



HR Resources | Best Practices Series

SAFE HIRING PRACTICES IN AN UNSAFE WORLD



- *As an employer, can I conduct my own background checks for prospective employees?*
- *What is a “National Criminal History Database”, and is it a complete search tool?*
- *What are the “Best Practices” for conducting pre-employment screening?*

Performing Background Checks In-House

An employer can elect to conduct their background checks themselves; however, the amount of time it would take for one manager to familiarize themselves with the complex maze of legislation covering this topic would be prohibitive. In addition, adherence to the federal Fair Credit Reporting Act (FCRA) and Equal Employment Opportunity Commission (EEOC) guidelines alone could fill one full time position, depending on the volume of background checks performed.

Is Your HR Manager Informed Regarding the Following Legal Issues?

Arrest records, records that extend beyond reporting period scope, sealed or special disposition cases, and deferred adjudications may not be considered when screening applicants in most cases.

- Certain states require that an applicant be given a copy of their background check, even if they do not ask for one.
- If a decision is made against hiring an applicant based upon their background check results, they must be notified of such, and given time to respond before an employer takes any adverse action.
- Certain states limit the scope of background checks to 7 years for most positions

- The EEOC recommends that before an criminal convictions considered as a barrier to employment, an individualized assessment should be given which includes consideration of recidivism rates for that particular crime, time since the offense, and relatedness to the job position.

Additionally, if you are a national employer, maintaining compliance in a multi-state environment may prove to be nearly impossible. That is why many employers elect to use a Consumer Reporting Agency (CRA), or pre- employment screening provider.

The Fallacy of the “National Criminal Records Search”

Many online sites offer an inexpensive “national criminal records search”, which purports by its title to be national in scope. In reality, the only “national” criminal record search is maintained by the FBI and is not available for public or private researchers. Recent reports from the National Employment Law Project state that even that database is full of errors and inconsistencies. There is no central repository for federal, state and local criminal records that is available to employers.

Not all States and Counties Report

The shortcomings of these databases are many. There are more than 3600 counties, 10,000 federal, state and local courts, and 50 state repositories around the United States. Only some states and counties submit their criminal record information to any type of statewide or “national” database.

Impermissible Records May Be Reported

Criminal records submitted into these databases are not screened for pre-employment use. Therefore, arrest information not resulting in convictions, records that extend beyond reporting period scope, sealed or special disposition cases, deferred adjudications, and many other record types that may not be permissible for use for pre-employment screening purposes may be included in the database. The FCRA and various states have legislation in place which limits what type of records may be used for pre-employment screening purposes.

Database Records Can Provide Misleading Misdemeanor Coverage

Many database resellers imply that both felony and misdemeanor crimes are reported in their database searches. In fact, in most cases, the only misdemeanor crimes that are reported in a “national database check” are those that have been reduced from a felony. **Over 70% of all crimes committed are at the misdemeanor level** and these include crimes that are critical to a safe hiring decision, such as domestic violence, theft, assault, driving under the Influence, and gun crimes. The only way to search for these records is at county and city level.

In summary, a national criminal record database search provides a wide, yet incomplete net. When using such a resource, results provided must be screened by someone who is knowledgeable in the various intricacies of FCRA compliance and other multiple state and federal legislation.

Best Practices for Pre-employment Criminal Records Searches

In evaluating any pre-employment service provider, find one that offers the “industry standard” for criminal records checks: a multiple jurisdiction felony and misdemeanor criminal record search, combined with a social security number trace.

The SSN trace helps identify potential jurisdictions in which the applicant may have lived, providing a residential history of the applicant for a period of approximately seven years.

The criminal background check should encompass a criminal history search at the county and city level, for each area of residence, which is designed to reveal felony and misdemeanor convictions.

A pre-employment screening provider should make it clear whether or not they release all criminal history information, leaving it to the employer to familiarize themselves with federal FCRA, state and local employment laws, or if they provide prescreened, FCRA and state compliant information. If your company does not have a certified, Human Resource professional on staff, who is familiar with employment screening compliance issues, it would be best to employ a screening provider who is familiar with all legislation, a member of a professional screening association such as NAPBS (National Association of Professional Background Screeners), and a member of ASIS International.

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