

The How's, Why's and Why Not's of Employment Background Screening

Part One: Compliance

Employers are a special breed of people that provide the means to house, clothe and feed their employees, whom in turn provide the labor and skills to complete the circle. It's the perfect symbiotic business relationship that fuels the greatest nation in the history of the world...

- Except for criminals that steal and destroy instead of contribute.
- Except for social tinkering that rewards objectionable behavior over respect.
- Except for those that would commit fraud over the truth.
- Except for a lack of personal responsibility over those that achieve.
- Except for over-reaching regulations from a government that has no clue where the revenue actually originates from.

Welcome to the Human Resources Department of the 21st Century. Now go hire some people to grow your business!

The format of this eBook is simple in that I'll take you through what comprises a legal and effective employment criminal background check. As a Credit Reporting Agency (CRA) everything that we touch at HireSafe is focused first on our fiduciary responsibility to our client, while always maintaining the rights of the job applicant.

This installment of *The How's, Why's and Why Not's of Employment Background Screening* specifically addresses compliance with federal hiring, which is not optional.

Hiring has never been so difficult to perform and yet the answers and tools to make informed choices are at our fingertips. Of course I'm referring to Pre-Employment Background Screening... the right tool to hire the right people. Using this toolkit, small employers have the same leverage as their large counterparts to screen and select the best people available. So what could possibly prevent an employer from effectively utilizing this valuable service?

Most likely the clutter and noise found in the marketplace seems intimidating. Like most modern shopping experiences, the Internet provides countless screening options. Just like any other profession that is as highly regulated as the screening industry is, there are intimidating laws and regulations that seem to change monthly. Then there's the list of news articles involving employers being hit with multi-million dollar judgments that could have been prevented.

Performing the proper level of due diligence during the hiring process will greatly assist in making an informed hiring decision which is crucial to the success of any business venture, small or large.

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It's enough for anybody to get cold feet. But wait, there's more as the unscrupulous providers selling non-compliant information. Exaggerated claims to provide unrealistic results or to perform employment checks that no-one will know about! And who's to know what is legal, what is correct, and what is compliant? If it's on the Internet then it must be true, right!

If you're still with me, you obviously care about sustaining and growing your business while doing the morally "right thing" for yourself, your employees and those that live in your community. The sole purpose of this eBook is to distinguish fact from fiction in the Employment Background Screening industry. So what makes this author an authority to speak as to truth or embellishment?

Let's begin with my introduction. My name is Alfred Firato and I am a licensed CA Private Investigator ([CA PI #25313](#)) who launched my screening firm, Data Research Network, Inc., in 1997. We operate under the trade name of HireSafe, which is exactly what we provide. At the time of our founding, the background screening industry was a rather insignificant aspect of the hiring process, often practiced by retired policemen with access to off-limits records. Unorganized, often illegal and at times morally wrong information was distributed with impunity. The most basic principle of HireSafe was to be different, legal and totally professional. The only hurdle was that there wasn't a template or cookbook on how to achieve that objective.

That's why I am qualified, after 19+ years of research and education through earned knowledge, to speak truthfully and candidly.

Focus Point: Using a Compliant Screening Partner

Compliant reporting begins with receiving compliant reports from your screening partner. As in every strata of business, there are those that are professional and know their field inside out, and then there's everybody else. The internet has given rise to amateurs in the background screening industry preying upon unsuspecting and trusting shoppers. There are few barriers to entry into this growing industry, however actually knowing and practicing within in a compliant and informative basis is altogether different.

Pre-employment background screening appears to be a simple endeavor, best typified as the fa precision Swiss watch. Simple and easy to read on its; face, while inside that casing is an extremely complicated process if the desired outcome is an accurate and compliant report. For a Human Resources professional, there can be no other objective.

This is where the separation of an experienced professional and a post office box-based operation begins. The flashy website doesn't mean a thing... it the procedures and accuracy that are important, first and foremost. Here are the key factors in selecting a supplier to perform any type of service on your behalf:

1. How long have they been in business? HireSafe was established in 1997
2. What is their history of service with the [Better Business Bureau](#)? HireSafe is rated A+.
3. Do they hold any professional licenses or training? HireSafe is a licensed [CA Private Investigative Agency](#) (PI #25313) and is FCRA Certified.
4. Do they belong to any professional trade associations? HireSafe was among the founding members of the National Association [of Professional Background Screeners](#) (NAPBS) in 2003.
5. Do they send their work to third-world countries for processing? All HireSafe research and reports are produced exclusively in the USA.
6. Do they have an office in a commercial building? HireSafe is located in a commercial office complex.

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7. Do they provide live telephone support? HireSafe is staffed by Americans and open M-F 8-6 PST.
8. Is their pricing viewable on their website? HireSafe maintains a transparent pricing policy on our website.
9. Do they impose minimum ordering requirements or monthly access fees? HireSafe maintains a “pay-as-you-go” policy with no minimums or monthly access fees.

These questions, and countless others such as attitude, will help sift the professionals from the amateurs.

So now you think that you're ready to place a background screening order? Not so fast... there's much more to consider if you want to do it correctly.

Focus Point: The Rules

The best place to begin is at the beginning, and is with the federal (and some state) regulations. These rules are clear and they are not optional! The Employment Background Screening industry is regulated by the [Fair Credit Reporting Act](#) (FCRA). Originally enacted in 1970 for the banking industry, it was revised in 1996 to include background screening for employment suitability, and it has been amended by the [Fair and Accurate Credit Transaction Act](#) (FACT Act) in 2003. The enforcement arm of the regulation is the [Consumer Finance Protection Bureau](#) (CFPB).

The word “credit” is sprinkled throughout the content because an employment background check is classified as a “Consumer Credit Report” not to be confused with the personal credit reports available from Experian, Transunion and Equifax.

It must be noted that regulation only applies when the report is produced by a [Credit Reporting Agency](#) (CRA) such as HireSafe. An employer is not regulated if they create their own report without the assistance of a professional provider.

So here we go with the first red flag: if an employer performs the background check in-house they are 100% responsible for errors in their reporting process. Additionally there are very few, if any, employers with a dedicated and fully knowledgeable staff to perform background checks. While criminal records are in the public domain, obtaining them quickly and cost-effectively is an altogether different story. Some things in life are best left to the professionals... think plumbing and electrical work.

Focus Point: “Ban the Box”

A growing number of individual cities and states have implemented a restriction about inquiring about an applicant's criminal history on the employment application. This is commonly called the “Ban the Box” movement, which takes its lead from the [Equal Employment Opportunity Commission](#) (EEOC) guidelines. The stated intent is to protect minority males that have committed crimes from being rejected without an opportunity to prove their potential to be hired.

It's important to note that the “Ban the Box” movement does not prevent a criminal background check from being performed; it postpones that function after the first interview has taken place.

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Focus Point: Consistency

At HireSafe, we narrow the selections by having multiple suites of background checks general aligned with various positions. For instance, the Envision Suite is aimed at entry to middle levels of employment. The three different options coincide with the vast multitude of positions to be filled. The Echelon Suite is focused on middle to executive managers. The Encompass Suite is position/industry specific: janitorial; non-emergency transport; retail; medical staffing; etc.

The packages within each suite can be further customized to fit any specific need that an employer may have. By working with pre-set packages you can repeatedly perform the same level of screening on a particular position or category. That's critical because arbitrarily selecting searches can lead to allegations of discrimination.

Focus Point: The Steps

Step 1: The provisions of the FCRA require:

- An employer must first demonstrate that they have a permissible purpose in order to request a background report on an applicant every time a request is made.
- Not use the information for any purpose beyond employment/tenant suitability purposes.
- Provide the necessary disclosures to the applicant (see Step 2)
- Follow the Adverse Action steps if employment is denied with the appropriate notices (see Step 5)

Step 2: Written Authorization

Before obtaining a Consumer Credit Report from a CRA, the employer must obtain the applicant's written consent and also provide that applicant with a clear and conspicuous written disclosure that a background report may be requested.

The disclosure and authorization **MUST** be provided in a separate, stand-alone document in order to prevent it from being buried in the employment application and be lost to distraction. It is the sole responsibility of the employer to obtain and distribute the disclosure forms. HireSafe offer both the traditional paper-based format and an electronic "paperless" process.

Step 4: Candidate Evaluation

Our individual lives are a walking mosaic towards the maturing process. During that journey often mistakes are made and hopefully they are not deal-breaker in the eyes of societal laws. To this very core concept the EEOC has issued a set of guidelines for an employer to follow while evaluating employment suitability based upon, in total or in part, on a criminal history.

- A. How long ago did the criminal event take place?
- B. Has there been repeat behavior?
- C. Does the crime that was committed prevent the applicant from performing the duties required of the position?
- D. Does the demonstrated behavior represent an untenable liability risk?

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Step 5: Adverse Action

If adverse information is found, the applicant has certain federal rights under the FCRA which **are NOT OPTIONAL**. This process is known as the Adverse Action Steps, consisting of two separate letters. These letters require a proof of delivery to support any legal compliance challenge placed on the employer. The two letters are:

A. Pre-Adverse Action

This first letter is sent to an applicant in the event that information in their report might contribute to the denial of employment. The letter must contain a copy of the report as well as a copy of their Federal Rights under the FCRA. Once delivery has been acknowledged, the applicant has a minimum of five (5) business days in which they may challenge the accuracy of the information presented to the employer. At that time the CRA will re-investigate the record to verify it's; accuracy. Upon completion of this step, either the original report will stand or an adjustment will be made. During the challenge period the position must be kept open pending any revised results. If the applicant does not challenge within the allowed five days, or if the original findings stand, then an employer can only then make their decision not to hire.

B. Final Adverse Action

Once the decision not to hire has been made, the final Adverse Action letter must be sent to the applicant, informing them of the denial of employment or the withdrawal of the employment offer. Only after this second letter is sent can the file be closed in compliance.

In the HireSafe platform, the Adverse Action letters are produced and dispatched electronically to the applicant. There is no need to send letters by postal mail with expensive proof of delivery.

Focus Point: State Laws and Regulations

Criminal Records

A number of states have their own rules for regulating background checks performed by CRA's. While the FCRA allows criminal records to be reported indefinitely, a few states limit that window to seven (7) years, most notably California. In New York, Kansas, Maryland, Massachusetts, Texas, New Hampshire and Washington waive the seven year limit if the applicant is expected to earn a specific threshold income. Reporting criminal records beyond the industry best-practice of seven years could be viewed as beyond a reasonable window under the EEOC guidelines.

The obvious quest resulting from the seven year reporting rule is "when does the seven years begin to run?" The general rule is that the seven years begin to run from the date the subject is free of physical custody, regardless of whether the person was on parole or probation. In other words, the seven years begins when the subject is no longer under the control of the court.

Employment Credit Reports

There is an increasing movement across the nation to limit the use of personal credit histories in the evaluation for employment. Here we return to the basic concept of having a permissible purpose, and clearly many positions do not. Denying employment to a person where their personal credit standing has no bearing whatsoever on their ability to perform their job is both legally and morally wrong.

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Generally, personal credit reports are allowed in those states that impose regulation to require any of the following conditions to be met:

- A. Does the position routinely require the handling of cash in excess of \$10K?
- B. Does the position have access to confidential personal information regards customers, employees and businesses?
- C. Is the position managerial with signature authority?

SUMMARY

Hiring laws are complicated, and compliance is not optional. Performing the proper due diligence in the hiring process begins with a professional vendor that understands the myriad collection of employment regulations. It continues with being provided as part of their service the necessary forms to support the rights of the applicant. Throughout this procedure the screening partner must be conveniently available to answer the inevitable questions regarding the reports in understandable terms.

Compliance begins, and ends, with compliance.



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