



# 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;
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- Electronic form I-9 services; and
  - Federal and state litigation history.
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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.
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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.
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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.)

### 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.

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## 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.

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## 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.



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## 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.

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## 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

**“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.”**

talent management strategy and accordingly, it should have the input of senior stakeholders.

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.

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