

# The Hire Authority

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## Evaluating Your Background Screener

In a down economy many firms are reducing or suspended hiring activity, and this naturally moves the focus away from your company's background screening provider. This might be an ideal time to evaluate your screening provider. If the evaluation suggests that a change is warranted, it's much easier to switch when the hiring volume is reduced.



Here are some key points to consider when evaluating your current screening provider:

1. Is your screening provider a member of the National Association of Professional Background Screeners (NAPBS)? NAPBS members are actively working to increase the professionalism of the screening industry.
2. Does your provider have a published data protection and privacy policy? With identify theft the fastest growing crime in the US, integrity of data and sensitive information has never been more important.
3. Are all employment and education verification checks performed by professionals in a controlled environment? Some firms use home based agents to save money, but this creates data privacy concerns.
4. Does your screening provider notify your company of changes in applicable law that impacts your screening process and practices?
5. Is your provider providing updates in technology to enhance your productivity and data security?
6. Does your screening provider continue to offer new solutions to improve your applicant selection process?
7. Does your screening provider deliver educational material to help you make informed decisions about background screening approaches and practices?

If you have answered "no" to many or all of these questions, then it might be time to consider a new background screening provider.

## Greater Risk Requires Greater Due Diligence in Background

The term “background check” can have many meanings and there are a number of screening elements available to employers. When determining which elements are appropriate for a pre-employment background check many employers consider cost and turnaround time. However the most important consideration should be the risks involved in the position(s) in question. Under the legal concept of “negligent hiring” employers can be held responsible for the actions of their employees. Therefore the type of work performed and the circumstances under which that work is performed should be considered when determining the extent of the background check.

Here are some examples where employers have an increased duty of care, and should consider whether the background check being performed satisfies that duty of care:

1. The workers have contact or responsibilities with groups at risk, such as the young, elderly, or sick.
2. The workers have access to sensitive information such as credit card numbers,

bank accounts, health records, or social security numbers.

3. The workers have unsupervised access to another person’s property, such as in-home health care providers, or in-home/office cleaning services.
4. The workers have a degree of authority or responsibility, such as managers or executives. Publicly held companies may have a higher duty of care under Sarbanes-Oxley.
5. The workers have access to critical computer systems and databases. Employers should be especially cognizant of workers with remote systems access.

In many states, certain positions have a legislated requirement for the background check elements. However, employers should not automatically assume the legislated requirement is adequate or will protect them from a negligent hiring lawsuit. In many cases, the legislated requirement does not meet a reasonable duty of care for sensitive positions and should be embellished with other screening elements for a more comprehensive background check.

***“Under the legal concept of “negligent hiring” employers can be held responsible for the actions of their employees.”***

## Key Trends in Employment Screening



Several trends are emerging that may have an impact on your pre-employment screening practices and providers. Here are some of the more significant ones.

**Second Chance Laws** – Several states have already passed legislation aimed at giving individuals with convictions a better chance at securing employment. Second chance laws may restrict employers from denying employment based on certain types of convictions. Additionally the laws generally require more diligence from employers when determining whether a good business justification exists to deny employment.

**NAPBS Accreditation** – The National Association of Professional Background Screeners is a non-profit trade organization for the screening industry. In 2009

NAPBS will introduce an accreditation process for its members. To be accredited, member firms will have to demonstrate compliance with an exhaustive list of best practices designed to protect both applicants and employers. Compliance will be determined by an independent third party auditor.

**Integration of Services** – The new buzz word in employment screening is “integration.” Integration generally means the seamless transfer of data between screening systems and other applications such as applicant tracking, HRIS, or payroll. Integration enables “one button clicks” for background checks, and can save employers substantial time and money in the hiring process. In the past integrated systems were very expensive and only found in larger companies, but with sophisticated web-based applications, integration is affordable for employers of all sizes and types.

**Social Networking Sites** – An increasing number of recruiters and other human resource professionals go online to learn more about job applicants. Users of this information should be aware that online material can be inaccurate and could be considered discriminatory. Any information found on social networking sites should be confirmed using more traditional and legally defensible sources of data.



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## E-Verify

As of April 2009, more than 117,000 employers have registered to use the E-Verify system. While the numbers of participating employers is increasing, only about 2% of the 6 million US employers are currently registered.



Employers use the E-Verify system to determine if a worker is authorized to work in the United States. Employers or their qualified third party agents can submit information from the worker's I-9 form to E-Verify. The E-Verify system provides access to two main databases via a secure website. The Social Security Administration database (SSA) is used to match US citizen names, social security numbers and birthdates with SSA records. The E-Verify system also accesses the US Citizenship and Immigration Services (USCIS) Customer Processing System (CPS). The CPS database is an aggregated system of several Department of Homeland Security databases. For non-citizens, the worker's Alien ID-number is compared to the CPS database to determine if they are legally authorized to work in the US.

If the submitted data matches a record found in the SSA or CPS database, the employer is immediately notified that the worker is authorized to work in the US. If a non-citizen worker is not immediately verified, USCIS agents will conduct a secondary search of the component databases which comprise the CPS database. This verification process usually takes one to three days. If the worker cannot be verified immediately or following the secondary search, the employer will receive a tentative non-confirmation (TNC) notification along with instructions for the appeal process by the worker. Because of errors in the system's databases, some TNC are erroneous.

During the verification process, employers must follow specific procedures that protect workers rights. During the TNC appeal, employers may not fire workers, suspend pay, or suspend training or any other privileges.

A non-verified worker has eight business days to appeal the TNC. If the worker fails to complete the appeal process in the allotted time, or fails in the appeal process, the employer will receive a final non-confirmation notification. Neither, the employer or the worker may appeal a final non-confirmation. If the non-confirmed worker is not terminated, the employer is knowingly employing an unauthorized worker.

## Nationwide Wants and Warrants

Nationwide Wants & Warrants Search is a new background screening search that should be considered by employers seeking a more comprehensive check on prospective employees. Nationwide Wants and Warrants is a nationwide search for any outstanding extraditable warrants across the United States. Types of warrants can include bad checks, traffic violations, failures to appear, unpaid fines, and extend to felony warrants for parole or probation violations, robbery, rape, forgery, kidnapping and murder.

Database Sources include City Police, City Courts, County Municipal Courts, District Courts, County Sheriffs, District Attorneys, State Departments of Correction, Probation and Parole Boards, Attorney Generals, state law enforcement agencies, Federal Drug Enforcement Agency, Federal Bureau of Investigation, United States Marshall Service, and International Interpol and Royal Canadian Mounted Police.

Employers should be aware that the information found in the Nationwide Wants and Warrants Search does not represent conviction records. Therefore it is not immediately actionable for employment denial. Rather the employer should notify the prospective employee that the final hiring decision is being postponed pending the outcome of the outstanding warrant.



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## Don't Ignore the Adverse Action process

When first passed in 1970, the FCRA was primarily meant to promote confidentiality, accuracy and relevancy regarding information gathered about consumers. In 1997, the law was amended which had great impact on consumer reports for employment purposes. Even though amendments were made in 1997, some employers are still failing to comply with some of the requirements and obligations.

Of particular note is the adverse action process. If an employer makes an adverse employment decision based in whole or in part on information supplied in the background investigation report, the employer is obligated to follow as strict process. The process is as follows:

Step 1. Before taking any adverse action, the employer must send a pre-adverse action notice and provide the applicant with 1) a copy of the report

2) a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act."

Step 2. If the employer intends to make a final decision not to hire, the employer must send the applicant a notice of adverse action informing the job applicant that the employer has made a final decision. The employer must send another copy of A Summary of Your Rights Under the Fair Credit Reporting Act.

It seems illogical that the government intended that two notices be sent. However, the law clearly requires two notices. There should be some delay between the Pre-Adverse Action notice and the Adverse Action notice. The delay is meant to give the consumer time to review their report and challenge the accuracy or validity of the information in the report. The second letter should be delayed until a reasonable time has passed for an applicant to respond.

If you are not following this process, you are violating the consumers' rights and subjecting yourself to serious civil litigation. If you have any question in regard to the process or need the appropriate forms, contact [inbox@inquirehire.com](mailto:inbox@inquirehire.com). As your background screening provider, we expect to provide you guidance.





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