



Building an Effective Background Screening Program

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Presented by Matt Jaye
Vice President, Sales

Agenda

- About Corporate Screening
- Background Screening Industry Overview
- Compliance
 - Trends
 - Disclosures and Authorizations
 - Adverse Action
- Developing Your Background Screening Program
- Background Screening Products and Services
- Technology Trends
- Final Thoughts

About Corporate Screening

- Ohio Corporation
- HQ and Operations located in Cleveland, OH
- Satellite Offices in Tampa, FL
Alexandria, VA, Charlotte, NC
- Privately owned and operated since 1987
- Founding and accredited member of the NAPBS

30 Years of Service

Corporate Screening Services, Inc. is a Cleveland, Ohio based provider of global background screening and HR process solutions.

INDUSTRY OVERVIEW & COMPLIANCE

Background Screening Industry Overview

- Background Screening Market: Nearly \$3 billion domestic (KPMG)
- Highly regulated
 - FCRA
 - State consumer reporting laws
- Highly enforced
 - FTC
 - CFPB



Background Screening Industry Overview

- In 2012, SHRM reported 86% of companies conduct criminal backgrounds
- Industry lacks formal standardization and uniformity
 - Makes the industry ripe for scrutiny.
 - National Association of Professional Background Screeners (NAPBS)



Compliance Review

FCRA

- Increasing number of Fair Credit Reporting Act (FCRA) class action lawsuits and fines over the last several years
- NAPBS reports that cases tracked by Employment Screening Litigation Tracking Group (ESLTG) since October 2015 indicate:
 - 67% of employer-focused cases accuse employers of violating either disclosure and authorization or adverse action requirements.
 - CRAs are also being targeted, with accusations that they are providing information for employment purposes without ensuring it is complete and up-to-date or sending a contemporaneous notice to the consumer

What do all of these companies have in common?



Compliance Review

Expensive Settlements

- Damages and fines in FCRA class action cases can rapidly add up:
 - Statutory damages of \$100-\$1000 per violation
 - Attorney's fees
 - Punitive damages
- In 2014, Publix Supermarkets settled an FCRA lawsuit for \$6.8 million. The trend continues.
 - In January 2016, Wells Fargo agreed to pay \$12 million for violating disclosure/authorization and adverse action procedures
 - In 2015 the following employers settled FCRA class action lawsuits that alleged disclosure/authorization violations: Home Depot (\$3 million), Chuck E. Cheese (\$1.7 million), and Food Lion (\$3 million)
 - In January 2016, Calvin Klein agreed to pay more than \$700,000 to settle for not following proper adverse action procedure

Compliance | Disclosure and Authorization

- Lawsuits contend that the disclosure/authorization form did not meet the statutory requirements of the FCRA to be “clear and conspicuous” and not consisting “solely” of the disclosure/authorization.
- Incorrect forms often contain extraneous information such as releases of liability or authorizations outside of authorizing a background check all combined into one long form applicants must complete or scroll through on an online application.

Compliance | Disclosure and Authorization

Prior to the background check:

- Disclose to candidate that a background check will be ordered
 - In writing
 - In a form that is clear and conspicuous and consists solely of the disclosure and authorization
 - Prior to procurement of report
 - Language to cover both forms of report (consumer and investigative consumer)
 - May include state specific requirements
 - Maintain original
- Provide candidate with a *Summary of Rights under FCRA*

Compliance | Adverse Action Procedures

The FCRA requires certain actions from employers when taking adverse action based on a background screening report.

- Adverse action examples:
 - failure to hire or an applicant, or
 - denial of retention or promotion of an existing employee.

Compliance | Adverse Action Procedures

Following adverse action procedures is important for reasons beyond legal requirements:

- Most errors in reports are not the fault of the CRA (i.e. Corporate Screening) or the applicant.
- Instead, most errors are because of inaccurate information from the reporting source.
- Following adverse action procedures helps ensure that you receive the best information, which in turn helps you find the best candidates.

Compliance | Adverse Action Procedures

The adverse action process consists of two parts: Pre-adverse action and adverse action.

- Pre-adverse action procedures – send:
 - A pre-adverse action letter
 - Copy of the consumer report
 - Copy of “*A Summary of Your Rights Under the FCRA*”
 - Any state-specific letters.

Compliance | Adverse Action Procedures

Adverse action procedures:

Takes place after the applicant has been allowed adequate time to request a reinvestigation (typically at least 5 business days)

- Send:
 - An adverse action letter
 - A copy of the consumer report
 - A copy of "*A Summary of Your Rights Under the FCRA*"
 - Any state-specific letters.

Compliance | Things to Consider

- Best practice is to create/review company background screening policy
 - Seek legal review of policy and procedure
- FCRA concerns
 - Disclosure and Authorization Forms
 - Adverse Action Procedures
- EEOC Considerations
 - Documented Individualized Assessment process
- Employment Trends
 - “Ban the Box” Legislation
 - Restrictions on the use of credit report information

DEVELOPING YOUR BACKGROUND SCREENING PROGRAM

Your Background Screening Program

The number one reason why employers use background screening is to mitigate risk associated with a bad hire or placement.

- Background screening reports don't all contain the same information. Determining the right program for your organization requires attention to detail.
- Your industry and risks are unique factors that should determine the type of screening program that you use.
- Not all background screening vendors are alike

Screening Program | Information Sources

Social Security Number Trace & Validation

- Investigative tool – not a consumer report
 - Will not be included in your report
 - Should not be used against your applicant
- Uses:
 - Identifies address history
 - Identifies alias names
 - Identity theft and reverse lookups
- Sources: credit headers, news/magazine subscriptions, public utilities, etc.

Screening Program | Information Sources

Primary Source – Court Searches

Primary Source Court Searches (Benefits):

- Justice system creates and maintains the criminal records
- Consistent across the country
- Most accurate info available
- Most up-to-date info available, not reliant on any update feeds
- The only search method that is completely FCRA and EEOC compliant

Primary Source Court Searches (Things to Consider):

- Limited geographically to the jurisdiction of the court
 - Use SSN Trace to overcome this limitation

Screening Program | Information Sources

Database Searches

Database Searches (Benefits):

- Large geographic coverage
- Inclusive of several million records
- Fast Results
- Good supplement to primary source court search program
 - Helps overcome the residency-based search methodology of court programs

Database Searches (Things to Consider):

- Not always accurate (wrong dispositions)
- Not up-to-date (antiquated info)
- Some incomplete info (i.e. arrest without conviction)
- Unless conducted properly, they may not be FCRA and EEOC compliant as a stand alone search
- Spotty coverage – bits and pieces, as a standalone search it can create a false sense of security

Screening Program | Specific Search Products



County Court Criminal Conviction Search

- ◆ Considered Industry gold standard
- ◆ Search for convictions related to violation of individual state law
- ◆ Conducted on a county by county basis
- ◆ Most accurate and up-to-date criminal record information
- ◆ Should follow strict Q/A Procedures
 - ◆ Matched with three (3) identifiers
 - ◆ Application of reporting matrix for compliance with applicable federal and state law reporting prohibitions.



Federal Court Criminal Conviction Search

- ◆ Search for convictions related to violation of federal law
- ◆ Conducted on a district by district basis
- ◆ Should follow same Q/A Procedures as County Court Search



National Criminal Database Search

- ◆ Search of over 300 million records
- ◆ Recommended as a supplement to primary source court searches
- ◆ Should follow strict Q/A Procedures
 - ◆ Re-verified through primary source (i.e. county or federal court)
 - ◆ Matched with three (3) identifiers)
 - ◆ Application of reporting matrix for compliance with applicable federal and state law reporting prohibitions.

Verifications | Best Practices

🕒 **Employment Verification**

- ◆ All employment information should be obtained only from authorized / qualified sources
- ◆ No “3 and out rule”
- ◆ All derogatory / discrepancy information should be obtained in writing

🕒 **Education Verification**

- ◆ Locating alternate qualified sources - alumni office and/or board of education
- ◆ Finding records that have archived or merged with other districts
- ◆ Identify “diploma mill” schools and/or fraudulent credentials

🕒 **Professional License, Credential, Certification Verification**

- ◆ Verified via primary source
- ◆ Details when available will include: License/Credential/Certification type, date obtained, expiration date, status, disciplinary action.
- ◆ All discrepant information will be obtained in writing from the source

Technology Trends

ATS/HRIS Integrations

- Increased usage
- Order and receive background reports directly through your system of choice
- Reduces time spent starting background screening process
- Improved candidate experience
- Minimizes risk of non-compliance with FCRA/EEOC regulations

Candidate Invite/Data Entry

- Reduced data entry on client side
- Minimizes need for client collection of P.I.I.

Paperless Drug Screening

- Mobile device compatibility (similar to airline boarding pass)
- Allows you to set expiration date for drug test
- Provides access to approximately 3,000 collection sites nationwide

Final Thoughts

- Determine the appropriate products and services based on your unique needs and the instructions that should go along with each product/service (this should be customized)
- Partner with your provider to ensure the process for requesting and receiving background checks fits well with your workflow (i.e. ATS integration, Online Ordering, Candidate Invite Ordering, etc..)
- Thoroughly evaluate hiring processes and procedures regularly to ensure compliance with the FCRA guidelines, as well as any local and state regulations (i.e. “ban the box” laws)
- Regularly evaluate that contractors are adhering to your background requirements
- Seek annual legal review of policies and procedures
- Select a qualified screening partner

THANK YOU

If you have any questions or want assistance with your background screening program, please contact
Matt Jaye

Phone: 800-229-8606, ext. 326

Email: MJaye@CorporateScreening.com

