

“Off-The-Shelf” Background Screening

By Norm Gagnon, Director of Compliance

In an effort to streamline operations, offer quick turnaround times, and lower prices, many companies in the background screening industry have marketed products and services as if they were breakfast cereals at the local grocery store. Background screening is now being viewed as a commodity, as demonstrated by reverse auction bidding for services and many other emerging industry trends. Services in this industry have not been perceived as commodities in the past, nor should they be today.

Fifteen years ago, a tremendous amount of education was given to vice presidents, directors of loss prevention, and human resources regarding the merits of background screening. Countless discussions centered on finding the true return on investment (ROI) of these corporate lessons and many debates questioned the significance of the “negligent hiring” threat.

Today, loss prevention executives deliver well-documented ROI analyses of background screening to their corporate management team, leading to significant programs in place with the blessing of the C-suite executives. Background screening can easily be quantified as the right choice in helping human resource departments eliminate potentially dangerous and unpredictable candidates.

As for the threat of negligent hiring, the debates have been replaced by case studies. The majority of HR managers agree that background screening is an appropriate and effective method to minimize negligent-hiring claims. For any individual who needs to add quantifiable data to their idealistic motivation of employee and customer protection, consider the following two points by industry leaders:

- According to background screening industry experts, employers in California lose negligent-hiring lawsuits about 60 percent of the time.
- The settlement award averages \$870,000.

It is no wonder that over 80 percent of employers now conduct at least one form of background screening on potential and/or current employees. Time is valuable and employers want a more efficient, quick decision process to hire individuals.

By decreasing the time an organization needs to make good, responsible hiring decisions, vacant positions can be filled quickly and appropriately.

As a result these industry demands, additional services, such as **adjudication of background screening reports** and **administering of adverse action** (when a background screening report may be used to disqualify the candidate), are being offered to the employer with the intention of reducing administrative costs associated with running a background



screening program. As an added bonus to customers, these services are being offered for a low fee.

On the surface it would appear that background screening services could be placed at the end of the cereal aisle and procured in the same manner as groceries—order in bulk, buy on price, and make sure the shipments are delivered on time. While timeliness is a key factor in product selection and volume plays a role in pricing, neither should overshadow the importance of understanding the product.

Even when purchasing a box of cereal, consumers can compare the quality of the product offered from different

producers, even if they are all marked “corn flakes.” Different ingredients and nutritional values are factors equally important to cost when selecting a brand.

The food industry provides metrics of quality, such as vitamin and protein content, but what metrics can be used to compare background screening services between competitive providers? The answer is a combination of factors, including customer service, enhanced product delivery, software applications, and, most importantly, education and compliance.

Key Topics to Understand

Edge Information has recognized a significant increase in the need for education in background screening over the last fifteen years. The following list includes key topics that we discuss with our clients and recommend all employees review with their prospective providers *before* sending a request for proposal or announcing the bidding process.

1. Compliance with the Fair Credit Reporting Act (FCRA)

While many components of a thorough background check can be gathered without using an outside agency, the assistance of a Consumer Reporting Agency (CRA) is usually necessary to retrieve accurate “hands-on” criminal history records. The steps below should be followed for all candidates, in order to maintain compliance with the many state and federal regulations governing background screening. *Note: California requires these steps, even if the research is done solely by the employer.*

- Provide a *disclosure* to the candidate that lists all of the background checks that may be conducted.
- Obtain a signed *release form* from the applicant. This signed form allows you and/or a CRA to prepare a consumer report.

2. Adherence to Numerous State Regulations that Pertain to the Use of Background Screening Information for Employment Purposes

Assure the information used is reportable. For example, in select states some information is only reportable if the applicant’s wage is likely to reach a certain limit, such as \$25,000 versus the federal requirement of \$75,000. First offenses for some criminal convictions are not allowable for review by the employer. California has special rules to adhere to for possession of marijuana.

3. Understanding the “Holes” of Multistate (“National”) Proprietary Databases

While there are millions of criminal records maintained in these databases, there are a large number of counties and states that do not sell their data to the database compilers. This situation exists for any jurisdiction that does not allow their criminal records to be sold to third parties. The benefit of these databases stems from the millions of included records from all

over the United States that are instantly available and a relatively inexpensive way to increase the effectiveness of the overall criminal search on a candidate.

- Federal requirements ask the CRA to verify the information before providing the data or sending it immediately to the applicant upon reporting to the employer.

4. Outsourcing the Adjudication (Scoring) Process

- Clearly identify and document the criteria that you prefer the CRA to use when reviewing your background screening reports.
- Define the process and contacts to be used when the CRA needs to contact you in case further review is necessary.

5. Outsourcing the Adverse Action Process

- Confirm the CRA offers you a complete process that is current with the Fair Credit Reporting Act guidelines.
- Define the turnaround time you expect for your letters to be processed and how fast you want any disputes handled.

6. Integration

- Establish a schedule for reoccurring conferences (weekly) with all parties involved prior to any implementation plan that includes ATS provider, HRIS provider, background screening provider, employer’s HR department, LP department, and operations.
- Discuss any change request with all parties to eliminate surprises. Assign this responsibility to one of the preferred vendors by selecting them as “project manager.”

Buyer Beware

The background screening industry has grown tremendously and changed significantly over the past ten years. As a result, Consumer Reporting Agencies should be providing more education to their clients. At the same time, clients should be allocating ample time to discuss these pertinent issues.

Although handling background screening as a commodity does have its advantages, equating background screening to a commodity could jeopardize the case in negligent hiring and/or retention lawsuits. It is highly recommended that before you select an off-the-shelf background screening package, pick up the box and read all the ingredients. ■



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