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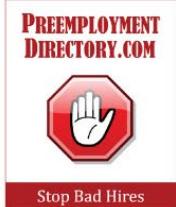
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The Directory is an important resource for Human Resources, Talent Management and Hiring Managers interested in learning information about background screening.

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 the information they need:

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## What Hiring and HR Managers Need to Know About Accredited Background Screening Firms

By: By Derek Hinton, President, CRAzoom and W. Barry Nixon, COO, PreemploymentDirectory.com

Most hiring managers and human resource managers are familiar with certifications since many of them are certified via associations or organizations which they personally belong to. Certification, in many cases, is based on an individual passing a professional discipline or industry based examination and possessing prescribed experience as identified by the offering entity. Examples would include the following certifications:

- human resources professional - SHRM SCP, SHRM PSP, SPHR, PHR
- financial professionals – CPA
- project management - PMP®, CAPM®

Accreditation is different than certification.

Typically, accreditation is used to verify that an organization meets specified criteria as identified by the offering body to demonstrate their competence to perform specific activities. It's not a social award based on level of donation or membership, tenure in an association, or fraternizing, but based on the results of an independent organization certifying that the applying organization meets the established criteria.

Also unlike individual certification programs, accreditation is not a process that organizations simply go through once and are accredited for life. Firms are required to repeat the process after a specified number of years to ensure that they continue to adhere to the established standards.

The National Association of Professional Background Screeners (NAPBS) Accreditation program is based on the applying firm establishing that it has been an operating background screening firm for a minimum of one year, and has met all the criteria of the Background Screening Agency Accreditation Program (BSAAP) as developed by the Background Screening Credentialing Council (BSCC). This process ensures companies comply with relevant laws, ethical business practice and demonstrates a commitment to excellence.

The BSCC has developed a strict and thorough set of professional standards of specified requirements and measurements which have become a widely recognized seal of approval. Adherence to the standards demonstrate a commitment to achieving excellence and professional accountability that results in continued institutional improvement.

The BSAAP provides a detailed process for evaluating and improving internal operating procedures that every CRA, and their clients, benefit from. Accredited CRAs have made a commitment to uphold and deliver the highest level of industry standards for the following critical areas:

- Consumer Protection
- Legal Compliance
- Client Education
- Researcher and Data Product Standards
- Verification Service Standards
- General Business Practices

To become accredited, firms must demonstrate initial and ongoing compliance with the accreditation standard as prepared by the Background Screening Credentialing Council (BSCC). Compliance is demonstrated through rigorous desk and on-site audits, all of which are completed by an independent third-party auditor. To be approved for accreditation, a background screening provider has to document each of their policies and processes as required in each of the areas within the Standard and demonstrate that it adheres to best practices through both desk and onsite audits by an independent auditor.

Accreditation lasts for five years. An Interim Surveillance Audit by the independent auditor is required before the end of the third year and firms are required to recomplete the process during their fifth year of accreditation.

### **What does NAPBS Accreditation mean to Employers?**

Accreditation is a vigorous standard that takes considerable monetary and personnel commitment for a background screening firm (a.k.a. consumer reporting agency or CRA) to earn and maintain. Remember, accreditation is a company standard—not an individual standard, which means that policies and procedures are institutionalized across the enterprise, rather than residing in one or two certified employees' knowledge.

### **Compliance**

Many of the standards are geared toward ensuring that the accredited CRA is committed to your compliance with legal and regulatory issues such as the Fair Credit Reporting Act (FCRA) Driver Privacy Protection Act, Federal and state discrimination laws.

### **Best Practices**

In addition, accredited firms adhere to accreditation standards that are based on industry established best practices which in many instances go beyond many of the legal requirements.

### **Verified Records**

Working with an accredited firm also offers employers a viable and superior option to working with a data-broker who simply offers online access to data stored in various databases. Accredited background screening firms verify information accessed by actually researching court or originally sourced records.

### **Information Security**

Accredited agencies are required to implement written data security policies to ensure that sensitive personal identifiable information is secure.

### **Client Education.**

One of the responsibilities of an accredited CRA is to educate clients about process requirements to help them use information appropriately and comply with the myriad of laws which impact background screening.

### **Business Practices.**

Accredited firm staff undergo criminal background checks, are required to maintain all necessary insurance, and validate the legitimacy of clients, vendors and applicants.

### **Conclusion**

Earning accreditation is a difficult and arduous process for background screening firms, however, employers that engage the services of one of the few elite firms accredited background screening firms stand to gain the best possible results.

Choosing an accredited firm is a cost-effective way for employers to stay informed about and navigate the maze of legal requirements that impact background screening without needing to overly invest in staff and resources. This is particularly important as we continue to see growth in FCRA lawsuits, the influx of new 'ban-the-box' legislation and numerous state or local requirements. Of course, using an accredited background screening firm is not a guarantee that you will not be sued or made a target of an enforcement action, but if you get pulled into the fray you want to have the best possible players on your team.

In the end, using an accredited background screening firm is your best bet in your effort to hire the best talent to meet your business needs and to provide a safe workplace.

Source: Much of the information in this article is based on the NAPBS accreditation information on the NAPBS web site. It was not written by NAPBS. For detailed and specific information on the accreditation process visit [NAPBS.com](http://NAPBS.com).



#### **ABOUT THE AUTHORS:**

Derek Hinton began his career with a CRA in 1984 and is President of CRAzoom, a company that has assisted many CRAs become NAPBS Accredited, and CrimApollo, a criminal record assessment and EEOC compliance service.



W. Barry Nixon, is the COO of PreemploymentDirectory.com, the leading background screening information portal on the worldwide web, the co-author of *Background Screening Investigations: Managing Hiring Risk from a HR and Security Perspective*, and the publisher of *The Background Buzz*, *The Global Background Screener* and *The 2016-17 Background Screening Industry Resource Guide*.



## MITIGATING RISK OF PERSONAL DATA COLLECTION WITH BACKGROUND SCREENING

*By: Christine Cunneen, CEO of Hire Image LLC*

*As an HR professional conducting background screening, you are responsible for keeping the data you collect on applicants and employees secure. Sensitive personal identification information (PII) such as Social Security numbers, driver license numbers and dates of birth must be protected from being exposed or falling into the wrong hands.*

**Here are tips for mitigating the inherent risk of collecting personal background screening data at your company:**

**Assess the risks to personal data within your organization.** Trace the flow of how PII moves into, through and out of your business and who has – or could have – access to it. Do you disclose or share PII with others? Do you have secure storage and control of access? How is data disposed of? Inventory all devices and files where sensitive data is stored by type and location, including who and how your business shares and receives PII.

**Develop a plan to address risks.** Put data retention and privacy policies in writing, and develop a plan to identify what information must be kept, how to secure it, how long to keep it, and how to dispose of it securely when it is no longer needed for business reasons or to comply with the law.

**Implement your protection plan.** Effective data security plans include physical/electronic security, employee training and the security practices of contractors and service providers. Encryption and other IT security measures such as firewalls, strong passwords and data breach detection systems should be in place for your company and your vendors. Contractually obligate vendors to handle your personal data safely including informing you about a data breach. Restrict personal data on removable devices and require visitors to sign in/out to safeguard against access to data at employee workstations.

**Ensure your company purchases cyber insurance.** Data breaches can occur from data or devices stolen by insiders; failure by vendors; employee error or negligence; internal IT error; and hackers. Over 4 billion data records were stolen globally in 2016 – a record year for data loss. Cyber insurance policies will cover liability for a breach in which PII is exposed or stolen from criminal access to a company's electronic network.

**Partner with a background screening agency that does not off-shore your applicant's data (unless searching off-shore) and is accredited** with NAPBS, ensuring that the highest ethical standards are being followed when it comes to protection of PII. Ask if the background screening company transfers data across the Atlantic, as such "offshoring" of information puts data at additional risk from cyber attacks.

By understanding your role in protecting your applicant and employee's data, you can successfully create a culture of security where employees and your background screening agency can help recognize security threats, uncover risks and vulnerabilities, and remain vigilant in helping to implement your PII protection plan.



### **ABOUT THE AUTHOR:**

Christine Cunneen is the CEO of Hire Image LLC. She is a past Chair of the National Association of Professional Background Screeners (NAPBS) and remains very active in the association. She is a member of SHRM, serving on the advocacy team and legislative committees. Cunneen is a frequent speaker at events educating employers and other professionals about background screening and is often quoted for her expertise in the news media. She travels to DC often to meet with legislators and is involved in advocacy pertaining to laws and regulations that impact hiring practices and the background screening profession.

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\*Sources: U.S. Chamber of Commerce; Society for Human Resource Management; Academic and Business Research Institute.



## FINDING A BACKGROUND SCREENING COMPANY THAT IS THE BEST FIT FOR YOU

*By: Shannon Johnson, President of DataQuest, LLC*

### **Do you work with a credible and accredited Background Screening Company?**

Many employers like you, have some sort of background check program in place for their new hires, volunteers, and/or contractors. They may also have procedures in place to process re-occurring checks on current employees as well. Each company's hiring procedure and background screening program is different depending on their type of business, industry regulations, and whether they fall under certain federal, state, and local law requirements. Many utilize background screening companies who are experts in this field to conduct background checks, drug testing, and/or other screening services for them, instead of employers trying to do these investigations and services on their own. This type of background screening company is known as a Consumer Reporting Agency (CRA). It is very important to thoroughly vet these CRAs before having them do any work for you. You should always choose a credible company, and only work with one that is an active member of our national association, called the National Association of Professional Background Screeners (NAPBS). Furthermore, only a small percentage of companies in our industry have gone through an extensive accreditation process, and have earned this highly desired seal of approval. By choosing a background screening company that is accredited, will help ensure that you are working with a company that has proven to have implemented best practices in the following areas: consumer protection, legal compliance, client education, researcher and data product standards, verification service standards, and general business practices.

### **Is your Background Screening Company helpful and informative?**

Other things to think about when looking for the right background screening company to work with are: how good is their communication, and do they offer training and education to their clients? It is very important to make sure you understand exactly what the overall background check process is between you and your vendor. The background screening company should explain to you what each service/product is exactly, and you should also have the understanding of what their overall service includes. Customer Service is always a key element too when choosing the right screening company. You should be able to figure it out fairly quickly if the background screening company has an acceptable level of customer service that you are looking for. The screening company you choose to work with must always be straightforward and transparent with you on what exactly their scope of services are, and make it very clear as to what level of service you should expect to receive from them. It's important that your screening company work with you to make sure you know how to read and interpret your background check reports, and to understand the information that is returned. And at any point if you are unsure and need further clarification or need a refresher on something, you should always feel comfortable to reach out to your screening company for assistance - especially before moving forward with any hiring decisions.

### **Has your Background Screening Company done a good job of informing you of what you're really getting with your background checks?**

The background screening company should make it very clear of what their services are that they are offering, and provide detailed information of what each service includes so that you have a full understanding of what exactly you are getting with each order and with their overall service.

Have you ever thought about any of the following questions:

- Do you fully understand what type of background check you are ordering and what services are being processed?
- Are you sure you are getting exactly what you think you are getting in your background check order?
- What are you supposed to do once the report comes back?
- Do you know how to interpret the results on the report?
- Do you really know what to look for on the report, or do you just call it good once you receive it, and put it away in a file?
- Do you know what your obligations are for following pre-adverse action and (final) adverse action steps, if you are thinking of taking any adverse action based on information in the background check report?

If any of these are questions you have had, you are not alone. These questions are very common, and your background screening company should be able to provide you answers to all of them as well as provide any assistance you may need.

#### Does the Background Screening Company provide clear and easy to understand information on the report?

It is always important to make sure you review all of the reported information that has been returned. The background screening company may flag a section for your attention, or add important notations within the report for you to review or pay close attention to. You should also always review all of the verified information and compare it with what the applicant provided to you, and ask yourself:

- Does it match up with what the applicant gave you?
- Did the background screening company uncover additional aka/alias names or addresses that the applicant didn't disclose to you?
- Did the dates of employment or position match with what the applicant stated when they worked at a particular company?
- Was the applicant truthful with the information they submitted or disclosed?

These are all vital pieces of information you want to pay close attention to so that you can really utilize the information in the report to help in your hiring decision.

#### Do you have the right package of service(s) in place?

You really need to work with your background screening company and establish the right package of service(s) for you to meet your hiring needs. Most background screening companies have several different types of screening packages to choose from, ranging from very basic packages to very comprehensive ones. If the background screening company doesn't have different options that can fit your needs, then that may be a sign to find another one that is right for you. Make sure to ask questions if you are unsure of what a particular service is, or if particular service(s) would be recommended depending on a position. The information that is being reported should be exactly what you understand it to be.

#### Conclusion - Choose a Background Screening Company that best fits your needs:

Conducting background screening is to help inform you of who you are hiring, and if they can be appropriately placed in a position within your company or be allowed to work at a certain job site, etc. However, in order to do that you must first find the background screening company that is a right fit for you, and establish your screening process with them to help you find the best qualified candidates. It is always best to review your screening program with your legal counsel to determine best practices, implement proper policies and procedures for your background screening processes, and determine how to handle returned information on reports.

You need to first figure out though what is important to you and what you are looking for in a background screening company. Background screening is essential for employers like you, to help reduce possible negligent hiring and mitigate risks of liability. Choosing a credible, informative, and accredited background screening company to partner with, would be your first step in that process.

#### **ABOUT THE AUTHOR:**



Shannon Johnson is President of DataQuest LLC, and has been in the background screening industry for over 24 years. DataQuest is a background screening company that helps Business Owners & HR Professionals find more qualified candidates, while improving their bottom line & reducing risks. We are very proud to be formally recognized as **Accredited** by the NAPBS. DataQuest is a leading strategic partner to companies of all different sizes and industries, for their employment background check screening, verification services, and drug testing needs. Please visit us at: [www.dataquestllc.com](http://www.dataquestllc.com), phone: (888) 443-0135, or email: [info@dataquestllc.com](mailto:info@dataquestllc.com).



## ADVERSE ACTION COMPLIANCE

*By: Ji Kim, Director of Business Development, Shield Screening*

With the growing trend of pre-employment/employment litigation targeting the pre-adverse/adverse action phase of the screening process, it is important to implement and observe a clear adverse action policy to limit your civil liability. Whether your pre-adverse/adverse action process is handled in-house or through your background screening provider (CRA), here are some simple practices to mitigate your liability in the event litigation is brought against your company:

Verify that your pre-adverse action provides the applicant:

- A copy of their Consumer Report
- The Consumer Financial Protection Bureau's "A Summary of Your Rights Under the FCRA"
- A reasonable opportunity to dispute the contents of their Consumer Report before adverse action is taken. A minimum of five business days is recommended.
- Contact information for your background screening provider/CRA

While reinvestigations during the dispute process are typically given 30 days to complete, it is best practice to conduct and complete these as soon as possible. Confirm with your CRA that they have a specific policy in place to start the dispute process as well as a logbook to record and track the progress of the investigation. Preferably, your CRA will provide real-time updates for ongoing disputes. When reinvestigations are completed, ensure that your CRA provides the applicant a written letter detailing the reinvestigation process, the results, the applicant's rights, and what updates, if any, were made to their Consumer Report.

In the event that you proceed with adverse action, provide the applicant:

- Official notice of adverse action
- A copy of their Consumer Report
- CFPB's "A Summary of Your Rights Under the FCRA"
- Contact information for your BSP

Maintaining thorough records is essential to mitigating your future liability. Your pre-adverse/adverse action policy should include a detailed record of events. Any action taken during the pre-adverse/adverse action phase should be documented, and any communication with the applicant or CRA should be similarly logged for the record. This should include any documentation the applicant may provide during the dispute process.

It is important to be mindful of the timeliness issue with post mail. Where allowed, electronic communication can greatly reduce the time involved in the pre-adverse/adverse action process. Additionally, receipt of electronic communications is much easier to verify and record than by post mail.

Understandably, the potential for lawsuits related to the pre-employment/employment process are always a cause for concern. Moreover, the pre-adverse/adverse action stage of the hiring process can be an easy target for litigation if you do not have a policy in place to protect your organization. However, implementing a few policies and procedures such as these can mitigate much of the risk your company may face in future litigation in this field.

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### ABOUT US:

Shield Screening is a full-service accredited national background screening company that recognizes the need for quality, dynamic background screening for today's employment marketplace. Shield Screening takes a hands-on, creative approach to crafting customized solutions that provide our client's with the information they need to hire and maintain solid, well qualified employees.



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## COMPLIANCE IN BACKGROUND SCREENING: WHAT IS IT, AND WHY SHOULD I CARE?

By: Jessica Cohen Taubman, JD, Compliance Manager, Employment Background Investigations, Inc

You already know about legal compliance in your industry. Healthcare companies know HIPAA, banking and financial services companies know DODD-FRANK and FINRA, energy companies know FERC, trucking companies know DOT and FMCSA, and the list goes on ... and on.

You probably don't know a lot, though, about legal compliance in background screening. But you should.

Background screening applies to every industry and every employer, and it's in your best interest to make sure you're doing it in accordance with laws and regulations.

### Why Compliant Background Screening is Important

#### 1. It's the law!

Employers have specific obligations. The background screening company – a.k.a. Consumer Reporting Agency (CRA) – also has very specific obligations.

#### 2. Protect Consumers and Employers

The laws and regulations surrounding background screening are designed to protect: 1) the "consumer" – your candidate for employment or continued employment, and 2) the "user" – that's you as the employer and user of background reports. When both parties comply with applicable law and regulation, they are protected. In theory, the consumer gets a good job and the employer gets a good employee.

#### 3. Avoid Costly Litigation

Non-compliance can be expensive. Employers are frequently the subject of class action litigation regarding their background screening practices and, without admitting any wrongdoing, pay multi-million dollar settlements. The settlement list is long and includes companies like Dish Network - \$1.75M, Uber - \$7.5M, Publix Supermarkets - \$6.8M, Swift Transportation - \$4.4M, Lowe's - \$22.5M, and Wells Fargo - \$16M to name just a few.

There are several primary laws that apply to background screening, but there are also several layers of regulations and requirements that add significant complexity to even the most straight forward screening programs.

The primary federal law regulating background screening in the U.S. is the **Fair Credit Reporting Act (FCRA)**, 15 U.S.C. 1681 et seq. Other laws and regulations come from local, state, and federal sources including FCRA state analogues, ban the box, criminal, credit, and privacy laws. Bodies such as the FTC, CFPB, and EEOC add even more regulatory requirements and best practices guidance.

The amount of law and regulation governing background screening is immense! Highly competent, compliant background screening companies utilize strict methodologies to develop, maintain, and continually improve compliance programs.

## **Characteristics of a Compliant Background Screening Company**

### **Expertise**

The screening company must have subject matter experts. These experts are responsible for monitoring changing compliance requirements, understanding those requirements, and working with others throughout the organization to ensure enterprise-wide compliance.

### **Processes**

The screening company must have specific, repeatable, controlled processes to ensure consistent adherence to compliant operational procedures. This includes human processes and technological processes.

### **Audits**

The screening company must regularly audit all activities to ensure ongoing conformance to defined processes and compliance obligations.

### **Adjustments**

The screening company must be vigilant in continuously adjusting processes to accommodate changing laws and regulations, best practices, and achieve optimal outcomes.

## What to Look for in a Compliant Background Screening Partner

### **1. Accurate Source Information**

Section 607 of the FCRA requires a screening company to “follow reasonable procedures to assure maximum possible accuracy.” Section 613 increases accuracy requirements when the information being reported is a public record, such as a criminal record, and requires the screening company “maintain strict procedures [to ensure reported information] is complete and up to date.”

Employers must have accurate information to use in their employment decisions. A compliant screening company will follow stringent processes – each and every time – requiring records be confirmed at the source before reporting to a client. For example, criminal records will not be reported based only upon a commercial database finding. Rather, the record will be researched at the originating source, such as a county court, and multiple identifiers will be used to confirm a certain record belongs to a specific individual.

### **2. Compliant Reporting**

The federal FCRA, FCRA state analogues, and other law and regulation impose limits on what information may be reported by a screening company and/or considered by an employer as part of an employment decision. For example, Section 605 of the FCRA prohibits reporting of non-convictions (i.e., arrest-only records, not guilty findings, and dismissed charges) older than seven years. Some states also limit reporting of convictions to seven years. Various federal, state and local law and regulation require certain notices be included with background reports.

The list goes on (and on!) of information that cannot be reported, or reported only under certain circumstances. The bottom line for employers is **background reports presented to them by their screening partner should include only legally permissible information.** (An employer who claims they did not consider prohibited information – when it appears on the background report – will be in a position that is difficult to defend.) This is another area where a compliant screening company will use rigorous, consistent processes to ensure report content and attachments meet applicable requirements.

### **3. Credentialing**

Section 607 of the FCRA requires screening companies “make a reasonable effort to verify the identity of a new prospective user and the uses certified” before providing background reports to a user (the employer client). This means a screening company must conduct due diligence on every prospective client before providing background reports.

Background reports contain much confidential information that must be protected. In an age of identity theft and data breaches, compliant screening companies conduct methodical credentialing of every prospective employer client. The screening company must ensure they provide background reports only to legitimate business enterprises that have a permissible purpose for obtaining the background report.

### **4. User Certification**

Section 604 of the FCRA requires a screening company obtain a certification signed by the user (the employer client) in which the client “certifies to the [consumer reporting] agency” the client will take specific actions when procuring and using background reports. Among the specific requirements to which the client must certify agreement: 1) having a permissible purpose, 2) providing disclosure, 3) obtaining written authorization, 4) following adverse action procedures, and 5) not using information in violation of any Federal or State equal opportunity law or regulation.

Compliant screening companies will detail these FCRA requirements in their client agreement. Calling out these specific obligations is not only legally required, it is also one of the first opportunities for client education. Further, it demonstrates the screening company’s diligence regarding compliance within their organization and that of their clients.

### **5. Confidentiality, Privacy, and Security**

The FCRA, security law, and privacy law all stress the importance of confidentiality and protection of consumer data, much of which is considered “Personally Identifiable Information (PII).” Security-conscious screening companies will protect all client information and that of client candidates and treat all such information as confidential.

Compliant screening companies will protect data by using a variety of technology tools and following strict security protocols. These tools and protocols will be tested regularly to ensure they are working properly, are followed consistently, and continue to provide appropriate security given rapidly changing environments. Professional, high quality screening companies will demonstrate compliance with security, confidentiality, and privacy requirements. They will also be aware of and, to the extent possible, accommodate best practices. By doing so, clients can be confident their data is protected and handled in a secure, confidential manner.

### **6. Technology**

The FCRA does not specifically address the use of technology in the context of background screening for employment purposes. When designed and used properly, however, technology can provide strong support for compliance and enhance compliance through enforcement protocols.

When designed properly, this “technology driven compliance” is a great tool and can do things such as:

- Provide disclosure to the consumer.
- Ensure an authorization is obtained.
- Facilitate adverse action processing.
- Support compliant electronic signatures to help expedite screening.
- Link proper notices to background reports. Examples include notices such as the FCRA Federal Summary of Rights, New York Article 23-A, and California FCRA consumer notice.
- Provide forms management by automatically serving up needed forms to an employer or a candidate based upon information sought. Examples include driving record forms, country-specific information access forms, and statewide criminal record forms.
- Redact Personally Identifiable Information (PII) such as full SSN, DOB, and driver’s license number.

In order for compliance to capitalize on technology, screening companies must first have **compliance experts** who understand legal and regulatory requirements.

Second, the screening company must have **technology experts** to work with compliance experts to develop compliant solutions.

Third, the screening company must **understand the needs and wants of their employer clients**. The best solutions can only be crafted when compliance, technology, and client needs are all understood.

## **7. Educate and Guide**

Screening companies have an obligation to train and continually educate their own team members. Frequent, ongoing training and education is needed to ensure workers continue to follow established processes, as well as learn new processes as compliance requirements change.

Employer clients also need education. Obviously, employer clients must learn how to use the screening company's technology platform – that's usually pretty easy. Equally important (or perhaps more important) is for clients to continually have access to information and education about the current screening environment, changes in law and regulation, and best practices based on screening-related events (such as regulatory guidance and litigation activity). Although screening companies cannot provide legal counsel, they can **provide information to help clients make informed, smart choices**. Compliant screening companies will offer education through blogs, newsletters, whitepapers, webinars, recorded sessions, resource links and more.

Importantly, in addition to daily customer support, they will also provide experienced Account Managers as a single point of contact for client strategic assistance.

## **8. Risk Management**

Smart screening companies manage and minimize. This will be evidenced by compliance experts and fully compliant processes and systems. In addition, risk is mitigated by no offshoring of domestic processing, no offshoring of data, no offshoring of customer service, at-the-source confirmation of data prior to reporting, highly secure systems, compliance-enabling technology, controlled processes, frequent audits, due diligence in employee selection and retention, and due diligence in client acceptance.

An active risk mitigation program provides assurance to clients that **everything reasonably possible is being done to protect them and their data, while providing information rich, compliant background screening reports**.

**EBI is one of the largest background screening firms in the country and is the only company that has been named to HRO Today Magazine's Pre-Employment Screening Baker's Dozen List of top background screeners nine times.**



### **ABOUT US:**

Employment Background Investigations (EBI) is a privately-held background screening firm known for its commitment to US-based customer service & operations, and for its agile, dependable cloud-based screening technology. Servicing 5,250 clients globally, EBI is the only company named to HRO Today Magazine's Baker's Dozen List nine times. A founding member of the National Association of Professional Background Screeners (NAPBS), EBI has the distinction of being one of the only screening companies to also be ISO 27001 certified for information security and ISO 9001 certified for quality management.

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## CUTTING CORNERS ON BACKGROUND CHECKS COSTING EMPLOYERS MILLIONS

*By: Kevin P. Prendergast, President & General Counsel, Research Associates*

Imagine the effect of having to add a \$5 million expense to your HR budget because you decided to save money by choosing an inexpensive, "big box" background screening vendor. Yet this scenario is becoming an everyday reality for many employers as an alarming number of class action lawsuits are being filed and won by plaintiff lawyers cashing in on big paydays.

Thousands of claimants are filing for their share of huge awards against some well-known employers (Publix- \$6.8 million; Kelly Services-\$6.75 million; Express Personnel- \$5.75 million; and Food Lion- \$3 million). These cases represent a small fraction of cases currently pending or recently concluded that have been filed against employers over faulty background checks. Settlements and judgments in 2017 alone are expected to approach \$250 million.

Consider two cases decided in March, 2017 in separate federal courts. In Syed v. M-I, LLC, a federal court of appeals allowed a plaintiff to proceed with a class action lawsuit against an employer even though there was no allegation that the individual was denied employment. The court found that a technical violation in the employer's background screening protocols was sufficient to allow Mr. Syed to proceed with a lawsuit. The court went on to state that this technical violation rose to the level of willful misconduct thus entitling the entire class of plaintiffs to recover mandatory statutory damages and their attorney fees. The employer had been using a big box screening firm.

Four days later, another federal court ruled in favor of an individual even though the person was hired by the employer and suffered no harm to his reputation or out-of-pocket losses. In Lagos v. Leland Stanford University, the employee reviewed his personnel file and discovered that the forms he signed to authorize his background check years earlier had two clauses that were not allowed to be included under federal law. He also filed a class action against his current employer and the court found that the inclusion of the two objectionable clauses constituted willful misconduct. The class will now be entitled to recover mandatory statutory damages and all of their attorney fees. Again, a big box provider was involved.

These cases are not aberrations or a reflection of the views of these two courts alone. Decisions like these are being handed down nationwide against employers at an alarming rate. "We expect that class-action lawsuits alleging noncompliance with the Fair Credit Reporting Act will continue to increase in 2017. The Fair Credit Reporting Act has been a hotbed for litigation for a couple of years and does not show signs of slowing down in the near future," said Melissa Sorenson, executive director of the National Association for Professional Background Screeners.

My firm, RAI, was founded by former FBI agents and has developed a worldwide clientele through a commitment to accuracy, attention to detail and a high-level of customer service. For our 50-plus years in business, we have never strayed from this approach of delivering background investigations, not "background checks." The risk has always been too high for our clients to allow for cutting corners or taking shortcuts.

However, as background investigations became more common, new providers began selling cheap and quick

background checks. The primary drivers for this commoditized approach has been speed and low cost with little quality control. While this has garnered some benefits for employers in terms of initial savings and quicker processing time, it has led to a stark increase in regulatory enforcement actions and class action lawsuits as a result of errors in background screening reports. Disgruntled candidates who have been spurned as a result of an inaccurate background check tend to be angry and often have ready access to legal resources. The market pendulum is beginning to swing back towards more in-depth analysis and reporting.

"Accuracy is critically important not only to the consumer, whom the laws and regulations are designed and created to protect, but also to the employer who relies on the information in the background check to make an informed placement decision," said Ms. Sorenson.

Indeed, inexpensive background checks miss important information. The big box background screening firms are designed to quickly gather and report information, not to detect fraud or deception. They sell primarily based upon price and supposed ultra-quick turn times. There is no review of the data provided by the applicant or analysis of the information obtained during the search. A savvy applicant can easily defeat these basic checks with very little effort. All that is needed is a few disposable cellular phones, fake email addresses or some doctored documents. We see it every day. Since there is usually no penalty for getting caught for submitting a fraudulent application, unqualified applicants see little risk in overplaying their credentials or hiding a checkered past.

In fact, we regularly see professional and administrative candidates applying to our clients who have items in their past that make them absolutely unsuitable for the positions they are seeking. Yet they are often working in a similar role in the same industry. Either the current employer is not performing background investigations or they are using one of the big box providers that simply report information at face value.

But equally important in today's litigious climate is legal compliance. As the president of my firm and a practicing lawyer for 30 years, RAI made a commitment to helping our clients navigate through the legal minefield and sort through the plethora of notices and forms which employers must provide to applicants prior to, during and even in some cases, after a background investigation has been completed. We view compliance as a shared responsibility.

In 2014, we developed our proprietary Compliance Manager Platform which manages the entire applicant background experience while seamlessly integrating into the employer's human resource platform. All required notices are provided to the candidate from California to New York in a documented, auditable system. Data entry by both the client and their candidate is minimal and the experience for both users takes less than a few minutes to complete. Documents and notices are updated as laws change and as new regulations are added.

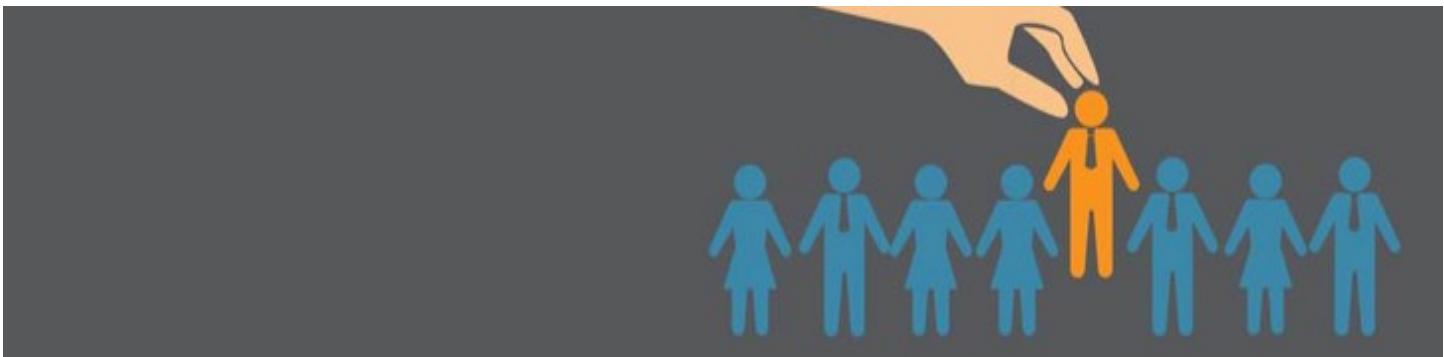
Reputable employers recognize the need to conduct legally compliant background investigations on their employment candidates. In a recent survey of over 1,500 human resource professionals, 96% indicated they perform background investigations. More and more, these professionals are moving away from commoditized background checks and presenting a strong business case for performing accurate and compliant background investigations. The cost difference is not as much as you might think and the added turn time is typically less than a day for an analyst to properly review the investigative results.

A background screening program should reduce risk, not create exposure and liability. The stakes are simply too high to cut corners in this area of your HR program.



#### **ABOUT THE AUTHOR:**

Kevin P. Prendergast is the President & General Counsel at Research Associates, Inc., a corporate investigative firm serving clients since 1953. Kevin oversees the compliance program at RAI and works with clients and their counsel in developing legally compliant background screening programs. Mr. Prendergast graduated from the Cleveland Marshall College of Law and has been licensed to practice law since 1987. He is a member of the American Bar Association, Ohio State Bar Association and the Society for Human Resource Management. Kevin can be reached at 800.255.9693 or [kprendergast@raiglobal.com](mailto:kprendergast@raiglobal.com).



## Key Considerations When Choosing An ATS to Work With Your Background Screening Firm

By: Attorney Lester S. Rosen, Founder and CEO of [Employment Screening Resources® \(ESR\)](#)

**An Applicant Tracking System (ATS)** is a software application that automates and streamlines the recruitment and hiring process. The vast majority of companies that recruit and retain top candidates either currently use, or plan to use, an ATS solution. The importance of hiring qualified and properly vetted employees is critical and integrating an organization's background screening program to create a seamless process is essential. With literally hundreds of ATS options to choose from, all offering a bewildering array of features and benefits, the big question is "Which ATS should I choose?" This article is intended to review 15 critical areas employers should review when choosing an ATS:

**1. Candidate Experience.** If candidates have a poor experience using an ATS because of a lengthy process and slow performance, they will leave. Since the candidate experience is so important and is an integral part of an employer's branding, have the ATS provider give a first-hand experience of the application process for a candidate. Millennials, in particular, want software that is logical and intuitive as well as mobile device friendly.

**2. Customer Support and Implementation.** Learn exactly how the ATS implements the solution, including specifics in terms of training, support, and timelines. Since downtime and performance issues can be problematic with an ATS, find out what customer support is available and when. The best case scenario is the ATS vendor offers 24/7 customer support but learn what hours and days the customer support team is available and the response time if issues emerge.

**3. Ease of Use.** The ATS system should be able to be used easily with minimum training to save time and money. While some ATS vendors may offer a number of confusing "bells and whistles," the most important factor is whether the ATS is easy to set up, intuitive, and easily maintained.

**4. Financial Viability & Scalability.** Since new ATS vendors are popping up almost daily, collect data on an ATS vendor's revenue, financial viability, and years in business in order to avoid frustration over the lost money and lost time used to implement a new ATS. If an employer grows and needs additional services or capacity, can the ATS provider keep up?

**5. Integrations.** Larger employers utilize multiple service providers including background screening firms and onboarding solutions. Hiring can be enhanced if various hiring related processes can all be integrated. Employers should learn what resources the ATS vendor will provide for integration. Since some ATS vendors may be overextended, make sure there are dedicated resources available when ready to integrate. Be careful about accepting a screening or onboarding provider only because they are already integrated. It is important to fully vet these providers. The fact that they are integrated is not a testament to quality. An employer should not allow themselves to be steered to a pre-existing partner just because of the pre-integration.

**6. Job Posting & Social Networking.** An ATS should have robust job posting and social networking capabilities in order to gain better candidate visibility. Make sure the ATS has access to job sites and social networking sites and have the vendor explain the posting process.

**7. Legal Compliance.** U.S. companies, whether doing business with the federal government or not, should make sure the ATS has tracking tools for legal compliance issues involving race, sex, and other factors in order to avoid exposure to lawsuits and fines.

**8. Ownership of Data.** Since employers will need your data if deciding to change ATS vendors or your business, ask the ATS vendor if candidate resumes and records can be downloaded and find out exactly what will be received, in what format, and if there is a charge for these services.

**9. Performance.** Learn about the up-time percentage record and speed of the ATS since slow performance and downtime can lead to lost candidates and opportunities. Find out the ATS vendor's record regarding system outages and where their data centers and servers are located.

**10. Portals.** Ensure the ATS has an attractive and intuitive Internal Candidate Portal for employees to access to view positions as well as an Employee Referral Portal for employees to refer their friends. Evaluate these ATS portals for the user experience for both employees and candidates.

**11. References and Demonstration.** Ask the ATS vendor for five references and prepare a list of questions based on the factors listed in this article. An employer should ensure the references are from users similar enough to make them meaningful. At a bare minimum, have an internal recruiter, an IT professional, and a hiring manager included in the selection of an ATS. Review in detail each and every step along the way, and avoid making assumptions about workflow. Once committed to an ATS, if a "must have" feature is discovered missing, it may be very difficult or expensive to get the system modified.

**12. Reporting.** At a minimum, make sure the ATS vendor has a reporting tool that reports information such as time-to-fill, diversity, and source of hire. Check what ATS reports are standard, if customized reports can be run, and how long these reports take to be delivered.

**13. Search.** The search functionality of a quality ATS should be quick and accurate with logical results. It should allow employers to pre-screen based upon job criteria and filter for particular needs. Have the ATS vendor perform multiple tests of actual searches on a live system and learn what type of search engine they use.

**14. The Cloud vs. IT.** Unless employers have dedicated IT resources, they should want their ATS vendor to maintain and update the system (software as a service - SAAS) so they can hold the ATS vendor accountable and not have to deal with over extended internal IT resources.

**15. Tools and Workflow.** Ensure that the ATS can provide the basic tools that are needed such as sorting, maintaining resume databases, and arranging interviews? By documenting the hiring process, employers can double check that all necessary workflows can be accommodated by the ATS. Advanced tools may include job application management, HR compliance management, resume downloading and parsing, applicant profiles, online job center for applicants, background verification and screening, HRIS Integration, offer letter generation, automated interviews, intelligent candidate matching, and mobile accessibility.

**Employment Screening Resources®** (ESR) is integrated with the most popular Applicant Tracking Solutions and can assist your organization in selecting the right ATS partner and has over 20 years of experience in working closely with ATS providers. Given the importance of the right decision, consulting with an independent third party background screening expert like ESR, employers can eliminate the hype, gain insights, ensure compliance and focus on quality providers that offer the right ATS solution to meet their hiring and screening needs.

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#### **ABOUT US:**

Attorney Lester Rosen is founder and CEO of **Employment Screening Resources® (ESR)** and author of "The Safe Hiring Manual." Visit the ESR website at [www.esrcheck.com](http://www.esrcheck.com).

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## HINDSIGHT IS NOT YOUR FRIEND

*By: Bob Long, Director of Sales, Courthouse Concepts*

Everyone has had one of those 'woulda, coulda, shoulda' moments where we reflect back on a missed opportunity or to put it another way, "If hindsight was foresight then it would be insight" and insight is the holy grail of making good decisions.

Background screening has become an integral part of the hiring process and a recent National Association for Professional Background Screeners (NAPBS) study reported that 96% of firms conduct some form of background check. With background screening being so ubiquitous it unfortunately has also caught the attention of plaintiff attorneys looking for a big payday by finding violations of the Fair Credit Reporting Act (FCRA) which is the primary law that governs the background screening process.

The recent annual report on the top news stories about background checking that appeared in the leading newsletter for the background screening industry, The Background Buzz, in 2016, showed that the level of class action lawsuits against employers and background screening providers continued to climb and individual suits were also high. Fisher Phillips recently reported in the article 'Employment Background Checks: In a State of Flux, but Still Worth Doing' that FCRA cases filed in the U.S. have increased by 20% at a rate of approximately 300 new cases each month.

This trend is very troubling for employers, but even more troubling is the fact that the vast majority of these cases usually involve allegations that an employer used defective background check authorization / disclosure forms and/or violated simple FCRA rules and procedures. Most of these situations could have been easily avoided.

The T.V. program 'South Park' features a superhero named Captain Hindsight. This fictional character has a natural gift for pointing out the obvious and stating what should have or could have been done to prevent the incident with some prior analysis or foresight.

The "South Park" fan wiki describes him best as "a superhero who 'helps' people in need by appearing at the scene to tell them about what they did wrong to get into a certain situation and what methods they could have used to avoid it, instead of actually rescuing them." It's humorous when he offers his two cents, almost immediately after something has gone awry.

As hiring managers, human resource and background screening professionals, hindsight is not a talent to be celebrated, nor is it a laughing matter. Just like Captain Hindsight, after a lawsuit is filed, an investigation will show what went wrong, leading you to say how it should have or could have been prevented. It's a bitter pill to swallow when it's something that could have easily been addressed.

Let's be clear, when a company or background screening professional needs to use hindsight it means there was an oversight in the background screening process that should have been identified before a problem arose. The consequences of not doing this is the proliferation of the multi-million dollar class action lawsuits that are flourishing today.

It is imperative for employers to work with a background screening firm that regularly monitors not only their own processes, but also their clients' processes as well and has well established quality processes in place. Note this is a cornerstone of earning accreditation through NAPBS.

Your background screening provider should also offer training to all personnel who are involved in the hiring and background screening process regarding how to legally use the information found in a background check and to appropriately implement the company's background screening policy and procedures. All new hires that will be involved with the background screening process should be thoroughly trained before they start handling cases and experienced staff should undergo periodic training to ensure their knowledge and skills are up to date. Having a established training protocol and procedures is another strong tenet of earning accreditation.

Simply waiting until something happens to say, "we should have had training on this," or "we could have avoided this if we did something this way," makes your company vulnerable to lawsuits and makes plaintiff attorney's very happy. Because of the growing lawsuits and the importance of background screening employers need to work with a proactive background screening provider that will engage them in a front-end approach to ensuring that their processes are fully compliant with FCRA requirements.

In her article, 'Pre-Employment Background Screening 101 – Mitigate Your Risk,' Montserrat Miller, one of the leading attorneys in the U.S that handles background screening cases says, "Under the Fair Credit Reporting Act (FCRA) (15 U.S.C. § 1681 et seq.) employers have two critical responsibilities when using the services of a third-party background screening firm to request background checks on prospective employees.

1. Employers must provide prospective employees a clear and conspicuous disclosure regarding the fact that you will conduct a background check AND you must get the individual's written authorization to conduct such. This is typically called the disclosure and authorization notice and it must be in a stand-alone document. The FCRA requires that when an employer requests a background check (aka a "consumer report") for employment purposes they must provide "a clear and conspicuous disclosure" in writing "before the report is procured or caused to be procured, in a document that consists solely of the disclosure" and "the consumer has authorized in writing...." (15 U.S.C. § 1681b(b)(2)(A)(i)-(ii))
2. Employers must follow the adverse action process, which is potentially a two-step process. The first step is typically referred to as the "pre-adverse action step" and you cannot send a final "no hire" letter until you complete this step. So, hypothetically speaking, after completing step 1 above you receive the results of a background check from your background screening vendor. The report indicates a criminal history or some other adverse item of information. Based on this information, you may decide not to hire the individual.

Now what? Before you take any final adverse action you must first provide the individual with a copy of the report you are reviewing and a summary of their rights as prescribed by the Consumer Financial Protection Bureau. This allows the prospective employee to review the report and alert you if any information contained therein is inaccurate or incomplete and also to act on that incorrect or incomplete information with the background screening company. You should wait at least five business days before taking any final adverse action although realize that in some states and cities, Fair Chance laws and ordinances (aka Ban the Box laws and ordinances) may impose greater time periods. At a minimum, employers must follow above two steps to comply with the FCRA. Depending on what state or city you are in there may be additional requirements, but these are the basics when doing pre-employment background checks on prospective employees."

### Getting It Done

An accredited background screening firm will have a Compliance Officer and you should have them examine your processes for compliance with the FCRA. They will review your background screening program—your policies and procedures—and then go step by step through the hiring process to understand where you may have deficiencies and need to shore up your compliance. For instance—if your FCRA disclosure and authorization has a lot of "extraneous language" such as a release of liability language, they will advise you to remove the language.

Remember willful violations of the FCRA are eligible for statutory damages of \$100 to \$1,000 per violation (each employee impacted counts as a violation), plus punitive damages and attorney's fees.

While I have been really hard on hindsight, the truth is all of us have hindsight moments. Its' inevitable. The key is to 'flip the script' on hindsight by working with a proactive background screening firm that will point out what should and can be done; and to help you take the necessary steps to ensure your background screening process is FCRA compliant. This is why background screening firms need to be nemesis of Captain Hindsight by pointing out potential problems ahead of time to protect their clients and themselves from unnecessary lawsuits.



### ABOUT THE AUTHOR:

Bob Long is Director of Sales at Courthouse Concepts a CRA specializing in pre-employment background investigations



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