



White Paper

Background Screening Trends in 2013

As an experienced industry leader that provides more than 9 million employment background checks across the globe every year, First Advantage has identified several background screening trends to help hiring professionals succeed in 2013.

Trends for the upcoming year include updated legislative considerations, ins and outs of using credit reports in hiring and an overall increase in employers conducting more detailed background screening than ever before.

It is vital for employer organizations to keep abreast of current trends in background screening. Since conducting comprehensive background checks is essential to the success of the hiring process, companies benefit from adapting their screening procedures to accommodate developments in background screening.

Updated Guidance for Criminal Background Checks

On April 25th 2012, the U.S. Equal Employment Opportunity Commission (EEOC) issued new guidance for employers on the use of criminal background checks when hiring new employees.

According to the EEOC document, the purpose of the Guidance is “to consolidate and update the U.S. Equal Employment Opportunity Commission’s Guidance documents regarding the use of arrest or conviction records in employment decisions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.”

The overarching concern for the EEOC is that background checks used in hiring decisions can have a disparate impact on protected classes. The Guidance recommends that employers take into consideration three factors prior to excluding an applicant from a job based on the results from a background check. Those considerations are 1) the nature and gravity of the offense or conduct; 2) the time that has passed since the offense or conduct and/or completion of the sentence; and 3) the nature of the job held or sought.

From a policy best practices standpoint, the Guidance suggests employers “develop a narrowly tailored written policy and procedure for screening applicants and employees for criminal conduct.” Employers should also:

- ▶ Identify essential job requirements and the actual circumstances under which the jobs are performed
- ▶ Determine the specific offenses that may demonstrate unfitness for performing such jobs
- ▶ Identify the criminal offenses based on all available evidence
- ▶ Determine the duration of exclusions for criminal conduct based on all available evidence
- ▶ Include an individualized assessment
- ▶ Record the justification for the policy and procedures
- ▶ Note and keep a record of consultations and research considered in crafting the policy and procedures
- ▶ Train managers, hiring officials and decision makers on how to implement the policy and procedures consistent with Title VII

Immigration Reform Sparks New Trends

Several recent developments related to immigration reform will continue to unfold into 2013.

1. Immigration and Customs Enforcement (ICE) will continue to audit companies suspected of hiring undocumented workers, making Employment Eligibility Verification Form compliance, or Form I-9 compliance, a top priority for U.S. companies. In a 2011 article, the Society for Human Resource Management reported a sharp rise in I-9 audits and penalties thanks to a shift in focus for ICE. In previous years, ICE performed workplace raids that targeted and removed undocumented workers; however, the Obama administration has initiated a change of direction for ICE that entails a more targeted pursuit of non-compliant employers through increased audits and workplace investigations. While undocumented workers are still removed from job sites, the focus of ICE is now on holding employers accountable for failing to adhere to employment eligibility laws.
2. A new and improved Form I-9 is slated to debut pending United States Citizenship and Immigration Services (USCIS) and Department of Homeland Security (DHS) approval. The imminent redesign of Form I-9 marks the first substantial changes to the form in 25 years. The proposed changes include expanded instructions, a new layout and additional data fields.
3. Digital Form I-9 services are available through third party vendors that provide paperless compliance and promise virtually error-free completion. Concerns about how digital service providers will transition to the new Form I-9 are growing, however. The software updates required to accommodate the changes could mean an added challenge for vendors and their clients.
4. USCIS encourages both employers and employees to use E-Verify to ensure employment qualifications. This free online service compares Form I-9 data to DHS and Social Security Administration records to verify employment eligibility. Using E-Verify is optional for most organizations, but some federal contracts as well as many employers in particular states such as Alabama, Arizona, Georgia, Louisiana, Mississippi, and North Carolina are required by law to participate in E-Verify. A federal bill known as The Legal Workforce Act of 2011 (H.R. 2164) that would mandate use of E-Verify was introduced in June of 2011. If passed, specific E-Verify requirements for employers would be gradually implemented.

Compliant Use of Credit Reports

There has been a notable surge in legislation that limits the use of credit information in background screening during recent years. According to a November 2012 report by the National Conference of State Legislatures, there are now eight states with laws that limit or restrict the use of credit information for employment purposes. Generally speaking the use of credit information in an employment situation requires a reasonable nexus between that information and the particular job description or role. Washington was the first state to enact such legislation in 2007, and it was joined by Hawaii in 2009, followed by Illinois and Oregon in 2010. In 2011, California, Connecticut and Maryland passed similar laws, and in 2012, Vermont followed suit. Out of 41 bills in 19 states and the District of Columbia that have been initiated or are awaiting review in the 2012 legislative session, 40 of them aim to restrict employers' use of an applicant's credit record in making employment decisions.

Background Screening for a Contingent Workforce

Temporary employment of contract personnel is on the rise. The Bureau of Labor Statistics reports a 29 percent jump in the employment of temporary personnel since 2009. Companies cannot afford the risks associated with forgoing background screening for their contingent workforce. Contract employees have the same level of access to important company data as permanent employees, so they should be evaluated by the same methods and criteria used to screen permanent hires. Failure to appropriately screen contract employees could result in the same types of losses associated with regular employees who are not screened.



In-depth New Hire Background Screening

Background screening for prospective hires is becoming more comprehensive due to the grave impact of negligent hiring. According to a study by the Society for Human Resource Management, 90 percent of companies routinely conduct background screening on their prospective employees, and employers are adopting a more thorough, investigative approach to finding the right candidates. At the most basic level, today's employers not only search records from the applicant's counties of residence, they also seek information from the counties where candidates have worked or attended school, or utilize national database searches covering counties across the US. Further, when screening for criminal history, employers may conduct searches for state and federal criminal records and state sex offender registries. Background checks now commonly include a variety of verifications to certify employment eligibility, education and professional licensure.

The consequences of haphazard hiring practices of not requiring background screening of employees can range from internal theft or loss to personal or property damage to third parties. Today's employers should seek to avoid the litigation expenses and reputation damages that can result from a bad hire. The most fundamental way for employers to prevent the risks associated with negligent hiring is to engage a reputable company to perform thorough background screening on every potential employee being considered for hire.

Banning the Box

A movement to eliminate obstacles to achieving employment for candidates with criminal histories is gaining momentum at every level of government. "Ban the Box" laws aim to eliminate the box on applications that requires previously convicted candidates to expose their criminal histories. A November 2012 report compiled by the National Employment Law Project cites that 43 localities nationwide enforce "Ban the Box" legislation. Grassroots efforts across the country have spurred local reform that has grown to include statewide "Ban the Box" laws in several states. California, Connecticut and Massachusetts have both local and state policies barring employers from inquiring about candidates' criminal records. Colorado and New Mexico have also banned the box statewide. At the federal level, the Ban the Box Act, H.R. 6220, was introduced on July 26, 2012. If enacted, the law would prohibit employers from inquiring about an applicant's criminal history except under specific circumstances. While not a mandate, at the national level, the EEOC suggests that as a best practice, employers forgo asking about past convictions on job applications unless the question relates directly to a job or business function.

Beware of "Diploma and Degree Mills"

There are two forms of bogus degree distribution that employers need to pay close attention to. Degree Mills that provide "real" degrees from fake colleges, and Diploma Mills that offer fake degrees from real colleges. Both can have serious impact on the workplace in the form of dangerously unqualified employees, payroll costs and damage to their business' reputation.

With the recent boom in opportunities to earn degrees online, "diploma and degree mills" are issuing more bogus degrees to unsuspecting students. Diploma mills rely heavily on internet marketing to attract students, and they typically promise degrees for a fee in a very short amount of time. It is important for prospective students to choose online degree programs wisely by ensuring the program's accreditation. Conversely, in a struggling economy with a highly competitive job market, it is more common than ever before for job seekers to resort to using bogus diplomas in an effort to gain employment.

The U.S. government has taken a hands-off approach to regulating "diploma and degree mills". It is the responsibility of individual states to crack down on fraudulent degrees, but only about six states have addressed diploma and degree mills in any meaningful way. The most critical way to combat the distribution of bogus degrees and certifications is through sharing information that exposes diploma and degree mills or by engaging a screening provider that proactively verifies education credentials through legitimate accreditors and references databases of fraudulent institutions.



About First Advantage

It is vital for employer organizations to keep abreast of current trends in background screening. Since conducting comprehensive background checks is essential to the success of the hiring process, companies benefit from adapting their screening procedures to accommodate developments in background screening.

First Advantage combines domain expertise, technology solutions and data to create proprietary products and services that organizations worldwide use to make smarter business decisions. First Advantage is a leading provider of talent acquisition solutions, including employment background screening, occupational health services, recruiting solutions, skills and behavioral assessments and business tax consulting services. Headquartered in St. Petersburg, Florida, First Advantage has offices throughout North America, Europe and Asia. More information about First Advantage can be accessed at www.fadv.com.

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