date of birth, Social Security Number and name with the SSA and DHS databases. In addition, an authorization status of the applicant's eligibility for hire is returned from E-Verify and available through the EEV Services solution to ensure all necessary follow up actions are facilitated and tracked through the system.

E-Verify requirements vary by state and can be subject to change quite frequently. Our online E-Verify state map is always up to date with the current State E-Verify requirements and can be accessed at http://www.lawlogix.com/e-verify

Average time expectation:

- Although many background screening providers offer instant results, some results may be delayed due to the manual processes involved. This can be the case for education verification and manual background checks at courts due to holidays or their internal processes.

Occupational and biometric services

These services are critical to offering a safer workplace and can include drug and alcohol testing, physical exam management, driver qualification files and fingerprinting. Look for a provider that demonstrates expertise in the industry, offers technological solutions to reduce paperwork and is knowledgeable about state and federal regulations. Your service provider should:

- Provide Department of Transportation (DOT) compliant services including certified Medical Review Officers (MROs)

- Provide a digital drug testing solution - including rapid response drug tests - for non-federally regulated programs

- Provide an electronic solution that helps store, track and adjudicate driver qualification files

- Meet your immunization and medical exam requirements, including a comprehensive review of exam results for compliance

A DOT five panel drug test (urine conventional) is a basic panel used by many organizations. The following drugs would be tested from the applicant's urine sample:

- Amphetamines (Amphetamine and Methamphetamine)

- Benzoylecgonine (Cocaine Metabolite)

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- Cannabinoids (Marijuana Metabolite, and THC-COOH)

- Opiates (Codeine, Morphine and Heroin)

- Phencyclidine (PCP)

Most service providers offer test panels beyond the basic five. Check with your service provider to see if those options are offered, and how they would provide benefit to your organization's specific needs.

Drug Test	Pros	Cons	Best For
Urine (conventional)	• Good turnaround time • Gold standard • Customer service and tracking done by service provider	• Results not immediate • Collection site • Management is offsite	• Pre-employment • Promotion • Random • Annual re-screen
Breath Alcohol Test–BAT (conventional)	• Immediate results • Defensible in court • Non-invasive • Governed by the ADA–helps with compliance	• Results are returned directly to customer due to federal regulations • Customer self administration and tracking, or if service provider is tracking info, then customer or clinic must send it to provider • Price	• Random • Post accident • Reasonable suspicion

Adjudication and alerts

Based on your hiring requirements, these services can help you identify and address various levels of acceptable risk in a consistent, standardized manner as it may relate to a particular position in accordance with your pre-established criteria. Additionally, you should work with your provider relating to Adverse Action letters mandated by the Fair Credit Reporting Act (FCRA) and state equivalent statutes for candidates that fail to meet specific hiring criteria set forth by your organization.

- Although service levels vary, many service providers administer an Adverse Action mailing service in which the provider sends the FCRA-mandated letters that the customer has provided.

- Choose a service provider that complies with the FCRA consumer dispute process, including providing a toll-free consumer dispute hotline that provides your candidates with the appropriate channel to dispute the finding in a timely manner.

Step 3. Streamline your process: To promote increased process transparency, a Monthly Compliance Exception Report should also be included in your employment screening process. This report will provide visibility into your hiring process by informing you which candidates have completed various parts of the screening process and which have not. The report also updates you as to which components are missing from a candidate's employment screening process.

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Step 4. Conduct quarterly business review meetings: Your service provider should meet with you once a quarter to present data analysis and a recap of your background and drug testing program. A service provider can also alert you to trends in screening and updated services now available and relevant to your industry.

Step 5. Continually assess compliance: State and federal legislation will continue to influence pre-employment background screening practices. Guidance from the Equal Employment Opportunity Commission (EEOC) related to criminal records, American Jobs Act and Ban the Box legislation may impact your hiring and screening practices. Additionally, the increased use of social media in pre-employment screening may also draw some legislative attention due to concerns with Title VII and EEOC violations. Be sure to remain current on all legislative matters that impact your screening practices.

A Sample implementation plan

An implementation plan should describe the main areas of consideration in developing and deploying a comprehensive employment screening program. The plan should identify the key representatives and subject matter experts from all necessary departments, including human resources, operations, loss prevention, recruiting personnel and technology.

The following brief descriptions provide a quick reference for each implementation area you should consider. While the following describes a standard implementation, your actual process may need to be customized depending on the needs of your group. However, this is a good overview of the implementation process.

1. **Administration**
The employment screening provider should assign a dedicated resource from a client solutions/engineering team to manage all aspects of the implementation process. That dedicated resource should then work with the appropriate legal, technology and training teams and subject matter experts to offer best practices that help establish a quality program. Once established, this implementation team should conduct weekly meetings to define and resolve all components of the proposed employment screening program.

2. **Legal**
Important service level agreements (SLAs), statements of work (SOWs), out of the ordinary processes, scope of work, pricing and compliance issues are negotiated throughout the service agreement signing period. In addition, state-specific Department of Motor Vehicle (DMV) forms are signed and submitted to state DMVs to receive proper authorization for accessing Motor Vehicle Reports (MVR).

3. **On-boarding/account setup**
Your company's existing internal corporate organization will help determine how your field, regional and global locations will be setup. A list of the organization's physical locations that includes its approved users (and their different levels of access rights) is a key item of information necessary to complete the account setup process. Sometimes accounts are set up in phases to accommodate large territories. For example, a Phase I setup may serve only a pilot/regional group of users, while a Phase II will provide for other field locations with geographical differences.

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4. Technology

Technology is a critical component to the entire implementation project timeline. For example, your target completion dates may be impacted when your screening system interface deviates from a standard process to a complex or customized process. During the discovery phase, all required data elements for ordering and returning results should be identified and properly documented to ensure the front-end input information is propagated to back-end systems. In addition, the system interface with an HRIS and/or an ATS should be clearly defined so that all of the applications integrate into a cohesive screening program. After the discovery phase and business requirements are documented, then a SOW is prepared for legal approval.

5. Communications

A vital component of a successful implementation is communicating helpful information and a timeline to the user community about the roll-out. This allows all users at various locations to set expectations and prepare for new system training. User names and passwords are distributed after training is complete.

6. Training

Supporting materials such as training documentation and user guides should be developed and distributed by the employment screening provider to ensure that users understand the system and the new process changes when onboarding new employees.

Summary implementation plan

A summary implementation plan provides a sample snap-shot timeline for a 60-day time period, from contract signatures to a production ready, go-live date. The 45 total duration days represent the number of business days that will elapse during a 60-day implementation time period. When expanding the program scope, the duration days may increase depending on how complex the plan may become.

The following chart of summary tasks provides the estimated number of days that will elapse to complete that part of the project (standard 45 days). For example, the "Training" 18-day duration period includes the development of training documentation and the actual training schedule. The "Legal Approvals" duration period may take only five days of review but could include approving all other process documents within a 10-day period.

Task	Duration	Month 1	Month 2	Month 3
Administrative Work	5 days	▬		
Legal Approvals	10 days	▬▬		
Technology Integration Plan	30 days	▬▬▬▬		
Future Process Flow	5 days	▬		
Customize Program	10 days	▬▬		
On-boarding / Account Setup	5-10 days		▬▬	
Communications	19 days		▬▬	
Training	18 days		▬▬	

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Compliance: Legal considerations to show due diligence

Following are regulatory issues that need to be considered during pre- and post-employment screening:

Fair Credit and Reporting Act (FCRA): The FCRA is a federal law that regulates the collection, dissemination and use of consumer information to be used for credit evaluation and other purposes including employment screening and tenant screening. Consumer Reporting Agencies (CRAs) are entities that report consumer information and are regulated by the FCRA. Key responsibilities include:

• Using reasonable procedures to ensure the maximum possible accuracy of the information reported

• Providing a consumer's file of information maintained on them upon request

• Providing a channel for consumers to dispute any inaccurate or incomplete records

Third parties that conduct background checks on employees or applicants on behalf of an employer are generally considered CRAs and therefore subject to the FCRA. Employers are also subject to regulation under the FCRA and it is therefore critical that employers understand their FCRA obligations as it relates to pre- and post-employment screening.

Steps for basic FCRA compliance

1 Provide disclosure to and obtain written authorization from applicant before ordering the background check.

2 Identify the purpose for ordering the report to the consumer reporting agency.

3 Provide the required FCRA notice before an adverse action is taken.

4 Provide notice after an adverse action is taken that meets FCRA requirements.

Ban the Box: New state and local laws are emerging throughout the U.S. to prohibit employers from inquiring about criminal convictions early in the employment application process. These laws are known as "Ban the Box" legislation. The underlying concern here is that by asking about criminal history early in the hiring process, employers have created an unfair disadvantage for persons with criminal records and have negatively impacted their hire ability. Hawaii was the first state to pass such legislation, and to date Connecticut, New Mexico, Massachusetts, Minnesota and 45 cities and seven counties (including Baltimore, Minneapolis, Jacksonville, Austin and Chicago) have passed this legislation.

Use of Criminal Records in Hiring Process: The EEOC has published guidance on how and when criminal history records can be used in the hiring process due to the concern that criminal records history may create disparate impact against minorities. The EEOC position is that it can have a discriminatory impact on minorities, and therefore violate under Title VII, since racial minorities such as African Americans and Hispanics have higher arrest and conviction rates than other groups.

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Steps for basic EEOC compliance

According to the EEOC, before denying someone employment based on a criminal record, employers should consider:

- The nature of the job

- The nature, gravity and job-relatedness of a criminal offense

- When the offense occurred

And newly added in 2012 under the EEOC guidance is the strong suggestion that employers should perform an "individual assessment" if a criminal record is returned and you do not have statistical analysis of the impact of such a record on that particular job (which is usually the case as such statistics are not always readily available). An individual assessment should include:

- Facts or circumstances surrounding the offence or conduct;

- Number of offenses for which the individual was convicted;

- Age at the time of conviction, or release from prison;

- Evidence that the individual performed the same type of work, post conviction, without any known incidents of criminal conduct;

- Length and consistency of employment before and after offense;

- Rehabilitation efforts; and

- Whether individual is bonded under a federal, state, or local bonding program

Credit Reports: To date there are ten (10) states that restrict the use of credit data for employment purposes. There are another 45 bills in 25 states and the District of Columbia that have been introduced or are pending in the 2013 legislative session relating to the use of credit information in employment decisions. Out of these, 42 address restrictions on the use of credit information in employment decisions, or would prohibit employers from relying on credit histories to deny employment or make other adverse employment decisions, subject to certain exceptions. Additionally, the Equal Employment for All Act is a pending federal bill which would restrict the use of credit reports by employers. If passed, the bill would amend the Fair Credit Reporting Act to prohibit the use of consumer credit checks against prospective and current employees for the purposes of making adverse employment decisions with limited exceptions, including certain positions with financial organizations, government agencies, or positions requiring national security clearance.

Employers should consult applicable laws in the jurisdiction in which they operate to develop policies that would ensure compliance around the use of credit data in employment decisions.

Social Media: According to a Microsoft study[6], as many as 70 percent of U.S. recruiters have used social media to evaluate applicants. Social media sites provide employers with a vast amount of, at many times, unfiltered information on candidates that resumes do not. The use of social media in employment decisions is attracting increased attention from law makers due to potential Title VII violations. Title VII prohibits employers from not hiring someone based on race, color, sex or national origin, etc. By using social media as a tool in background screening, it may become difficult to justify why you hired one applicant over another when you have mixed legitimate reasons with illegitimate ones – thereby inadvertently impacting a protected class. Additionally, under the FCRA, applicants have the right to dispute information, and using social media or blogs in your decision making process would make this dispute process extremely difficult. It is highly recommended that, if employers don't already have policies in place regarding the use of social media as a screening tool, they develop and implement one.

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Sources

1   Aberdeen Group August 2010 Talent Acquisition Report.

2   SHRM September 7, 2011 Drug Testing Poll Results in collaboration with and commissioned by the Drug & Alcohol Testing Industry Association (DATIA)

3   Results from the 2010 National Survey on Drug Use and Health: Summary of National Findings

4   2012 First Advantage Commercial Driver Report

5   Homechannelnews.com October 19, 2011

6   Microsoft Study, "Online Reputation in a Connected World", January 2010, www.microsoft.com/security/resources/ research. aspx# reputation.

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Appendix A: Types of background checks and drug tests reviewed

Recommended screening solutions:

Background Component	Pros	Cons	Best For
Adjudication Matrix	• This process involves applying your hiring criteria against the results of the candidate's background and drug screen, and informing you whether the candidate meets your pre-established hiring criteria.	• Keeping the matrix up to date. • Ensuring the matrix complies with EEOC guidance.	• Identifying candidates that may need further action to clarify report findings.
Employment Eligibility Verification (EEV or I9)	• These systems efficiently and effectively automate the return of employee eligibility results via the Internet. • Can be used to electronically manage your Form I-9s across your organization. • Manages an electronic copy of the Form I-9 for compliance. • The system can also transmit employee data through the E-Verify Program. • In addition, an authorization status of the applicant's eligibility for hire is addressed.		• All U.S.-based employees
National Criminal File (NCRF)	• FCRA governed • Approximately 6,000 new electronic records added daily • A comprehensive search against proprietary database of criminal convictions and includes sex offender registries records (48 states plus Washington, DC.) • Checks only specific name given	• Should be used as a supplement to a standard criminal search	• Pre-employment • Current employee pre-screening • Promotion
National Criminal File PLUS (NCRF PLUS)	• FCRA governed • Approximately 6,000 new electronic records added daily • A comprehensive search against proprietary database of criminal convictions and includes sex offender registries records (48 states plus Washington, DC.) • Checks name given and all pseudonyms/nicknames	• Should be used as a supplement to a standard county search	• Pre-employment • Current employee pre-screening • Promotion

Background Component	Pros	Cons	Best For
Felony and Misdemeanor (F&M)	• Best coverage for felony and misdemeanor–searches multiple courts. • Search up to two court locations, no matter how distant it is from the primary court location, in order to obtain a comprehensive felony and separately-held misdemeanor search. • This in conjunction with the NCRF Plus is one of the most thorough searches available today.	• Court turnaround time and access fees vary by jurisdiction.	• Pre-employment • Promotion
County Seat Felony and Misdemeanor	• Less expensive than F&M search. • Good turnaround time. • Good misdemeanor coverage. • Search of the county seat locations. • Felony and misdemeanors will be searched as long as the misdemeanor court is at the same physical court location (Ex. Felonies–room 101, Misdemeanors- Room 202). • Over 80% of the time, this is the only search required to locate several misdemeanors.	• More costly than FIM and may impact turnaround time. • Not as complete as F&M • Delays can be expected at lower court locations where direct public access is not allowed, requiring court clerks to conduct the searches.	• Pre-employment • Promotion
Felony Including Misdemeanor (FIM)	• Less expensive than F&M. • Better turnaround time than F&M. • Search of the primary court index (Superior, Circuit, etc.). • All felonies with sufficient matching identifiers will be reported as well as misdemeanors that do not require additional court searches for complete information (Misdemeanors held within same database systems as felonies). • Over 60% of the time, this is the only search required in order to locate several misdemeanors. • The FIM search is one of the most efficient, cost-effective searches due to the single primary index search.	• May not capture all misdemeanors in certain courts.	• Pre-employment • Promotion
Felony Record Search (FRI)	• Less costly than FIM. • Search of the primary court index (Superior, Circuit, etc.) for minimum of past 7 years. • Only felony hits will be searched and reported.	• No misdemeanor information reported	• Pre-employment • Promotion

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Background Component	Pros	Cons	Best For
Statewide Searches	• Search of either the State or the Centralized State Police Repository or State Administrative Office of the Court and will research and report Felony and Misdemeanors found that had sufficient matching identifiers.	• Possible hits that often require additional search(es).	• Pre-employment • Promotion
Federal Felony and Misdemeanor (FFM)	• Search of the appropriate federal jurisdictional court based on residential address and includes both federal felony and misdemeanors found.	• Low criminal hit (record) percentages found in the federal courts. • Possible hits often require additional search(es) in order to obtain pertinent case data, particularly ID information.	• Pre-employment • Promotion
Social Security Verification (SSNV)	• Verifies 2 out of 3 for DOB, SSN, and name. • Returns all names associated with the above.	• Based on credit header info, not a name match from Social Security Administration.	• Data verification only--can not be used to make a hiring decision for the information returned.
Sex Offender Search	• Helps to inform employees and customers against violent sexual offenders in the workplace. • Helps protects children and at-risk individuals. • Gives property owners/Realtors a sense of security when renting property. • Demonstrates good due diligence. • Sex Offender Registries (48 states plus Washington, D.C.). • For some states the sex offender's photo is also available.	• Not all states are covered. • Not all states allow all levels of sex offender information to be shared (Ex: level 1 offenders aren't shared for some states). • Information shared with the public may differ state by state. • Not all sex offender information can be used in making a hiring decision (depends on the state).	• Pre-employment • Promotion
Financial Sanction Search (FSS)	• Search more than 200 databases, including the Federal Deposit Insurance Corporation (FDIC), Federal Trade Commission (FTC), Securities and Exchange Commission (SEC), and many more, for financial sanction information.		• Pre-employment • Current employee pre-screening • Promotion
Global Sanction Search (GSS)	• Multi-source search including U.S. and foreign databases. • Helps assist with compliance guidelines mandated by the Office of Foreign Asset Control (OFAC) and the USA PATRIOT Act.		• Pre-employment • Current employee pre-screening • Promotion
Healthcare Credentialing	• Speed up your credential process and get help confirming education, experience, licensure, and sanction information. • Enhances industry compliance. • Allows faster placement of medical professionals.		

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Background Component	Pros	Cons	Best For
Healthcare Credentialing	• Speed up your credential process and get help confirming education, experience, licensure, and sanction information. • Enhances industry compliance. • Allows faster placement of medical professionals.		• Pre-employment
Motor Vehicle Registration (MVR)	• Uncover new driving offenses that might put you at risk. • Batch processing capability allows easy uploading of lists of names to be searched. • Typical results: DL number, class and status, name, DOB, physical description, conviction dates, violations, accidents, docket numbers, court locations and accident report numbers. • User-friendly • Quick results, from instant to within 24 hours.	• Results vary state by state.	• Pre-employment • Yearly for drivers (DOT)
Employment Verifications	• Helps verify the employers for which the candidate has worked. • The number of employers verified is dependent on the customer's needs. • Items that can be verified: employer name, employer address, dates employed, position, full or part-time, temp or permanent, voluntary or involuntary termination, eligibility for rehire.	• Previous employers listed may not cooperate. • Applicant release may be needed. • May be difficult to contact if employer no longer in business.	• Pre-employment
Education Verifications	• Helps verify educational credentials including education degree and graduation dates. • Verifications include high-school, under-graduate and graduate degrees.	• Applicant release may be needed. • May be difficult to contact institutions due to holidays and summer vacations.	• Pre-employment
Urine Drug Testing	• Labs are certified. • Good turnaround time. • Gold standard • Customer service and tracking done by provider.	• Results not immediate. • Tampering can occur. • Rely on collection sites to accurately complete collection.	• Pre-employment • Promotion • Random • Post accident • Reasonable suspicion

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Background Component	Pros	Cons	Best For
Urine Rapid Response–Self Collect	• Immediate results on negative screens. • Less expensive than lab-based urine testing.	• Not legal in all states. • Tampering can occur. • Customer self-administration and tracking, or if service provider is tracking info, then customer must send it to a provider. • Test results are subject to interpretation (no quality control). • For non-negative results, must perform confirmation testing.	• Post accident • Reasonable suspicion
Urine Rapid Response - Clinic	• Immediate results.	• Not legal in all states. • Tampering can occur. • Customer tracking, or if service provider is tracking info, then customer or clinic must send it to a provider. • Test results are subject to interpretation (no quality control). • More expensive than lab-based urine.	• Pre-employment • Promotion • Random • Post accident • Reasonable suspicion
Oral Fluids (instant)–Self Collect	• Immediate results. • Cannot adulterate the specimen. • Less expensive than lab-based urine.	• Not legal in all states. • Marijuana detection window is short. • Customer self-administration and tracking, or if service provider is tracking info, then customer must send it to provider. • Test results are subject to interpretation (no quality control). • For non-negative results, must follow up with an alternate lab-based test.	• Post accident • Reasonable suspicion
Oral Fluids (instant) - Clinic	• Immediate results. • Cannot adulterate the specimen.	• Not legal in all states. • Marijuana detection window is short. • Customer tracking, or if service provider is tracking info, then customer or clinic must send it to provider. • Test results are subject to interpretation (no quality control). • More expensive than urine conventional. • For non-negative results, must follow up with an alternate lab-based test.	• Post accident • Reasonable suspicion

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Appendix B: Alternative drug test and occupational health options

Other compliance alternatives:

Background Component	Pros	Cons	Best For
Breath Alcohol Test–BAT	• Immediate results–at clinic • Defensible in court • Non-invasive • Governed by the ADA–helps with compliance	• Can only be done at third-party collection facilities • Price	• Random • Post accident • Reasonable suspicion
Breath Alcohol Test–BAT (rapid oral fluid)	• Immediate results—on premise • Less expensive than conventional	• Not permitted in all states • Customer self administration and tracking, or if service provider is tracking info, then customer or clinic must send it to a provider • For non-negative results, must follow up with a conventional BAT	• Random • Post accident • Reasonable suspicion
Oral Fluid (lab based)	• Self-collected by employer • Approximately same spend as lab-based urine • Non-invasive • Cannot adulterate the specimen • Can include alcohol	• Requires purchase of collection device • Not permitted in all states	• Pre-employment • Post accident • Reasonable Suspicion • Random
Driver Qualification File (DQF)	• Electronic file and monitoring service • Helps with DOT compliance • User friendly reporting		• Pre-screening drivers/DOT • Annual screening drivers/DOT
Fingerprinting	• Nationwide collection network • Flexible easy scheduling with National Scheduling Center or online scheduling • Print-based as opposed to demographic-based • Electronic print submission capability • Results usually delivered in three to five hours	• There will always be a percentage of individuals who cannot be printed; 5 percent or less. After two to three rejections, a name check will be ordered, which takes 4-6 weeks.	• Pre-employment for regulated industries including Banking, Finance, TSA and FINRA

Background Component	Pros	Cons	Best For
Physical Exams	• Billing consolidation • A Medical Review Officer can review the exam • Provides clients with a comprehensive review of their wellness programs • Helps with compliance	• Critical to have all details clearly documented • Must have applicant consent in some states, if medical exam is not a job requirement • Service providers may not be able to order the exam, due to not being licensed in every state • Incompetent performance of the DOT examination can result in liability • Applicant must consent that service provider can call the physician for any further review of questionable results	• Pre-screening drivers/DOT • Annual screening drivers/DOT
Immunization	• Billing consolidation • A Medical Review Officer can review the exam	• Critical to have all details clearly documented • Must have applicant consent in some states, if medical exam is not a job requirement • Service providers may not be able to order the exam, due to not being licensed in every state • Applicant must consent that service provider can call the physician for any further review of questionable results	• Pre-screening drivers/DOT • Annual screening drivers/DOT

Drug testing turnaround time (for lab-based testing)

Type	Result	Clock begins once provider receives info from lab	Hours to get results (Avg)
Drug Testing (non-DOT)	Negative	Lab results	24
Drug Testing (non-DOT)	Non-Negative	Lab results	72
Drug Testing (DOT)	Negative	Chain of Custody and Lab results	24
Drug Testing (non-DOT)	Non-Negative	Chain of Custody and Lab results	72

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