



Weighing In: Professional Background Screening Protects Employers and Employees Alike by, Noelle K. Harling, Vice President of Frasco Profiles

Anyone applying for a job recently has likely consented to allow the prospective employer to conduct a background check during the pre-employment process. The increase in background screenings over the past several years can be attributed to a growing awareness of security since September 11, and heightened litigation surrounding negligent hiring.

While the necessity of background screening may seem obvious, recent media coverage suggests the background screening industry is impeding competition in today's already challenging employment market. It is easy to empathize with any applicant striving to acquire a new position, but it is important to understand that background screening organizations are regulated and operate in accordance with industry standard best practices.

To Screen or Not to Screen?

Employers use background screening to protect their business interests when hiring new employees and to ensure that they are providing the safest environment possible for employees and anyone coming into contact with employees during the workday. If an employee injures a coworker or customer and it is determined that a background check would have shown a history of, or propensity for violence, the employer can be held liable for negligently hiring that individual.

The companies performing background checks, known as Consumer Reporting Agencies (CRA), and the employers procuring these reports, are strictly regulated by state and federal laws designed to protect the interests of job applicants (consumers) during the background investigation process. The overriding federal legislation is the Fair Credit Reporting Act (FCRA) which falls under the oversight of the Federal Trade Commission (FTC).

Regulatory Oversight Abound

In addition to outlining what a CRA may and may not report, the FCRA clearly outlines employer obligations including obtaining written authorization from the applicant before procuring such a report. Should an employer deny employment based on information in a background check (consumer report for employment purposes), the employer must follow additional steps referred to as Adverse Action.

Adverse Action includes notifying the consumer *before a decision is made* that he or she may not be eligible for hire based on the content of the report and providing a copy of the report for the consumer to review. Once the consumer reviews the report for content and accuracy, and does not contest the report or cannot reconcile the content with the employer's decision, the employer must send a final Adverse Action notice. Adverse Action allows the consumer to verify any information being considered in a hiring decision is accurate. All but an extremely small percentage of screenings performed annually are in full compliance with the FCRA regulations.

Another protection afforded job seekers is the guidance and oversight of the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC stipulates that the practice of denying employment on the basis of a criminal conviction is unlawful under Title VII unless the employer can demonstrate a justifying business necessity.

Although allowed in some circumstances under the FCRA, many states have consumer reporting laws on the books that prohibit the reporting of all adverse public record information which antedates the report by more than seven years. Some states, such as California, prohibit the reporting of all non-conviction information, regardless of when it occurred. Industry practice for CRAs is to only report criminal cases where a conviction has occurred, or the case is open and pending trial.

While it is true that expunged cases appearing in databases available to employers are difficult to eradicate, there is a legal obligation on the CRA to correct inaccurate information once it is brought to their attention. If a record is reported by a CRA to an employer and the consumer disputes the accuracy of the information, the CRA is required under the FCRA to investigate the dispute. If the information is determined to be inaccurate, the CRA must correct the information in their report.

Also, pursuant to Section 613 of the FCRA, a CRA cannot report matters of public record which are likely to have an adverse effect upon a consumer's ability to obtain employment unless they either: 1) notify the consumer the information is being reported by the CRA and provide the name and address of the person

receiving the information; or 2) maintain strict procedures designed to insure that whenever public record information is reported it is complete and current. Again, this provision is in place to protect the consumer from inaccurate information being reported and/or considered in a hiring decision.

Screening Protects Consumers, Too

Although background checks can be unsettling, even to those who know their background is clear, the increased use of consumer reports in the employment environment and the supporting legislation has many added benefits. A background check is quite often the first indication of identity theft. Once a consumer sees this, it is frequently the CRA that provides the initial guidance on where and how to begin repairing any damage done by having their identity stolen.

Additionally, the background screening industry serves several critical functions, including:

- Protecting the rights of consumers
- Helping employers comply with hiring standards set by state and federal law
- Assisting public and private employers avoid legal exposure for negligent hiring
- Ensuring a safer workplace and avoiding the frustrating and often tragic consequences associated with workplace violence, theft, drug use, and hiring based upon fraudulent credentials
- Playing a critical role in the homeland security effort
- Promoting the profitability and productivity of American business by lowering the high cost of turnover through more informed hiring decisions

Background screening can be a daunting task but one that ultimately helps employers protect their businesses and the safety of those who work for them. Thousands of companies are becoming better acquainted with whom they are doing business, and they are not alone in their efforts. Since 2003, the National Association of Professional Business Screeners (NAPBS) has protected the interests of employers and employees by promoting ethical business practices and compliance with the FCRA, and fostering awareness of issues related to consumer protection and privacy rights within the background screening industry.

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