



## Making Background Screening work FOR you not against you

As a Human Resource professional, you wear many hats: Insurance coordinator, employee handbook expert, hiring consultant, recruiter, policy writer, and even counselor. It's no wonder that today's HR professional feels frustrated with the ever changing policies and procedures related to the hiring process, both internal to the organization and legislatively.

Although it is nearly impossible to cover every topic important to HR professionals with regards to background screening, we would like to provide you with some quick guidelines and answer some questions you might have. So to cover as much ground as possible, we will break this white paper down into three distinct categories; Federal Regulations, State Regulations, and Service Differences.

### **Federal Regulations:**

Odds are the majority of you have heard of the Fair Credit Reporting Act (FCRA for short). This important legislative piece holds the key to three areas of consideration: the Consumer Reporting Agency (CRA for short and Us – Shield Screening), the Consumer (Your Applicant), and the User of Consumer Reports (You).

It is important to understand your obligations under the FCRA with regards to the use of consumer reports and what steps you must follow during the process. However, don't become bogged down in every tiny detail, instead seek out a screening company that will help you navigate the requirements and procedures. Many CRAs employ Compliance experts who will assist you with policy and procedure development. CRA's are required according to the FCRA to provide you the necessary documentation to stay in compliance with the FCRA requirements.

In addition to the FCRA, the EEOC has recently taken a position on the use of consumer reports in the hiring process. As a matter of fact, the EEOC is the HOT NEW TOPIC both among CRAs and organizations utilizing background screening in the hiring process. The primary concern of the EEOC is ensuring arrest and conviction records are not fostering discriminatory hiring practices. At a glance, the take-aways from the new guidance is not to have a blanket policy to disqualify anyone with a criminal record but rather apply your policy to job specific requirements and functions. For example, if your applicant will not be driving or operating heavy machinery then a DUI charge might not be an appropriate disqualifier for that position.

For EEOC consider the following questions:

- Do your policies make blanket decision on not hiring anyone with a criminal record?
- Are your manager, hiring officials, and decision-makers trained about Title VII and its prohibition on employment discrimination?
- Does your policy limit inquiries related to criminal history to information which is job related and consistent with business necessity?

- Is the criminal history information you obtain for your employees confidential and only used for the purpose it was intended?

### **State Regulations**

There are 50 states and if you are a national organization then there are at least 50 different set of rules you may find yourself attempting to make sense of. Although I will not cover the entire spectrum of regulations in each state, we will cover the areas you will want to research in your state and a few important state specific requirements.

Each state not only manages their own criminal processes but also the way this information is stored, accessed and the parameters of what is allowed. Most states provide unlimited access and reporting of criminal conviction information however, there are 12 states that place restrictions on the the information a CRA may report. These states are CA, CO, KS, MD, MA, MN, NV, NH, NM, NY, TX, and WA. In these states, arrest records, criminal convictions, and indictments cannot reported after 7 years and therefore are not to be considered by you in the hiring process.

In addition to reporting requirements, state legislation may also regulate the type of screening that must be done for a particular industry. As you can imagine, these industries are typically safety sensitive industries or industries with direct access to vulnerable populations. Examples of these industries are Transportation, Healthcare, Home Health, Energy, Childcare, Education, etc. Make sure you check to see if there are also Federal regulations as there are with the Department of Transportation.

Although I covered solely criminal considerations, you must take a look at the services your organization utilizes and check with your state on the use of each service. An example of these state specific restrictions would be Maine which does not allow pre-employment drug testing or Oklahoma who restricts the use of Worker's Comp information as a hiring decision.

### **Service Differences:**

There are so many choices these days for a CRA to assist you with your screening needs. That said, there are almost as many names to the same services as there are background screening providers. Understandably, this makes navigating which services you need VERY difficult and confusing. Here are some basic pointers and questions to help ensure your screening partners is actually searching and providing you the information you with need and want.

First, let's explore what information is available in their basic form.

- Criminal Records – County (stored at the County Court House or on the County Criminal website - Federal (stored electronically on the Federal PACER system) – State (contributed records from the County and either manually or electronically sent to the state)
- National Criminal And Sex Offender Database Search – Criminal and sex offender information gathered by the CRA and aggregated to form a searchable database. Sources vary greatly from state to state and from CRA to CRA. The information available is determined by what information was purchased by the CRA, what is made available from each state, and how often the CRA updates the data from the sources.

- Motor Vehicle Records – Maintained by the state and accessible either from the state or a electronic portal (NOT databased)
- Worker's Compensation Claims Search – Maintained by the state usually the Department of Labor and many times NOT available via an online search.
- Verifications – Either Employment, Education, Reference, License Verifications obtained by calling the entity and obtaining the information requested (entities sometimes utilize third party providers such as the Work Number to store their information and take the administrative burden from staff)
- Social Security Number Search – Either from the Social Security Administration or a Credit Bureau. Does not match Social to Name but provides pointer information such as address history.

The best case scenario would be for each CRA to label their services the same but of course due to free enterprise, branding, marketing, competition and the like, CRAs look for differentiators to gain the ever sought after market share. So, when you talk with a CRA, have the following questions handy to help you navigate their service offerings.

- *County Criminal Records:* How far back does the information go? How do you conduct a county criminal search? What is the average turnaround time?
  - RED FLAGS: All our records are INSTANT (this is not possible in many counties where the court clerk must conduct the search). All our records are searched ONLINE (per previous – this is only available about 60% of the time so beware).
- *National Criminal and Sex Offender Database:* What is the size of your database? Do you verify records? Do you have a source document? How often is your database updated?
  - RED FLAGS: We do not know the size of our database (most companies with good sized databases can provide you a source document and know the size of their database). We do not verify records. (The information may be dismissed from the county but was never updated in the database. This creates compliance concern and is illegal to use in some states such as CA)

If the screening company has a service where the name does not describe the service, ask what is included specifically with the service.

Background screening can be complex and has many moving parts that contributes a great deal of knowledge as to the character and history (and consequently future) of your applicant. Deciding what information is important to the position, confirming you are meeting any state or federal screening requirements, following the regulations in your screening process and ultimately ensuring you are receiving the information you need is KEY.

**THE GREAT NEWS?** CRAs, like SHIELD, are properly equipped and more than happy to help. Call us with your questions and let us consult with you!