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PreemploymentDirectory.com is the largest and most comprehensive web based directory of firms in the background screening industry. It is designed specifically to make it easy for businesses to quickly find a company to meet their needs.

The Directory is an important resource for Human Resources and Hiring Managers interested in learning information about background screening. Our Background Screening Knowledge Center is one of the most extensive sources for getting a wide array of information on background screening.

The Directory is also a valuable tool for employers seeking a background screening provider. It contains the largest listing of background screening firms around the world, online or in print.

The Directory consists of several sections to guide organizations quickly to a company that will meet their needs:

- The U. S. Domestic Section includes background screening firms (CRAs) that are listed by their location, State by State.
- The International Section includes firms that conduct background screening in countries outside of the U.S. and internationally. These firms are listed by country.

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#### Website:

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#### Publications:

- *The Background Buzz* (the leading online newsletter for the professional background screeners. The news source that professional background screeners depend on)
- *The Global Background Screener* (the international news source for professional background screeners.)
- Annual Background Screening Industry Resource Guide
- Annual Suppliers to the Background Screening Industry Buyers Guide





# Best Practices for Selecting the Right Background Screening Provider for Your Company

**M**y favorite article title for 2014 was “the FCRA is the new FLSA.” This title appropriately calls out the heightened attention the Fair Credit Reporting Act (FCRA) received during 2014. In our research we identified at least 20 class action cases that were filed including at one stretch from June to July where a dozen FCRA class action lawsuits were filed. To say the “train has left the station” on FCRA lawsuits is an understatement because it seems more like an avalanche.

As a result of the rapid increase in FCRA class action lawsuits, frequent announcements of multi-million dollar settlements, the EEOC’s continued focus on employers’ use of criminal records potentially having disparate impact and the continued passing of ‘Ban the Box’ laws across the nation, background screening is definitely on the radar of many employers.

In our first ‘Guide to Selecting a Background Screening Company’ published in 2009; we suggested that ‘employers needed to treat the selection of a background screening provider with the same level of diligence that is generally applied to selecting an Accounting firm or other core business partners. Unfortunately, due to the current legal and political environment this recommendation is now coming home to roost.

With more than 90% of firms conducting some form of background checks, it’s a process that impacts the vast majority of employers.

Getting the hiring process right can mean lots of success for the organization. Getting it wrong means dealing with a myriad of negative impacts and costs related to making a bad hire.

How costly is a bad hire? A recent CareerBuilder survey reported that 42% of companies reported a bad hire cost them at least \$25,000.00 in the past year, and 25% reported a loss of at least \$50,000.00. Add to this that 46% of new hires leave their employer after 18 months of employment, hiring the wrong person can add unnecessary and burdensome cost to running your business. Some estimates suggest that replacement for a new hire can run between two to seven times the person’s salary while others suggest that 25-2005 of annual compensation is the cost. Compounding the impact of a bad hire are the negative effects on productivity, team morale, customer service and even sales.

When done well, a background check can be a powerful first line of defense against making a bad hire and add value to the selection process by aiding in the verification of prerequisite competencies, experience and education.

Done poorly, background screening can contribute to turmoil which can negatively impact your organization including leading to legal, reputational and financial problems.

Needless to say, all background screening firms are not created equal. The right partner can help you build an effective employment screening program that reduces negligent hiring risks, builds a safer and more productive workforce and supports the strategic talent management goals of your organization.

The purpose of this article is to increase your knowledge about the criteria that you should use to select a background screening firm that will help you pick the right talent and avoid making bad hiring decisions.

“Just one bad hire can set off a legal and financial firestorm if the person is dangerous, unfit, unqualified or dishonest and a background check would have raised a red flag.” Les Rosen

It is also important to note that the landscape for background screening continues to evolve which means the importance of selecting a forwarding thinking and agile background screening partner is becoming more important. Several years after the issuance of the new ‘EEOC Guidance on Use of Arrest and Criminal Convictions Records in Hiring’ a shift in paradigm is occurring about the use of blanket policies that rigidly disqualify individuals’ with criminal records. The pendulum is swinging towards practices that more precisely tie to job requirements and individual qualifications. This movement is being aided by the rapid

onslaught of ‘ban the box’ laws and the political movement to reduce the barriers to previously convicted persons gaining meaningful employment.

Closely associated with the issue of use of criminal records in the hiring process is the ‘ban the box’ movement which is sweeping across the ‘U.S.’ At the end of 2014, more than 80 Cities and Counties (up from 56 in 2013) and more than 15 states( up from 10) have embraced a ‘ban the box’ policy.

The Global Retail Theft Barometer reported that 43% of shrinkage in the U.S. is due to employee theft.

Our focus is to help organizations select providers that have the appropriate processes, practices and procedures in place to ensure that the accuracy of information provided is as high as possible.

In general, this means service providers that are:

- Complying with applicable governing laws at the federal, state and local level;
- Using business practices based on industry standards (many of these are depicted in the accreditation standards established by the National Association of Professional Background Screeners (NAPBS®); and
- Demonstrating excellence in protecting consumer personal data based on industry ‘best practices.’

The following are the best practices that we have identified will help you to select a top notch background screening firm to help you meet your hiring needs.

#### **I. Scrutinize the Firm’s Demonstrated Service Capabilities:**

1. Does the vendor provide ‘Full Service’ background screening services that will meet your business and hiring needs and include the following?
  - Identity verification, social security trace, fingerprint, etc.;
  - Federal, state, county and multi-jurisdictions (national) criminal and civil background checks, including misdemeanors, warrants and felonies, when permitted. (Currently no one database exists that stores complete up-to-date records for all federal, county, state and local criminal records including the FBI’s Interstate Identification System);
  - Education, professional license and credential verifications;
  - Motor vehicle records;



- Employment verifications and reference checks;
  - Sexual offender searches;
  - Terrorist watch lists;
  - Credit history, within legal guidelines;
  - Electronic form I-9 services; and
  - Federal and state litigation history.
2. Does the vendor have the capability to collect information directly from courthouses in jurisdictions appropriate to meet your needs?
  3. Can the vendor meet your required turnaround time for each type of background check you require? What is their average turnaround time? How is turnaround time measured?
  4. Does the vendor use a variety of methods for meeting your request and reporting needs, including Internet based tools with 24/7 access from a computer and any mobile device at anytime from anywhere as well as fax, e-mail, interactive voice response, and a secure electronic file transfer?
  5. When providing an educational verification, does the vendor verify the legitimacy of the institution as a degree granting entity, that the institution is accredited by a legitimate accreditation organization and for foreign institutions provide equivalency information to U.S. institutions?
  6. Verify that the vendor is certified in states that require background screening firms to be certified or require a private investigator license.
  7. Does the vendor have a clearly demonstrated process in place to fully explain limitations of national or multi-jurisdictional databases to clients and have a written procedure in place for how criminal hits received from such sources will be re-verified?
  8. Does the vendor maintain records regarding how often their databases are updated and make this information available to clients upon request?
  9. Will the vendor assist you in developing an effective Background Screening Policy, if needed, or if one already exists, will they review your policy and make recommendations for improvements?
  10. Does the provider give you projected hit rates (what you can expect) based on your industry, nature of the jobs you recruit for and geographic scope of your recruiting for the following categories:
    - Criminal background;
    - Dispute rate (discrepancy with reported information); and
    - Resume verification discrepancy rate.
  11. Ask the provider to describe how their company responds to candidate disputes and their problem escalation process. Also ask what percentage of the applicants they screen file a formal dispute claim?
  12. Ask the provider about the steps that they take to ensure accuracy of the information they report.
  13. Ask if the same record is reported from multiple sources, how many times it is noted on the report.

**“The FCRA requires background screening firms to provide the maximum possible accuracy in information so make sure you evaluate how a provider goes about ensuring they are meeting this requirement.”**

## II. Legal Compliance

1. Require the vendor to certify their compliance with all applicable federal, state and local discrimination, consumer reporting, privacy protection, data destruction and other governing laws.
2. Verify that the vendor has written procedures in place to ensure that all information sent to the client will comply with the law, e.g., arrest records, sealed or expunged records, etc. In addition, does the vendor provide all necessary FCRA forms, procedures and training in how to appropriately use, as needed?



3. Does the vendor have an established process in place to monitor and ensure that all 'data furnishers' as defined by FCRA/FACTA, that supply them information about individuals have instituted reasonable policies and procedures that (a) ensure the accuracy and integrity of furnished information and (b) allow individuals to formally dispute the accuracy of certain information that has been provided about them?
4. Does the vendor certify that their employees and sub-contractors who have access to personally identifiable information, sign a confidentially and non-disclosure agreement that meets your company's requirements? This should include language that addresses new hires and employees leaving the firm. Have your legal counsel review the agreements.
5. Does the vendor have a written policy and procedure that clearly articulates the process to be used when an adverse criminal record is discovered that complies with the FCRA? At minimum, this should include their process for re-verifying the information and/or notifying the applicant at the time the information is reported as required by law.
6. Does the vendor have a written policy that details how they investigate and certify that all of their sub-contractors are bona fide businesses involved in the legitimate processing of personally identifiable information for a permissible purpose as defined by the FCRA?
7. Does the vendor's policy state that consumer reports will only be issued after a client certifies it will comply with the FCRA and applicable federal and state laws? Also, does the policy affirm that access to personally identifiable information will only be provided to an authorized representative of your firm as prescribed by the FCRA?
8. Ask the vendor if they update you on changes in legal requirements at the city, state and federal level.
9. Check to see if the vendor can provide guidance regarding 'Relevance Screening' (identifies the convictions to consider based on job criteria) to ensure compliance with EEOC and OFCCP Guidelines or has a matrix that maps relevance.
10. Ask if the firm has been held liable for their business practices or are currently facing any active claims?
11. If your firm will be conducting background checks on applicants from or in other countries, verify that the vendor is Safe Harbor certified by the U.S. Department of Commerce. (Also check the International Resource Center at [PreemploymentDirectory.com](http://PreemploymentDirectory.com) for additional information.)

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### III. Policies and Procedures

1. Does the vendor certify that all staff, regular, part-time and temporary, have been criminally screened at time of hire and ongoing checks are made to ensure employees continue to have acceptable work histories? This should be a contractual agreement that is part of the service delivery contract.
2. Does the vendor have a written policy and procedure in place to avoid contacting a current employer if the applicant has requested that they not do so?
3. Review the vendor's policy regarding making employment verification calls to verify the number of times the vendor will attempt before closing the search and ensure this meets with your requirements.

### IV. Information Technology and Systems

1. Does the vendor have the capability to interface and/or integrate their screening solution with your HRIS and/or Applicant Tracking System (ATS) to allow information to seamlessly flow in and out of your organization's HR system in a secure manner?
2. With great advances in smart programming systems, predetermined hiring criteria can be programmed into a system so each report on an applicant is graded consistently and fairly. Using rules that apply to the various searches conducted during background screening, a system can electronically evaluate all the information to yield individual search decisions, as well as an overall recommendation. Does the vendor have this ability to help you create a 'smart' system?

Sounds like a great idea! If you choose to set up this type of process, you need to exercise great caution to ensure that your system **does not** simply identify 'pass/hire' or 'fail/no hire' decisions. Otherwise, with the new EEOC Guidance on the use of criminal records in background screening you will likely put yourself on a collision course with the EEOC if convictions result in automatic denial.

The new guidance recommends tailoring screening procedures to ensure that they are job related and consistent with business necessities; these procedures should include an individualized assessment that considers the following:

- Identifying essential job requirements and the actual circumstances under which the job will be performed;
- Determining the specific offenses that may demonstrate unfitness for performing the jobs; and
- Determining the duration of exclusions for criminal conduct based on all available evidence.

Remember all selection criteria used must be job related and have business justification. Ideally, the criteria should be included in a job description and reviewed by your labor attorney.



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## V. Training and Client Onboarding

1. Does the vendor have a documented training process in place for all staff that will be involved in processing or will have access to personally identifiable information? This training should be offered at the time of hire and on an on-going scheduled basis to ensure competency levels are maintained. Training should, at minimum, cover:
  - Legal requirements for conducting background screening;
  - Effective data protection and privacy to ensure security of information; and
  - The essential elements of a background screening policy and key elements of an effective employment background screening program.
2. The vendor should also be required to provide periodic reports that demonstrate that the training is occurring as scheduled.
3. Ask the vendor to describe their process for implementing the transition to their services.

4. Does the vendor have procedures and processes in place to advise, train and educate clients regarding:
  - Their legal responsibilities in conducting background checks;
  - How to order, retrieve, read and understand the information provided in a consumer report; and
  - Appropriate forms including providing sample documents, which are needed to legally conduct background checks.

## VI. Data Protection, Privacy and Security Measures

1. Does the vendor have a written Information Security Policy that adheres to known best practices and provides a high level of data protection? Ensure that the vendor policy addresses at minimum the following:
  - Details the purpose of the collection of an applicant or employee's personally identifiable information;
  - The intended use and how the information will be shared, stored and destroyed;
  - Creates an audit trail of who has accessed information and has a procedure in place to detect, investigate and respond to intrusions; and
  - Identifies a specific position or person(s) that is responsible for implementing, managing and enforcing the information security policy.
2. Have your Information Technology staff verify that the vendor and any sub-contractors that are involved with processing personally identifiable information:
  - Have system security in place that fully meets your data security requirements and meets background industry standards; and
  - Have procedures in place to mask some or all of the social security number from all reports, as well as obscure the year of birth.
3. Have your Information Technology staff closely scrutinize data security processes for communicating and securing data. This is especially important if the firm utilizes independent contractors or home operators for court records research, verification services or sends data offshore for processing. In addition, if such practices are used by the vendor you should have your Legal Counsel define contractual language to be included in the vendor's agreement with their contractors that addresses:
  - The appropriate type and amount of Errors & Omissions insurance coverage that needs to be in force with your firm named as co-beneficiary;
  - The contractors and their employees are held to the same requirements and standards as the vendor's employees;
  - Specific procedures exist to ensure your data is protected; and
  - All data protection laws are strictly followed.
4. Your security staff should verify that the vendor and any sub-contractors that process personally identifiable information meet your physical security requirements for securing their systems and meets background screening industry standards.
5. Verify that a written policy exists that states that an applicant's personally identifiable information or client information is never resold. Make sure this language is built into your contractual agreement.



6. Require the vendor to either provide periodic reports verifying data protection procedures are being followed or to allow their processes to be audited. An emerging practice is the use of the Service Organization Control (SOC) 2 Report that is performed in accordance with American Institute of CPAs standards. (A report on management's description of a service organization's system and the suitability of the design and operating effectiveness of controls.)
7. Verify that the vendor has a Record Retention and Destruction policy that clearly defines how electronic and papers records will be destroyed and fully complies with Federal Trade Commission (FTC) regulations.
8. Review the providers data breach policy to ensure it matches your requirements.
9. Review the company's disaster recovery plan to ensure it meets your company requirements.

## VII. Order Management and Notification

1. **Does the provider have an Account Management focus that provides continuity of support, assign someone to your company that you regularly deal with to gain familiarity with your company's policies and ways of conducting business?**
2. Ask vendor to explain their capabilities to support centralized management of orders from many locations or conversely, their capabilities to support multiple locations with different policies based on your needs.
3. Ask vendor to describe their capabilities to provide batch ordering services, if needed.
4. Ask them for a sample of the report format and are they willing to customize to meet your needs.

## VIII. Quality Assurance

1. Does the vendor have a documented quality assurance policy and on-going process in place to ensure the highest report accuracy is maintained?
2. Ask the vendor if their processes have been audited by a certified external organization and the frequency that audits occur.
3. Ask the vendor about anti-fraud steps they take to mitigate the risk created by diploma mills, fake resume firms, bogus references, etc.



## IX. Financial and Pricing

1. Has the vendor demonstrated financial stability over the last three years? Have your Controller or CPA review.
2. Does the vendor have Errors & Omissions insurance or self-insurance that meets your company requirements?
3. Require the vendor to fully disclose previous litigation within the last five years and any that occurs while the contract is in place. Make sure this language is built into your contractual agreement.
4. You need to do a thorough examination of the cost associated with conducting the different type background checks, checking alias, scope of the checks, e.g., federal, state, county, number of years that will be checked, number of follow up attempts, etc. You should also carefully review the providers' policies that govern pricing. It will be wise to have a person knowledge of background screening to provide input on the providers' pricing.

## X. Making Sense of the Answers

The starting point for making sense of the answers to all of these questions is to be very clear about your job requirements which include identifying the level of risk associated with performing the duties of the position and the specific skills, knowledge, behaviors, traits and experiences that are required to be successful. A well

written job description is the road map to success in hiring the right person, presuming that it is used to guide the process.

There should be a clear nexus between the stated risk level and specific skills, knowledge, behaviors, traits and experiences, requirements in the job description and the type and scope of background check that should be performed.

With this thought in mind, the challenge is to balance the ten factors and the answers to the questions to arrive at a conclusion in order to select a background screening firm that best fits your needs. One of the ways we suggest to firms to balance the selection decision is to assign an importance weight to each of the factors. This will allow you to score providers and make consistent comparisons. The key to this approach is getting the importance rating right so that it properly guides your selection process. This is a decision that has strategic importance to the organization's talent management strategy and accordingly, it should have the input of senior stakeholders.

**“There should be a clear nexus between the stated risk level and specific skills, knowledge, behaviors, traits and experiences requirements and the type and scope of background check that should be performed.”**

This approach will also help to reduce the subjectivity that can creep into the process. For example, the firm that has the slickest and most dazzling presentation may make a great impression, but may not have the same strength of services that a less impressive presenting firm has. The driving force behind the selection has to be matching your requirements as identified in the importance ratings and the strengths that a given provider offers.

Another action that we strongly encourage organizations to include as part of their selection process is to meet the team of people that they will actually be working with; the people that will deliver services to them on a day to day basis. During your site visit, ask for a meeting with the service delivery personnel that will be providing services to your account. This is where the synergy between the provider and your organization must be a great fit, not just with the Executives and Marketing/Sales team.

Finally, we suggest that you ask for a set of test searches before you make a commitment you can actually experience the providers service firsthand.

## Conclusion

A background screening company is an important business partner which your organizations should rely on to help you mitigate many of the risk associated with hiring people and to hire the right people.

We have presented many of the essential factors that should be considered to be sure you make an informed decision when selecting a background screening firm. In addition to our selection guide, we suggest you review the National Association for Professional Background Screeners (NAPBS®) Model Request for Proposal, which includes the key questions businesses should be concerned about when selecting a background screening firm (see [www.NAPBS.com](http://www.NAPBS.com)).

In addition, the following emerging issues, tools and information should be considered:

The passage of medical marijuana laws in 23 states and the District of Columbia and approval of legal recreational use of marijuana by adults in Colorado, Washington, Alaska, Oregon, and the District of Columbia is causing the need for firms to re-examine drug screening policies. In addition, the SAMSHA National Survey on Drug Use and Health reported that “for 2008-2013, an annual average of 8.7% of full time workers in the 18-64 age range used alcohol heavily in the past month, 8.6% used illicit drugs in the past month, and 9.5% were dependent on or abused alcohol or illicit drugs in the past year.

One practice that continues to grow, but has not been widely adapted is Infinity Screening™ (post-hire employee screening). With the economy in an upswing, we project Infinity Screening™ will continue to grow as businesses recognize it is a valuable tool to manage and mitigate risk over the life cycle of employment.

The level of screening of contingent workers has not increased proportionately with the increase in use of these workers, thus leaving a vulnerability for organizations.

Social media tools will continue to impact employment screening as the search engines and sites like LinkedIn, Facebook and Twitter continue to attract business users. We believe that managers everywhere are using these tools to check out applicants on their own despite official company policies to the contrary. The challenge for businesses is to find a way to harness these new social media tools to maximize their benefit and minimize the risk.

Global screening continues to grow, albeit at a slow pace, however, we project the pace will pick up. In 2013, the U.S. Department of Labor indicated that there were 25.3 million foreign born workers in the U.S. labor force or 16.3% in total. Couple this with a report by KPMG that showed that 70% of American executives indicated intentions to expand their international employee base, the ground work for increasing global checks is being laid. Juxtapose on this the results from HireRight's Annual Employment Screening Benchmark Report which indicated that 52% of candidate background checks conducted in Europe and Asia contained either a mis-statement or an inaccuracy. Note that China has replaced Mexico as the top sending country for immigrants to the U.S. Other Asian countries starting to be significant senders include Korea, Philippines and Japan.

Any future plans dealing with selecting a background screening firm should consider these emerging issues. We hope this information is valuable in helping you to select a background screening firm.

#### About the Author:



W. Barry Nixon, SPHR, is the COO, PreemploymentDirectory.com, the leading online directory that features background screening firms worldwide. He is the co-author of 'Background Screening & Investigations: Managing Hiring Risk from the HR and Security Perspective.' PreemploymentDirectory.com publishes the leading e-magazine for professional background screeners, *The Background Buzz*, the only international focus e-magazine, *The Global Background Screener* and the **Annual Background Screening Industry Resource Guide** which features many of the best background screening firms in the world. Barry can be contacted at [wbnixon@preemploymentdirectory.com](mailto:wbnixon@preemploymentdirectory.com) or directly at 1(949) 770-5264.

#### Disclaimer:

Any use of the recommendations included in this article should be done under the auspices of a knowledgeable labor attorney and/or expert consultant with specialized knowledge of background screening. There is no intent to provide legal advice in any form.

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## ICE IS ISSUING STEEP PENALTIES - ARE YOU USING AN ELECTRONIC FORM I-9 SOLUTION?

**A** few years ago, the United States Immigration and Customs Enforcement (ICE) levied a huge \$625,000 fine on a clothing manufacturer based in New Jersey for Form I-9 violations. More recently, a staffing company in Minnesota was fined \$227,000, and a bakery in Texas had to pay \$15,000. These are just the ones that grab the headlines, but that ICE audits are on the rise. Employers need to take notice and make sure they are compliant.

[The United States Citizenship and Immigration Services \(USCIS\)](#) has posted that penalties for Form I-9 violations can range from \$110 to \$1,100 per form. Furthermore, if a company is found to be hiring or continuing to employ a person that is not authorized to work in the United States, the penalties jump to a range of \$375 to \$16,000 per unauthorized worker. With so much at risk, many employers are now choosing to take advantage of electronic I-9 platforms.

[United States Law 1986. 8 C.F.R. § 274a.2](#) mandates that employers are required to process and retain original Form I-9s for all current employees. Additionally, employers are required to retain Form I-9s for all former employees for a period of at least three years from the date of hire, or for a period of one year after the employee is no longer employed, whichever is longer. Processing and storing paper Form I-9s may present many risks, challenges, and unnecessary labor expenditures to employers who want to be best-prepared to face an ICE audit.

There are many advantages to going electronic. A good electronic I-9 system will prompt employers to complete all fields required on the Form I-9. A paper Form I-9 has no such prompts, and the employer is left having to utilize his own knowledge to complete the form. There is a huge perk of uniformity with a good electronic I-9 platform that is hard to match with a paper I-9 system. It may be difficult for employers who use paper Form I-9s to keep track of all of the documentation, and to know with a sense of certainty that all of their paper Form I-9s are in one place and that there aren't a dozen sitting in someone's desk drawer in the office down the hall, or that the HR rep who retired last week didn't accidentally take one or two home with him. A solid electronic I-9 system keeps all Form I-9s in a single location, and allows customizable user access so that an employer can turn off/on and/or limit an employee's access to the electronic Form I-9s as business needs necessitate.

It is also much easier for employers to search Form I-9s using an electronic storage system than it is for employers to search a paper Form I-9 archive. Employers who are told by the ICE to produce certain Form I-9s within 72 hours in the event of an audit would face a much less momentous task searching by name in an electronic interface than they would if they had to dig

through hundreds and/or thousands of paper Form I-9s looking for the ones ICE has requested. Organizationally, electronic I-9 systems also have the upper hand. If business locations move, or if internal organizational changes have been made, it is much easier for a company to simply rearrange electronic user access with a few clicks of the mouse, than to have to physically move paper Form I-9s from one building to another, or even from one state to another. Another advantage electronic I-9s is that a reputable electronic I-9 system will alert employers when document expiration dates are approaching, and when re-verifications are necessary. There is also a reduced risk in document fraud, as well-rounded electronic I-9 systems will alert employers when a duplicate SSN has been entered. Overall, electronic I-9 systems present efficiency and compliance solutions that paper form I-9s, by their very physical limitations, simply cannot provide.

In addition to the federal law regarding Form I-9s, there are also many state-specific laws that require the use of E-Verify to confirm an employee's work eligibility within the United States. Employers seeking a comprehensive solution to their I-9 and E-Verify needs may consider choosing an electronic I-9 platform that seamlessly combines the electronic I-9 process with E-Verify case processing and management.

Samantha Kolensik is the Product Manager at Employment Background Investigations.

*Employment Background Investigations is a technology driven leader in domestic and global pre-employment background checks, drug testing, occupational health screening and I-9 compliance. We specialize in development, implementation and management of customized employment screening programs for large and multi-national clients. We are dedicated to information security.*

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*All content provided by EBI is published for the convenience of its readers and should never be deemed as legal guidance or advice. Always consult your legal counsel for specific advice on state laws and industry regulations.*



## FBI AGGRESSIVE ON FOREIGN CORRUPTION PRACTICES ACT COMPLIANCE AND YOUR ORGANIZATION IS A TARGET!

Mason Johnson was an up-and-coming CEO, expanding his company into a multi-national empire, doing business with retailers, suppliers and partners in more than 50 countries worldwide. Global expansion increased revenue to \$60 million from just \$5 million two years ago. Johnson and his team thought they had taken all the right steps. They focused on growth, quality and logistics. Since their industry is not heavily regulated, compliance issues received short shrift.

Only somewhat familiar with the Foreign Corruption Practices Act (FCPA), Johnson had not invested in a Corporate Compliance Program, nor did the company have a Human Resource (HR) driven Employee Due Diligence Program in place. These oversights caught the attention of the U.S. Dept. of Justice, which recently announced an aggressive focus on FCPA compliance.

Upon "Notice of Audit" by the DOJ, Johnson hired an accredited and expensive compliance consulting firm to ensure proper controls were implemented prior to the arrival of the FCPA auditors. It was too little, too late.

The organization failed the audit. Although Johnson authorized new controls for proper due diligence on all employees, vendors, contractors, suppliers and partners moving forward, there had not been adequate controls in place over the last few years. The company was immediately fined \$5 million under FCPA Enforcement Statutes.

The lack of historical compliance supported a DOJ mandate for an investigation of all individuals and businesses associated with the organization within a 30-day timeframe. Johnson was advised that if the investigation uncovered FCPA violations, criminal charges could be assessed on him and other officers of his company.

## See International Screening Solutions ad on page 32

Johnson spent over \$800,000 in 30 days on resources to conduct the investigation and prepare the results for the DOJ. The investigation uncovered multiple violations by the company's partners, suppliers and employees.

- An employee in charge of Procurement awarded a multi-million dollar contract to a manufacturer in Korea where his brother was a stockholder and ran Business Development.
- A retailer in France was on a Watch List for possible links to the funding of ISIS.
- An employee was on Mexico's Most Wanted List, accused of "Crimes against Women."
- An employee (of 7 years) had been added to a foreign Sexual Registry Watch List for crimes prosecuted 90 days prior to the audit.

Johnson's executives, officers and board of directors were not linked to any of the criminal violations, but the organization was assessed criminal penalties of \$75 million. The FCPA violations were published by media globally, causing suppliers, partners, vendors and clients to cease all relations with the organization. Over 300 employees lost their jobs and investments in the company's Employee Stock Plan.

- The Procurement Manager was criminally prosecuted, and the manufacturer in Korea was financially barred from doing business in the US.
- All employees who contributed in any manner to the account with the retailer in France were personally & criminally investigated.
- The employee on the most wanted list was extradited to Mexico.
- The employee on the Sexual Registry Watch List resigned.

Johnson is no longer a CEO. He lost everything he and his team worked so hard to build. Don't believe the myth that international expansion is like the Wild West, with few rules and even less enforcement. The Department of Justice has made compliance with FCPA a priority, and US businesses conducting commerce overseas are a target. If for no other reason, they are a target because they don't think they are a target.

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WorldWatchPlus is a service of **International Screening Solutions**, a Pre-Employment Background Screening and Global Due Diligence company with globally-compliant screening solutions.

*This literary aggregation was compiled with facts from FCPA Enforcement, including:*

- \$1.5B+ paid in 2014 to resolve FCPA enforcement cases
- 2015: hundreds of new FCPA enforcement cases
- FBI deploying 3 new FCPA squads: NYC, Washington and LA



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## BACKGROUND SCREENING FOR TODAY'S WORKFORCE

Background screening is designed to bring an objective view to the decisions made around hiring; the promoting, retaining, and dismissing of employees. Rather than relying on “gut feel” or what’s stated on an applicant’s resume, employment screening gives you clear methods to verify claims and check the background of a prospective or current employee. It helps you choose the best candidates. Screening programs can also strengthen an organization’s defense in the event of a negligent hiring or a negligent retention lawsuit by demonstrating duty of care in the employment process. Further, properly structured screening programs can help employers show compliance with laws that promote fairness in the hiring process. Background screening is ubiquitous, but isn’t always done well. Here are some guidelines for a background screening process that will help you manage hiring risks, rather than create them.

### Process Within the Process

Within the hiring process, background screening stands out as an intricate procedure governed by both practical needs and compliance requirements. Screening is tricky because it seeks, by definition, to learn about the personal character and experiences of a job applicant. It is a portal to employment, fulfilling a critical need for most people to be fully part of the community. The aim of employers is to learn whether a specific individual will be a good hire. The aim of legal policy is to make sure that the information acquired in background research is used fairly and only for job-related purposes. Through legal interpretations by trial (in courts) and error (by some employers), we have learned what features a compliant background screening process should have.

A properly designed screening process can achieve the employers’ goal and meet standards of fairness. Here are some conceptual elements of that process:

- Employers have a right to use background screening in making employment decisions. This right has been affirmed many times in law, case law, and regulation.
- Screening should be job-related and serve a business necessity. Both court decisions and the Equal Employment Opportunity Commission (EEOC) guidelines stress that background screening has to be pertinent to the job in question and exclude asking about, or using personal information that has nothing to do with performance on that job. Clearly, the kind of personal information sought will vary with the job in question. If the employer can show that a piece of information is both job-related and a business necessity, it can be used.

- The specific items researched in a background check for a job should be consistent for every applicant, and used consistently in decision-making.
- In general, employers should avoid blanket background check policies. Both EEOC and Ban the Box laws in various states and jurisdictions target the use of simple “check box” criminal background checks in employment. The thrust of these legal initiatives is to induce employers to use more individualized assessments, and to do the background research at a later point in the hiring process, where the applicant has shown basic qualification for the job.
- Adverse action against an applicant should follow the two-step process defined by the Fair Credit Reporting Act (FCRA), at least if a third party agency provides the background report. The purpose of the two-step process is to ensure that the applicant is aware that his or her personal background will be researched and used in the employment decision, and that it gives them the right to approve and contest the outcomes.
- If a background check for an applicant indicates they have arrest or conviction records, an individualized assessment is recommended. Regarding arrest records, which are not conclusive evidence of wrong doing, it is especially important to give the applicant an opportunity in an individualized assessment to explain the circumstances of the arrest.

Employers who follow a screening process built on these concepts will greatly mitigate hiring risks due to both the applicants’ characteristics and compliance.

“If you have the wrong people on the bus, nothing else matters.” Jim Collins, Good to Great.

Your employees will ultimately determine your success, no matter how hard you work or how brilliant you are personally. Management determines the culture of the organization by its methods, its commitment, and its example. This is true in hiring the right people, as it is in most other aspects of the organization. If you, the employer, show a strong positive attitude and a commitment to excellence, the chances are much better that your employees will follow suit.

We have discussed a number of steps you can take that affect your ability to hire the right people. One of the most important things about these steps is that they require your unwavering attention to design and detail. This gives you a double benefit. First, your hiring process will work efficiently to find, screen, and select the best people available. Second, the people you do hire will recognize the diligence you put into the process, and they will reward you for it by acting the same way.

#### About Proforma Screening Solutions

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## Are You at Risk for a Lawsuit? Top Reasons Employers Are Sued Under the FCRA

*By Attorney Lester Rosen, CEO and Dawn Standerwick, Vice President of Employment Screening Resources*

The current trend of litigation over pre-employment background checks is not limited to lawsuits against background screening firms. Lawsuits, particularly class action suits, against prospective or current employers are mushrooming. These lawsuits are most frequently brought under a federal law that controls the process of pre-employment background checks in the United States, the federal Fair Credit Reporting Act (FCRA) and, in many cases, could have been easily avoided.

Many employers have settled cases for millions of dollars even though they maintain they did nothing wrong. Often, the alleged violations were technical in nature and could have been easily avoided if the employer had properly reviewed, or had competent legal counsel or other subject matter expert review, their policies and practices.

FCRA class actions make a tempting target because the awards can be enormous. The damages can be from \$100 to \$100 for every applicant screened. Employers also face the possibility of claims for punitive damages if it is shown they should have known their acts were willfully out of compliance with the FCRA. That means that even if an employer was operating under a good faith belief they were following the law, punitive damages can still be awarded. In addition, class action lawsuits commonly ask for attorneys fees and court costs which can be substantial.

Employers should also keep in mind that the FCRA is not the only potential area of risk when it comes to background checks. The Equal Employment Opportunity Commission (EEOC) has recently brought legal action against employers on the basis of the unfair use of criminal records. There are also numerous state laws to consider.

At the end of the day, employers still need to perform background checks since one bad hire can create a significant legal and financial nightmare for not only the employer, but, someone who may be potentially harmed. These threats can be largely avoided if an employer utilizes a quality background screening firm that specializes in educating their clients about legal compliance and provides accurate, actionable information.

The following are the top eight reasons employers should review their practices and procedures to avoid litigation under the FCRA.

① *Download the complete whitepaper which provides in depth details and FCRA section references by visiting <http://www2.esrcheck.com/reasons-employers-sued-under-fcra>*

**1. Employer failed to obtain written authorization from the applicant prior to obtaining the consumer report.**

The FCRA requires that the employer receive written authorization from the prospective employee before conducting a background check. A class action lawsuit on this topic settled for **\$875,000 dollars**.

**2. Employer failed to provide the applicant with a document consisting solely of the stand-alone disclosure.**

This is one of the most common claims seen in lawsuits brought against employers. The FCRA, requires that the employer disclose to the job applicant that a background check may be obtained in a written disclosure and “in a document that consists solely of the disclosure.”

**3. The disclosure contained a release of liability language.**

Closely related are claims that the employer included a liability release in its disclosure form. These cases not only argue that such a release is contrary to the “standalone form” rule recited above, but that the very notion of a release violates the FCRA.

**4. Failure to provide the applicant a copy of the consumer report and “pre-adverse action notices” prior to taking action.**

Another common FCRA lawsuit involves allegations that an employer failed to provide the prospective employee with a copy of the consumer report, a “pre adverse action notice, and summary of the prospective employee’s rights under the FCRA.”

**5. Failure to provide the applicant with a post-adverse action notices.**

The FCRA requires employers to provide the applicant with a post-adverse action notice after the employer takes adverse action to communicate several required notification components.

**6. Failure to update forms.**

Although it is easily preventable, some applicants sue their employers simply because the employer has not updated their forms pursuant to the FCRA. Kmart recently settled a class action lawsuit for **\$3 million dollars** in a case that included an allegation that an old form was used.

**7. The employer’s screening policy disqualified applicants based on criminal history that is unrelated to the job.**

Employers can also be sued for subjecting their job applicants to an overly broad and unduly harsh criminal background check. Employers with blanket hiring policies (I.e. no felony convictions) may be creating liability absent state or federal requirements to automatically screen out certain types of criminal histories.

**8. Failure to Follow State Specific Requirements**

States, counties and even municipalities have passed legislation which impacts the hiring process in specific jurisdictions. Among the most virulent are ban the box laws that impose a range of various requirements depending upon the jurisdiction.

### About ESR

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## WHAT DOES PSP OFFER?

- PSP enrollment allows you to offer your motor carrier customers a driver's safety history as part of pre-employment screening
- Driver records come directly from the FMCSA Motor Carrier Management Information System (MCMIS)
- Driver records include three years of roadside inspection and five years of crash information

## HOW DOES PSP WORK?

- Visit PSP any time to purchase a driver's record (with the driver's written consent)
- PSP is completely Internet-based and access credentials are required
- Receive a driver's record immediately
- Save and print records for a driver's file
- Know your clients are hiring the safest drivers



**Pre-Employment Screening Program**  
Federal Motor Carrier Safety Administration

1. VISIT [www.psp.fmcsa.dot.gov](http://www.psp.fmcsa.dot.gov)
2. DOWNLOAD the enrollment pack
3. E-MAIL to [PSPenrollment@egov.com](mailto:PSPenrollment@egov.com)



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- Chartered Institute for Professional Development Annual Conference and Exhibition, November, 4 – 5, 2015, Manchester, England

### **2016**

- SHRM Annual Conference & Exposition  
June 19 – 22, 2016, Washington, D.C.
- 2016 Annual Conference – National Association for Professional Background Screeners, September 18-20, 2016. Palm Desert, CA
- The ASHHRA 52<sup>nd</sup> Annual Conference & Exposition  
Sept. 24 - 27, 2016, Grapevine, Texas
- SHRM India Annual Conference,  
September 24-25, 2016, New Delhi, India
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