



BACKGROUND SCREENING FAQS:

Information you need to know before engaging a vendor.

“Background check.” It seems like a pretty simple term, with no hidden meanings or nuances, no complications. It seems to be simply the process of looking at someone’s past to decide whether he is a good candidate for a position. However, this term is much more than that. This term brings up some occasionally complex questions: What are background checks? Do I need to run them? How are they done? These are important questions that are asked often and none of them can be properly answered in a single phrase. We have compiled a list of questions, and more importantly their answers, to help you understand how complex and important these “simple” background screenings are.

- **What is a background check?**
- **Why should I run background screenings?**
- **What are the different types of background screenings?**
- **What is the standard background check package? Is this package appropriate for all applicants in all industries?**
- **How do I order and receive a background check?**
- **What does the applicant have to do?**
- **What is the FCRA?**
- **How long do screenings typically take and how are they done?**
- **How far into the past do screenings go?**
- **How often should background checks be run?**
- **How much control do I have over the grading process?**
- **What happens if I choose to decline an employment applicant based on the background check?**

What is a background check?

When most people think of a background check, also known as a background screening, they think of a simple criminal history check. In reality, a background screening is much more than that. In layman's terms (for hiring purposes) a background check screens an individual on a number of levels to assess whether the individual can do the job required of them and are unlikely to do harm to anyone or anything. For other purposes, such as insurance, the check assesses whether the individual is a good candidate to be insured.

A background screening helps your company stay safe through the criminal history check. It helps assure that applicants can do what they claim they can through employment and education verification. It checks that applicants are who they claim to be and aren't wanted internationally. Background screenings, background checks, pre-employment screenings: Call them what you will, they help protect your company, your employees, and your clients through a number of processes and services.

Why should I run background screenings?

There are a few reasons to perform background screenings on your potential employees. First and foremost, the law requires some industries to run these checks. More importantly, you as an employer have a responsibility to your employees, your customers and your business.

A number of industries, especially those that require the handling of other people's personal and private information, require background screenings. These include the home healthcare, financial and education industries among others.

For those industries that do not require background screenings, there are still crucial reasons to run them. Protection of your employees is imperative in any business. A 2005 survey found that 2.3% of all businesses experience some form of co-worker violence, ranging from .6% to 8.1% for businesses with up to 250 employees and up to 34.1% for businesses with 1000+ total employees.ⁱ In addition, a 2006 survey discovered that 13% of all workplace fatalities were caused by assaults and violent acts.ⁱⁱ This includes homicides which accounted for 9% of all workplace fatalities.

Another very important factor is protection of your customers. In an article appearing on bnet, the Journal of Business and Entrepreneurship, the author cited a case in which an unnamed company hired Jesse Rogers as a home healthcare aide without running a background check.ⁱⁱⁱ Rogers, who had a number of larceny convictions, killed the 32-

year-old quadriplegic and 77-year-old woman he was supposed to be caring for in an attempt to cover up additional thefts.

Claiming that the failure to run a background check was negligence in hiring, the parents of the 32-year-old successfully sued the company for \$26.5 million in early 1999.

Even aside from lawsuits, failure to complete background screenings can cost the company. According to a 2007 survey about retail security, 44% of all shrinkage is due to employees. This translates to about \$15.2 billion. Moreover, the same study found that the average employee theft was over \$1,440 whereas the average shoplifting incident was less than \$345.^{iv} In addition, a non-industry specific study released in late 2008 found that 24% of respondents saw a rise in employee theft following the economic downturn.^v

Monetary repercussions can come through more circuitous routes as well. According to the book Freakonomics, an estimated 50% of the population lie on their resumes.^{vi} In addition, according to available data, about 50% of all references checked in 2004 contained inaccurate information.^{vii} These cause monetary loss when your new employees cannot perform the services they claimed they could, or when the news breaks that your CEO never actually graduated college. The negative media attention (which could come as a result of this or even as a result of a lawsuit) hurts your company as well.

All of these facts point to a distinct need for background screenings. While we all wish we could trust in the basic goodness of humankind, background checks are the only way to protect the many facets of your business that need to be protected.

What are the different types of background screenings?

There are a lot to choose from. Each has its own purpose and, while some overlap a bit, keep in mind that no two services are identical.

■ CRIMINAL HISTORY

The most well-known and well used background screening, there are three main types of criminal history reports: county, state and federal. Each option is useful. County criminal history searches are most likely to yield felony or misdemeanor convictions and are carried out based on previous workplace and home addresses. State criminal history searches yield information for all counties in a state that report to a state police department, meaning it can turn up convictions in counties where the applicant has neither lived nor worked. However, this does not preclude the use of county criminal history searches because there are some cases where

convictions have been reported at the county level but have not yet been reported to the state. Federal criminal history searches include only federally prosecuted crimes and therefore, once again, do not preclude the use of county and state criminal history searches. However, these crimes are often the most serious of offenses, including bank robbery and embezzlement.

■ **NATIONAL CRIMINAL DATABASE RECORDS**

In conjunction with the criminal history searches of public records, some background screening companies use broad criminal databases to find crimes that were committed in a state or county where no public search is conducted because the applicant did not work or live there. This can include sex-offender registries and terrorist watchlists among other sources. A manual search may be needed to confirm information identified in the database.

■ **VERIFICATIONS AND REFERENCES**

There are multiple types of verification and references services. The primary kinds are employment verification, education verification, and personal reference verification. Background screening companies verify employment by interviewing past employers for such basic information as dates of employment and job position. Depending on the background screening company, this interview can be more comprehensive. Education verification confirms dates of attendance at the school and degrees obtained, among other things. This service can also check for “diploma mills” that sell diplomas with no schoolwork necessary. Personal reference verification is geared towards obtaining a subjective look at the applicant. This interview will address issues such as work ethic, dependability and integrity.

Some background screening companies offer other verification services as well. These can include military verification and professional license or certification verification. Military verification confirms the branch and dates of service of the applicant. Professional license and certification verification confirms licenses and credentials for jobs that require them such as nurses or lawyers. This confirmation includes expiration dates, any honors conferred with the license, and any disciplinary action taken with the holder of the license.

■ **SOCIAL SECURITY NUMBER VERIFICATION/TRACE**

The main goal of this service is to detect fraud in the identity of the applicant. SSN verification simply makes sure that the SSN was issued, when and where it was issued, and that it is not on the death registry. The trace finds names and addresses associated with that SSN, which is helpful in the criminal history search service.

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CREDIT REPORTS

The credit report provides a variety of information related to credit history. This includes information such as bankruptcies, tax liens, accounts in collections and more. The credit check also serves to verify the social security number and other services associated with the SSN trace. This service can help the employer determine the responsibility level of the applicant.

■ **MOTOR VEHICLE RECORDS**

There are two types of motor vehicle records checks. The first is the Commercial Drivers License (CDL) check, and the second is the non-CDL check. There are some common factors to both of these reports. These include the name, state, expiration date, restrictions and any violation information. The CDL check includes factors such as clearances, issuances and CDL class. The non-CDL check includes factors such as the license status and general demographics. This can be an important check even for companies that do not utilize drivers because in some states convictions for DUI or DWI can only be found through the MVR check.

■ **DRUG TESTING**

Some background screening companies offer drug testing at a number of times: before the hiring of an applicant, randomly throughout the year and post-accident or "Reasonable Cause." There are a number of options for these drug tests, including on-site, lab-based or instant testing. They also offer a number of ways to test the applicant including urine, hair, saliva or breath alcohol. They also generally offer medical review officer services with this service.

■ **SEX-OFFENDER REGISTRIES**

Though sex-offender registries can be part of a national criminal database, they are also generally available on their own. These checks can search state records. Information returned can include identifiers, charges, conviction details and more.

■ **FINGERPRINTING**

While this service is not available to everyone due to federal and state regulations, it is very valuable where it is available. Once the fingerprint is submitted to the background screening company, they in turn submit it to the FBI. From there, the background screening company will review any rap sheets that come up.

■ **INTERNATIONAL SCREENING**

This service is a conglomeration of many of the other services offered. The only difference is that international screening takes it to the global level. Depending on the company and the country being searched, services offered range from criminal history to motor vehicle checks.

- **VENDOR SCREENING**

This service exists for companies who contract work to other companies or have a number of franchises. It verifies that everyone who works under the company's name runs the same type of background check program. Vendor screening is really a package of other services.

- **ADVERSE ACTION**

Adverse action services are used only when an applicant fails to meet the company standards. The background screening company will issue the appropriate documents to the applicant in order to make sure that the company complies with Fair Credit Reporting Act (FCRA) standards.

- **BANKRUPTCY REPORTS**

Bankruptcy reports provide information associated with any bankruptcy case associated with the applicant and a specific U.S. District Court. This can include the type of bankruptcy filed and the date it was filed, among other things.

- **CIVIL RECORD CHECK**

This service uncovers whether or not applicants have filed any civil suits or judgments or has had any filed against them. While available at both county and federal level, the type of information found at the different levels varies. If a company offers the county civil record check, the search can show divorce, domestic disputes and a number of other items. These same companies generally also offer the federal civil record check, which can show things such as claims for violations of civil rights.

- **MISCELLANEOUS INDUSTRY SPECIFIC CHECKS**

There are a number of background screening services that only need to be performed on people working in specific jobs. For instance, a Drug Enforcement Administration check is used to verify that a healthcare provider has undergone no drug-related disciplinary action. There are a number of checks in this vein, and they are sometimes included in the national criminal database check.

What is the standard background check package? Is this package appropriate for all applicants in all industries?

There is no single standard background check package because no single package is appropriate for everyone. In reality, the "standard" should depend on what position you are hiring for and what industry you are in. Any executive position should be subject to more stringent testing than a basic minimum-wage employee. Similarly, any

regulated industry or any industry that has access to personal information should run more stringent tests on their employees than, for example, the food service industry.

While there is no industry standard, each company should set its own standard by implementing a hiring/screening policy if for no other reason than to protect itself. If your company were to run a battery of checks on an applicant for one position, you should run the same checks for every other applicant for that position or risk a claim of discrimination. The best way to avoid a messy situation is to have internal standards that will stand up under close scrutiny.

What is the FCRA?

The Fair Credit Reporting Act, better known as the FCRA, was first enacted in 1971 “to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy.”^{viii} In essence, the FCRA exists to protect the consumer by putting limits on what can be reported by third-party consumer reporting agencies.

However, even though it is named the Fair *Credit* Reporting Act, the FCRA applies to all consumer reports. These reports can include the consumer’s credit standing but can also extend to character, reputation, mode of living and similar information that can be used to determine a person’s eligibility for credit, insurance, or a job.^{viii} By these standards, background screening companies are absolutely consumer report agencies and are therefore included in this act.

Within the FCRA there are a number of exceptions and rules to what can and cannot be looked for or shared. For instance, bankruptcy cases can be no older than 10 years and all other adverse information, with the sole exception of criminal convictions, can be no older than seven years. In addition, no medical information can be shared unless the report is being used for insurance purposes. However, in the case of companies running background screenings on potential employees, the rules about what information cannot be reported do not apply if the employee would be making at least \$75,000.^{viii}

In addition to protecting the consumer once the check is underway, the FCRA also requires the employer to disclose some information and obtain the consumer’s permission before the check can legally begin.^{viii} These forms do not require a lot of effort and simply serve to inform the applicant that a check will be done and that the applicant’s rights are.

What does the applicant have to do?

The background screening process is relatively simple for the applicant. First and foremost, you must give the applicant a disclosure form that informs him that a background screening will be performed. After that, the applicant must sign an authorization form that permits the background check.^{viii} The disclosure can only either be on a standalone form or combined with the authorization form. The primary purpose these forms serve is to keep your company legal and in compliance with the FCRA, as explained in detail in the question “What is the FCRA?” These forms also give the background screening company permission to do the check and may serve as verification to a former employer or school that they are allowed to give information.

It is possible that the applicant will have to perform other functions, but those are dependent upon what type of service is requested. For instance, any drug test will require some sort of effort from the applicant. Other than the exceptions for specific services, once the authorization form is signed, the applicant does not need to do anything else.

The applicant should, however, be aware of his or her rights. The applicant has the right to request that the company running the screening send him or her a copy of the report. Any fees associated with this will vary by state, but as of July 2008 will not cost over \$10.50. In addition, if any applicant feels that the information is inaccurate and they are passed over for the job because of the inaccurate information, the applicant has the right to require the background screening company to reinvestigate and, if needed, correct the background screening report.

How do I order and receive a background screening?

Before a background screening can be ordered a few things need to be done. First, the applicant has to both receive a disclosure form and sign an authorization form as required by the FCRA. This process is explained in detail in the question “What does the applicant have to do?” The FCRA is explained in detail in the question “What is the FCRA?”

Once the necessary forms have been completed, there can be a number of submission options, all depending on the company. In general, most companies prefer internet-based submission options and therefore most screening companies provide this option. Some do have other submission options, such as the ability to accept faxed in orders in for manual entry or phone-based ordering. How you receive your background screening will most likely match up with your submission method, though this can vary based on

your preference. Each possible screening provider that you look in to should be able to give you full, detailed information about their options on request.

How long do screenings typically take and how are they done?

As with anything, how long the screenings take depends on which specific service you choose and how that service is done. Many services simply require the company to enter the relevant information into a database, yielding instant results. However, most services take longer due to the need for a physical records search. A few services require a combination of database and physical searches and some take a more unique approach.

Instant, database-driven searches include credit history, name/address history, national security lists, sex offender registry and SSN verification/trace searches, while physical field agent searches include county, state and federal criminal history. A few of the remaining services use a combination of database and physical searches. Most national criminal databases use a database first, only doing physical searches to verify a hit. Some services require phone interviews. Those include education and employment verification as well as reference checks.

How long each of these services takes also depends on a few other factors. Which company you choose absolutely affects how long a service takes. For instance, some companies say they can get a service done in 5 days while others advertise 8 weeks. Another factor to consider is where you are requesting the information from. Records from the Department of Motor Vehicles or the Motor Vehicle Commission can be accessed instantly in many states, but can take three days in others. The most important contributing factor (aside from how the information is gathered) is the difference between hits and clears. Many companies, when running a national criminal database check, for instance, will know instantly if there is no record. However, if the database returns a hit, the accuracy of the information may need to be verified before it can be passed on.

How far into the past do screenings go?

The real question is “How far into the past *can* screenings go?” and that answer is a little convoluted. In essence, the FCRA, state laws similar to the FCRA and which service you choose dictate how far into the past the screening can go. According to the most recent version of the FCRA, information about having filed for bankruptcy has a limitation of 10 years and all other adverse information, with one notable exception, has a limitation of

seven years. Criminal convictions are the only source of information which has no federal limitation.^{viii}

That being said, just because the federal government has no limitation regarding criminal convictions, that does not mean that the states also do not have a limitation. Many states have enacted a more restrictive version of the FCRA that sets their criminal conviction limitation at seven years unless, for example, as in California, another law requires employers to look deeper into your background.^{ix} Even though not all of the states have laws prohibiting a criminal conviction search past seven years, background screening companies use seven years as the standard in order to remain legal across the board. Most background screening companies, however, would be willing to check past the seven years if specifically asked and if they are legally able to.

How often should background screenings be run?

The best option is to run a full background screening on your employees at point of hire and then a criminal history check once a year after that. This is because without the annual criminal history check, you have no way of knowing about a charge unless the employee volunteers the information. The annual rerun functions on the very valid idea that some people commit crimes after they have been working for a company for some time.

For example, take the case of a company that works primarily with children. The company had two factors that contributed to a problem: First, they only performed background screenings on their employees when the employees were being hired. Second, they had an extremely good retention rate, meaning that some of the employees had not been checked for years. In March of 2008, background screening company General Information Services, Inc. (GIS) offered the company a free batch rerun in conjunction with a new product. When GIS did the rerun, they found a variety of sex offenders, including a child molester and a number of employees with prostitution charges. This could be your company and your employees.

How much control do I have over the grading process?

The grading process applies a chart that turns the information found in the background check into a decision (for example, whether or not to hire an applicant). The grading system is set as either pass/fail or pass/review/fail. However, you should have the option to dictate what constitutes a pass and what constitutes a fail, setting a lower (or higher) threshold for particular category of applicants that you choose. For instance, you may choose to run a package for all applicants that includes a criminal history check and you

feel that a misdemeanor offense is negligible for your lowest level employee but is a large problem for someone in an executive position. In this case, as long as you inform the screening company, they can then set a different standard based on the proposed level of employment for an applicant. No matter what, in order to avoid a lawsuit, make sure that your threshold is the same for everyone applying for a given position.

What happens if I choose to decline an employment applicant based on the background screening?

If you ever decide to decline an employment applicant based on what was found in the background screening, you need to take a few steps as soon as possible.

- 1. Before making the decision based on the report, provide the applicant with a copy of the report and a statement of consumers rights (known as the Pre-Adverse Action letter)**
- 2. If the applicant chooses not to contest the report, send a second notice to the applicant notifying him or her of the decision and his/her rights (known as the Adverse Action letter)**

Background screening companies should have sample Pre-Adverse and Adverse Action letters available for you to send out. In addition, each company should have some sort of a dispute process, which you should be aware of and know your part in.

Sources:

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