

BACKGROUND CHECKS: FRIEND, FOE, OR “FRENEMY”?

Background checks are an important line item on many employment check-lists—applicants consider them routine and employers appreciate a so-called crystal ball view into one’s past. As with many things, though, does a background check actually deliver on its intended promise? Is it as accurate, prophetic, and legal as you’d think?

THE MAKINGS OF A BACKGROUND CHECK

Background checks are fraught with complexities—legal restrictions, search nuances, innumerable add-on options, and a degree of subjectivity. Though potentially beneficial to your business, understanding the options available is essential to receiving the returns you desire.

ACCURACY

Consumer reporting agencies (CRA) are limited—and are continually subject to more restrictive legislation, including Federal law—in the ways they can search for an employee’s criminal history within or outside of a database. Most notably, social security numbers have been redacted in court records and from background checks—instead, CRAs use other pieces of candidate data to narrow the search to the intended employee. At minimum, a CRA uses the employee’s name and birthdate, though some states are eliminating the use of birthdate in searches. A good CRA will use three unique identifiers, but even this allows a margin for error. Court records containing aliases or misspellings are not pulled during a routine background check unless specifically requested. As you may have guessed, expanding a search to include additional names or spellings increases cost and turnaround time.

TIMELINESS

As search criteria expands—in breadth (offenses and locations) and depth (years)—the greater the chance becomes of hitting a county where county clerks perform manual searches. Like any manual process, CRAs are subject to wait times imposed by local county clerks who must pull paper or electronic records and report information back to the CRA—it’s on a first-come-first-served basis and only happens as the clerk has time in his or her day to pull records. In states that are struggling financially and/or closing county courthouses, remaining staff receive greater numbers of requests from CRAs and are stretched thin. Not only does this add days on to a search (which is a very important situation to consider if you’re trying to hire quickly), but it can also incur additional cost. Some states, like New York, charge upwards of \$68 for this service—that’s in addition to the base cost of a vendor’s background check service.

As a tradeoff between time and costs, it’s worth considering the benefits of a national criminal database search to replace time-consuming manual searches. A national database search from a large CRA typically includes records from counties covering nearly 90% of the US population and, in some cases, can return instant results. Though not perfect, national database searches have a place in many companies’ background screening policies and procedures.

WHAT’S LEGAL?

The desire to understand an employee’s criminal history—or to cultivate a workforce of employees without certain histories—is legal, to a certain extent. The Equal Employment Opportunity Commission (EEOC) focuses intently on examining employer criminal history policies when charges are brought against an employer. It then works to determine whether the employer’s policies are overly restrictive or have a disparate impact on a protected group of individuals.

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One of the most common restrictions clients ask us to comply with is that of a blanket “no felony” policy within an entire facility. It’s policies like these the EEOC is especially sensitive to, as these policies tend to have a disparate impact on protected groups and no bona fide connection to work performance. This is one of the hardest policies to defend if you are ever faced with charges from the EEOC.

Some cities, counties, and states are considering or have implemented “Ban the Box” regulations, meaning they are requiring employers to remove the area of the employment application that asks for self-reported criminal history and wait until they extend a conditional job offer before asking the candidate to self-report or agree to a background check. Ensure you know the regulations present in your area.

HOW DO YOU CHOOSE?

The EEOC—and Elwood Staffing—recognize a best practice is to craft restrictions (or lack thereof) on a position-by-position basis within a hiring matrix ([click here to download a template](#)). This means that each position in your facility should have a clearly-defined written policy that includes a list of justifiable business reasons for excluding candidates with certain criminal histories, and that list must be based on the unique functions of each position. The policy must be easy for all hiring parties to follow (internal HR group and all external vendors). Very obviously, a position that requires driving could easily justify a “no DUI conviction” policy; on the flipside, however, there may be no justifiable reason a driving position could not be filled by a candidate with a history of check fraud. You have a much higher chance of successfully defending yourself if there’s a paper trail showing the thoughtfulness and fair administration of your policy than defending yourself with verbal recounts of its justifications and administration.

*The EEOC’s Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions*¹ states that employers should consider the following factors in determining whether an exclusion is job-related:

- The nature and gravity of the offense
- The nature of the job
- The time elapsed since the conviction or the completion of a sentence

It is especially important to match processes for permanent and temporary hires. Often, companies pay additional fees to expand checks or include aliases when hiring permanent employees, but don’t want to pay those same fees for temporary associates. Unfortunately, this sometimes leads to surprises when temporary associates have the opportunity to be hired permanently and undergo the more extensive permanent hiring process.

SO—ARE BACKGROUND CHECKS A FRIEND, FOE, OR “FRENEMY”?

Hopefully, you’re answering this question on a position-by-position basis now. Background checks can save heartache, especially if you are hiring for positions where certain criminal behavior could be extremely dangerous or destructive; but, they can also add time and red tape, which may be unnecessary for some of your open positions. While there is a very tangible cost attached to a background check, it can be hard to determine the exact value the results bring. Set aside some time this quarter—and on an annual basis going forward—to review your hiring requirements and the value of each step.

DOWNLOAD A HIRING MATRIX TEMPLATE AT www.elwoodstaffing.com/whitepapers

¹“Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964.” U.S. Equal Employment Opportunity Commission. N.p., 25 Apr. 2012. Web. 17 Sept. 2015.

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WONDERING WHAT OPTIONS YOU HAVE? CHECK OUT THE LIST BELOW.

Social Security Number (SSN) and Address History Verification

The vendor verifies a candidate's SSN and matches the associated historical address history against a third party source, such as a credit bureau or property/public utility database. The background check report provides a SSN, name, and DOB verification as well as a complete, historical address history. The address history can direct where to search for possible criminal records at the county level.

Note: Alias names can be revealed with this product with a special request.

National Criminal Database Search

A National Criminal Database Search provides results utilizing a national criminal database, which is made up of aggregated criminal public record data from counties and courts across the country. The reporting of information varies across the nation from some that never report their criminal cases and others report every two weeks.

View this map to see coverage by state.

County Level

Vendors may use independent contractors to research criminal records manually and fulfill verifications. These county researchers conduct the “walk in” screening services for counties/municipalities to find possible felonies and misdemeanors.

Statewide Level

This search may include felony and/or misdemeanor charges or convictions where available in a State Central Criminal Repository usually from state law enforcement or the Administrative Office of the Courts. Information may include convictions, adjudication withheld, deferrals, first offender, pre-trial interventions, and traffic violations.

Sex Offender

This report identifies if a person has been convicted of a sexually-related offenses against adults and/or children in all 50 states including District of Columbia.

OFAC / Patriot Act

The Patriot Act Report provides a database search of over 30 National and international security and sanction lists such as:

- Office of the Inspector General (OIG)
- Office of Foreign Assets Control (OFAC)
- Interpol Fugitives List
- Terrorist Watch List
- Health and Human Services Exclusions List
- Specially Designated Nationals List
- FBI Most Wanted List

These lists include individuals and businesses involved in terrorist activities, money laundering, illegal imports, fraud against government agencies, violations of federal banking regulations, and fugitives from justice.

Education Verification

This report verifies dates attended, graduation date, major, degree obtained, and grade point average. Unless business necessity dictates otherwise, we suggest using the honor system as an alternative to these often-lengthy inquiries.

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Employment Verification

This report verifies dates of employment, position held, eligibility for rehire, salary, and, if terminated, the reason for termination. Clients are typically able to customize the questions asked.

Professional License Verification

Professional License Verification is provided through direct source verification. In many instances, this can be completed using an online source. By accessing electronic sources first, the average turnaround time and cost is lower than using other resources. Clients are able to submit requests for professions such as Medical Doctor, Physical Therapist, Dentist, Dental Hygienist, Registered Nurses, Social Workers, and more.

Driving Records / Motor Vehicle Records

Motor Vehicle Records reveals an individual's 3 or 7 year driving history, depending on the state. The report includes: license validity, suspensions, restrictions, vehicle violations, accidents, and drug and alcohol related driving offenses. The search complies with the Driver's Privacy Protection Act and state law.

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