

All You Need to Know
To Hire Quickly & Effectively



Background Check Essentials

Michael Wenger

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All You Need to Know to Hire Quickly and Effectively

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Foreword

One fine day in June 2012, I received an invitation to connect on LinkedIn, which in and of itself isn't really so earth-shattering. If you are active on LinkedIn, you will get invitations. Like most people who use it with any regularity, I have a number of connections whose names I do not remember. I know the names of others but not much more. That was not the case with this invitation, though. Michael Wenger introduced himself as a business owner who was running a background screening company for employers and landlords. He saw potential synergy with my work as an employment lawyer. After a call with Michael, I couldn't help but agree.

At that time, I was working as in-house counsel in a staffing agency, and I had written articles about how employers use criminal history when making hiring decisions. In addition, I had been a guest speaker on podcasts and had started doing online training sessions. Michael appreciated my knowledge and saw potential in my writing, so he asked me to write some short content pieces for his client newsletter.

After that first conversation, I knew that Michael was not just another business owner selling background checks. It was obvious he was committed to ensuring his clients received the most appropriate tools to make informed hiring decisions and to comply with their legal obligations.

That commitment is a surprisingly rare quality. Not every background screening company takes the time to educate their clients on laws that may apply to their business. Some might ensure the required verbiage is present in the forms an applicant must sign. Some might mention certain laws in passing. Some, unfortunately, do not really know much about the laws they reference or how those laws may or may not apply to the businesses they are supposed to be helping.

Michael's ApplicantSafe® is different, and this book proves it. In these pages, you will learn a great deal about how background checks work. You may believe your current background check provides the necessary information to ensure you make a safe and appropriate hire. I suspect many of you will be surprised. Michael will walk you through the different steps and facets of a criminal background check without getting too technical, and he will keep you interested by sharing some of his own stories. While reading the book, I found myself fascinated—and I learned a lot.

I wouldn't have expected anything else from Michael. About a year after we connected on LinkedIn, when I started my own law practice, Michael became one of my first clients. He remains one of my most respected clients to this day. We have done webinars together, and I receive some of the most interesting and challenging legal questions from

his company. I feel so fortunate to be able to count Michael Wenger and ApplicantSafe® among my clients, and particularly that he has been with me from the inception of my practice.

I cannot think of anyone more qualified to write such a book, and I am sure you will feel the same when you have finished reading this one. You will have a better idea of what to look for in a background screening company and what questions to ask a current or potential provider. You may even reevaluate your current preemployment background screening process rather than blindly signing up for (or continuing with) a “package” that you are not entirely sure serves your needs. I would go so far as to say you probably won't ever look at your background checks the same way again.

I get it: You are busy. You are trying to run a business or hire people during very turbulent times—all the more reason to verify your hiring and prescreening process ensures a good hire. You might not have a lot of time to do a lot of reading, and you will not have to. This book is short, to the point, highly informative, and very readable. Reading it is time well spent.

Don't take my word for it. Turn the page and read to the end, and please pass this book on to every business owner, executive, or hiring manager you know.

Janette Levey
Levey Law, LLC.



Introduction

I didn't go into my meeting with Jordan intending to discuss preemployment background checks. Jordan ran a nationwide rental business and had asked to speak with me, not about employees but about our tenant screening process. He wanted to know more about the people he was renting to, and he had heard I was the guy who could offer him that information.

Before we got down to business, though, we started chatting about business in general: How is the rental market these days? How quickly is rent rising around the country? What does a one-bedroom apartment in Boulder, Colorado, cost these days? That's when Jordan let me know about his recent troubles with a superintendent he had hired for a complex he owned down south.

When he first hired this superintendent, Jordan thought he had hit the jackpot. This guy had it all: thirty years of experience in the business, a great personality, and an impression of responsibility. All signs pointed to this person being more than capable of overseeing a large apartment complex.

But Jordan was no fool. He knew he couldn't simply go on his gut instinct. He made sure to run a background check on this man before handing over the keys to the apartments and the cashbox. When the background check came back clear, Jordan hired the guy and congratulated himself on a job well done. He didn't give the matter another thought—at least, not until he heard about what happened at that complex.

About six months after hiring the man, Jordan discovered that his excellent new superintendent with the sterling background had stolen \$30,000 from the company through fake checks and rental income. Jordan couldn't believe it. People don't usually start stealing on that scale out of nowhere. How could he have missed the signs? And how could this man with thirty years in the business have had no record?

Jordan wasn't wrong. People usually don't start stealing \$30,000 in their fifties. And this man hadn't either. It turned out that he did have a criminal record. Jordan's background check company had simply missed it.

And trusting them had proven to be a very expensive mistake.

More Important and More Complicated Than You Know

Jordan thought he'd done everything right. He'd used what he thought was a reputable background check company—the same one that had been handling his tenant screenings for years. Like most people, he assumed that background checks and tenant screenings were essentially the same. Since Jordan had never experienced a problem on the

tenant end, he assumed the background check products were equally effective.

This is not the case at all, although on this point, it's very possible that the company Jordan used was just as confused as he was. Unfortunately, there's no licensing required to sell background checks, and that means many background check companies have extremely limited knowledge of the products they offer their clients. They're able to hide their ignorance precisely because most people are as uninformed about this area as Jordan. They assume all background checks are the same and one company is as good as another. And far too often, they only learn their mistake when it's too late.

"I wish I'd known differently," Jordan told me. "I thought I was getting a bargain at the price I paid for my background checks. I was certain it was smart business. Turns out, it was the worst deal of my life."

Unfortunately, this was a story I'd heard in some form or another a thousand times before. Jordan had the same problem as many business leaders: He was excellent at running his company but knew next to nothing about background checks. In fact, Jordan didn't even know that he should know anything about them. He wasn't even aware there were different types of screenings and checks available. Jordan simply trusted the company he worked with to get the details right.

When you're running a large, successful company, you often don't have time to focus on something that seems so unimportant. You know you need background checks, so once you check that box, why put more manpower or money behind that process?

Unfortunately, this is a far more complicated area than most realize, even those in human resources, whose jobs usually entail regular involvement in the hiring process. If you have always assumed background checks are as straightforward as putting a Social Security number into a database and getting back instantaneous, accurate, and up-to-date information about an applicant, you need to spend less time watching Hollywood movies and more time investigating the real process, because that's not how things work.

Background checking is a nuanced, ever-changing service with a number of products that all accomplish different things—and getting any of the details wrong can be costly. It isn't always about hiring someone you shouldn't trust. Often, the result of a poor background check policy isn't theft in the office; it's a large lawsuit or a ton of bad publicity.

But no matter the cost, you don't want your company to face it. To avoid it, though, you need to learn enough about background checks to know where the risks really lie.

No One Understands Background Checks

For something so important, it's amazing how few people take the time to understand the essentials in this area. I've worked in this industry for decades, and I can tell you with authority that almost no one in any industry really has a strong understanding of how background checks work, why they're important, or how to make the best choices in this area for your company.

In other words, like Jordan, most CEOs, entrepreneurs, and heads of HR are exposing themselves to significant risk because they don't know that they don't know enough about background checks.

But how could they know? This stuff isn't taught in schools. It isn't part of any HR onboarding education. The only source available to most companies—the background check companies themselves—rarely explains the details.

In some cases, that's because they don't know all the details either. Again, plenty of companies start out offering more straightforward tenant screening products or other HR services and simply add preemployment background checks to their services in order to increase their revenue without necessarily taking the time to learn and understand preemployment screening.

Ninety-nine percent of the time, this doesn't hurt anyone. Most people are honest and decent, and even if they have a record, they aren't looking to steal or take advantage of your company, your employees, or your customers. And most of the time, violations in background policy go unpunished because applicants don't know their rights.

But that 1 percent of the time when things go wrong, they really go wrong. We're talking about large lawsuits that bring tons of bad publicity and accusations of discrimination in your hiring process or serious crimes committed either against your company or your clients. It only takes one such occurrence to result in potentially devastating consequences for your company.

If you don't want to become part of that unlucky 1 percent, you have to start asking yourself and your team some very difficult questions. How well do you understand the background checks you're running? Do you know which checks to run for the particular information you need in order to make a hiring decision? For instance, which

product do you use to get data on local, state, and multi-state criminal records?

What about drug screenings? Do you know what the drug-screening company is doing to make sure no one cheats the system? Do you know when it's legal to run a driving check or a credit report on a potential hire? Do you know how to inform someone if you find a criminal record?

Do you know all the ways the laws and technology have changed this field in the last few years? Do you know how to monitor your employees' social media accounts and when that's permissible?

And do you know whether you can trust the background check company that you pay to guide you through all these choices?

The answer to all these questions is the same: probably not.

It's time to change that.

Someone Has to Clear This Up

The goal of this book is to create a mind-shift in how those in the hiring space think about background checks. In order to protect their companies, business leaders and HR departments need to have a fuller appreciation of the complexities and risks associated with these products and their company processes.

This is not something you can afford to put off. Every day that you brush aside this topic, you expose your company to new risks—first by hiring the wrong people and second by potentially leaving yourself open to lawsuits.

Until now, this risk has been somewhat unavoidable. If you aren't in the background check business and committed

to developing a thorough understanding of this topic, there are only a few places to look to get a handle on it. Information on checks is designed to inform people who work in this space and in the world of employment law. If you aren't part of the club, it's hard to join.

Fortunately, with this book, we can change that. And if I've done my job here, you will no longer have to live with that risk over your head.

This book is a natural extension of how I run my company. I've worked in this industry for twenty years and made a point of explaining it to others as I go. I'm not a lawyer, and I'm not going to explain the details like a lawyer. Instead, I'm going to offer you a simple, easy guide to understanding the essential facts of background checks so that you can make the best, safest, and most cost-efficient choices for your business.

In the pages ahead, we'll review the main background check products out there, the primary legal concerns you should have when choosing products, and the changes to the law, technology, and assumptions about employment that have taken place in the last few years.

Once you're caught up, we'll look at how you should make choices for yourself in this area before looking at how to select the best background check company for your needs.

Throughout, I'll try to keep the information as straightforward and down-to-earth as possible, so you can put this information to work right away.

That's one of the reasons Jordan decided to switch to ApplicantSafe®. After I heard his story, I explained how he could avoid that situation next time—something his previous company hadn't bothered to do. For the first time, Jordan

had a clear picture of what background checks could achieve for him and whom he could trust to implement his priorities.

That's where this book will take you: to a point where you can understand what you need from a background check, how to avoid risks, and who can help you get the details right.

Part I. Background Checks 101





One There is More Than One Type of Background Check

A call came into the office. It was from Deborah, the head of an agency that provided temporary staffing for offices in the city.

“I can’t seem to access my account,” she told Anna, one of our receptionists. “Can you tell me how to log in?”

“No problem,” Anna said. “This happens all the time. When did you last log in?”

Deborah’s response shocked Anna. “Never. I’ve never logged in.”

Anna couldn’t believe what she was hearing. “My files say that you’ve run over a hundred backgrounds checks over the past two years with us. Are you saying that you’ve never logged in to check the results on any of them? You’ve been hiring people without knowing what the background checks said? Do you even know which background checks you’ve been running?”

That’s when the truth came out. Deborah didn’t know anything about background checks. When she came on board, she had dismissed any offer we made to explain the details to her, claiming she understood it well enough already. What Deborah meant was that she assumed she didn’t need to know anything about them. In her words, “I figured that simply having a background check in place would do the job for me. They would scare off anyone with a record. If an applicant had committed a crime, surely they wouldn’t apply once they knew I’d find out about it.”

We immediately went into emergency mode and reviewed every one of the background checks Deborah had not looked at. We also gave her the login information (for what it was worth).

It turned out, she had gotten extremely lucky. None of her employees had a record. But I made sure to explain to her that zero out of a hundred was indeed extraordinarily good fortune in our line of work.

“From now on, I’m going to help you make smarter choices—whether you want to listen or not,” I told her. “Let’s make sure you’ve got the right checks. And then, let’s make sure you’re reviewing the information when it comes in.”

What Is a Background Check, Anyway?

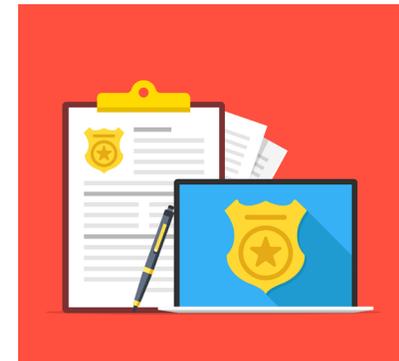
Deborah had clearly missed the point of the background checks she was running, but as I told her, she shouldn’t feel too bad about that. Many companies—including some extremely successful ones—don’t fully understand why they are running background checks, which checks they’re doing, or what information they’re actually able to gather.

To help Deborah (and you), the best place to start with the essentials of background checks is with a very basic question: What is a background check?

A background check is a broad term for many different processes and screenings that allow an employer to verify an individual is who they claim to be. This is done by investigating and reviewing important information about an applicant’s previous history. As you will see shortly, these checks can cover everything from criminal records to social media activity. What unites them is their purpose, which is to provide information to an employer that helps paint a picture of the applicant’s character and previous behavior. That information can, in turn, help the employer make the best hiring decisions.

At this point, most companies are aware of the general purpose of background checks and know they should run checks of some sort or another, but that is the extent of their knowledge. They don’t particularly know what data to expect from their background checks or which information they should prioritize. They simply entrust the process to an outside company and expect that company to make the best choices for them.

But this process deserves far more attention, because it is your best resource for eliminating crime in your workplace. A background check can let you know if you are providing



a convicted thief access to your cashbox or handing over the keys to tenants' apartments to a convicted sex offender. Knowing this before you hire someone can reduce the chance of a crime occurring, prevent negative publicity for your company, and limit your liability if a crime does transpire within your organization.

Simply put, your best protection against hiring someone who could hurt you, your employees, your customers, and your company is the background check. Background checks give you as much information as you can legally acquire about someone you are considering hiring, letting you make the best choices possible to protect everyone associated with your company.

I'm sure all of that sounds great. Simple and easy to understand. Unfortunately, things are about to get much more complicated.

How Background Checks Work

We've all seen how a background check works on TV. Someone sits at a computer, types in a name, and instantaneously gets the most up-to-date and thorough information on the person they're seeking. There's a picture and pages and pages of data just waiting to be scrolled through. The person at the computer can find a previous conviction at a glance and can act on that information with absolute certainty it is correct.

It'd be great if that was how background checks actually worked—but it isn't. A background check isn't like a credit report, where you put a Social Security number in and get a complete and accurate history. The process is slower and more complicated, the information is less unified, and the results are never quite 100 percent accurate.

The reason the system doesn't work like the movies is multifaceted. For one thing, the government doesn't track Social Security numbers for criminals. Even if they did, they wouldn't make them available to the general public because that could be a privacy violation. And even if they did release that information, there would still be flaws in the system, because many criminals are not in this country legally and do not have Social Security numbers. That means there's no single reliable identifier attached to each person that allows us to gather accurate information about them. We have to rely on names, birth dates, and records from the local jurisdictions where the applicant lived, which can obviously lead to confusion in record keeping and retrieval.

Another reason is that immediate, comprehensive information about an individual only exists in one place: the FBI database. And citizens don't have access to that. It's only open to law enforcement. In its place, there are privately run databases and publicly available information from courts and other government resources, which must be checked directly. This leaves employers in a situation where they have to use a number of work-around services to achieve that complete profile they see on the screen. They have to run multiple checks that come with varying costs, timelines, and levels of intrusiveness for the applicant.

An employer has to weigh the value of the information they can gain against the cost and friction such a check adds to their hiring process. For instance, the closest an employer can get to the FBI database is through fingerprinting. But that requires an applicant to go down to a police station or have their prints scanned at a location that might not be

close to where they live or work. Results can take a full business week to arrive. How many applicants are willing to go through that and wait that long to find out about a position? Employers must weigh how important that level of information and accuracy is when hiring for this particular position.

Most employers can't afford to risk losing their best applicants to that kind of cumbersome process—one that also still comes with its own limits on the information available. Perhaps such a check would be appealing for a particularly high-level hire, but for the average position, most employers prefer a combination of checks that are quick, affordable, and reasonably painless for applicants. That's the only way to get the information you need as quickly as you need it.

Finally, a standard fingerprint service may not provide the advice and information necessary for a company to make compliant and accurate hiring decisions. The cost for standard state and federal fingerprinting might be prohibitive as well.

For these reasons, companies that include major ride-share companies and others who have to hire quickly have shied away from requiring new members of their team to get fingerprinted and instead utilize a background check company for the more conventional type of background checks, which we will discuss.

Different Types of Criminal Background Checks

Employers have far more background check options available than they may realize. This is not a single check that you run, get complete information, and move on from. There is

a whole world of potential checks and screenings, each with its own strengths and limitations in providing a picture of the person you are considering hiring.

In fact, there are so many background check options that I split the main ones into two chapters. In the next chapter, I'll cover many of the noncriminal checks and screenings available. Here, I'll focus on the most popular types of criminal background checks you can run. That will give us plenty to cover here.

So let's imagine you are hiring for a new position at your organization. You have a dozen applications who fit the qualifications and experience you're looking for. You know you need to find out the criminal history for each of them. What checks do you run to get the best information? And what limitations come with each?

There are a large number of criminal background check products out there, but I will focus on the ones I think every employer should run, at minimum, if they want a clear picture of the applicant's criminal history:

- » Social Security trace
- » Multi-state criminal records database search
- » National Sex Offender Registry search
- » Global security watch list search
- » The statewide criminal records search
- » County-level criminal records search
- » Federal criminal records search

With this mix, you tend to get the clearest, broadest, and most up-to-date information available. Let's take a look at each one in turn.

Social Security Trace

A Social Security trace report should be the first step in a background check. While we can't use a Social Security number to investigate an applicant's criminal history, this report provides information that will be critical in attaining that history.

A Social Security trace verifies an individual's Social Security number by matching it to names—such as a maiden name or possible aliases—addresses, and the date of birth (DOB) associated with the applicant. If an applicant has concealed a name or identity, a Social Security trace is a good place to start to find that out.

Most employers do not understand or tend to underestimate the impact this search has on their background check.

The Multi-State Criminal Records Database

The multi-state criminal database is the only national database that is available to the general public (because, again, the FBI isn't sharing their information), and it is usually the first place you want to look.

The database is maintained by a private company that purchases and organizes publicly available information about criminal records from states across the country. This check also has the added bonus of being instantaneous and cheap, making it an ideal option for nearly every company.

In addition, some background check companies like ours will add other checks to the list above, namely the national sex offender registry and the global security watch list, as acting as a comprehensive terrorist database. Because while an applicant may or may not be on any of these lists,

you want to be sure to cover these concerns. We feel strongly enough about this that we add these services for free.

If your background check company doesn't, you'll want to make sure they offer them and then add them to the mix.

These three databases give you a very broad sweep of an applicant's potential criminal history, but there are limitations. Importantly, the multi-state criminal database doesn't necessarily provide a complete criminal history on the applicant. This is largely due to each state's different laws. (Because information is independently purchased in bulk from the states, each state puts limits on what information it releases. There is no requirement that a state provide any particular information for the database.)

New York, for instance, only sells Department of Corrections information. That means the only info the database has from New York is for those whose conviction was serious enough to warrant a prison sentence. Because the majority of convicted criminals don't serve a sentence, the database is missing most of the criminal records from that state. So if one of your twelve applicants was convicted of theft in New York but pled down to receive only community service, you won't get that record from this database.

New York isn't even the most reticent participant in the database. Some municipalities don't participate at all. That means that no matter what conviction your applicant received, if it occurred in a municipality that doesn't provide data to the database, it won't show up at all.

This is not the end of the limitations to this search either. Even when states and municipalities provide information, there's a risk that the information could be inaccurate.

Because the data is purchased in bulk and registered through names and birthdates instead of Social Security numbers, there's always a chance that a technical error can occur at some point in the process. And any exchange of information across platforms leaves room for mistakes to happen. Some information could be misplaced. Names could be misspelled or a birth month changed. And there's also a risk that information could simply not be up to date with the latest records. These databases are commonly updated monthly, so if a criminal record is particularly recent, it may not show up. Likewise, if a record has been removed or expunged, it may still appear on the search. The same might apply to the sex offender registry and terrorist databases.

Sex Offender Registry Search

A registered sex offender is a person who has been convicted of a sex crime and is required to register in their county of residence as a sex offender as part of their sentence. Sex offender registries generally include the offender's address, a description of their physical appearance, a picture, and the crimes for which they are required to register. All fifty states require individuals convicted of certain sex crimes to register for a defined period of time. Those convicted of more violent crimes are typically required to remain registered for longer periods. While registered, sex offenders must update their addresses each time they move.

A sex offender registry check can quickly identify if someone is a risk to a vulnerable population and the general public, including employees and customers. Almost all

sex offenses may be considered job relevant when individually assessing someone's suitability for employment, which is in compliance with the Equal Employment Opportunity Commission's guidance.

To qualify as a registered sex offender, a person must:

- » Have been convicted of a sex crime(s).
- » Have been required to register as a sex offender in their state/county of residence as part of their sentencing.
- » Have registered as a sex offender, usually through the sheriff's department in their home county.

Despite it being a criminal offense not to register as a sex offender when required to do so as part of sentencing, many sex offenders fail to register. Thus, a significant percentage of offenders in each state are not included in the registry and cannot be guaranteed to be free of a sex offender conviction.

Our sex offender registry includes information such as the identity and location of known sex offenders from all fifty states as well as Washington, D.C., the Northern Mariana Islands, the US Virgin Islands, Puerto Rico, Guam, and Native American tribal lands.

Global Security Watch List

A global watch list records check will look for an individual on all of the major global watch lists, which include monitored lists, adverse media lists, sanctions lists, and politically exposed persons lists. Some of these lists will allow you to

identify individuals that the FBI suspects of serious crimes, such as people who are on a most-wanted list.

Global watch list records are constantly updated, and it's important to rely on trusted sources of high-quality data that monitor record updates in real time.

A global watch list screening first verifies the identity of an individual against multiple independent and reliable sources. The global watch list records check then runs the verified profile against a comprehensive set of watch lists and is alerted if an individual is on any of the sanctions lists around the globe for activity including:

- » Criminal activity
- » Terrorism
- » Financial crimes
- » Financial sanctions
- » Exclusions and debarments
- » Disciplinary actions

Data is pulled from global watch list sources, including but not limited to:

- » Office of Inspector General (OIG)
- » Office of Foreign Asset Control (OFAC) Specially Designated Nationals (SDN) and Blocked Persons
- » European Union Consolidated List
- » Drug Enforcement Agency fugitives
- » Government sanction databases
- » US terrorist watch list

One thing that you can be sure of is that if an individual is on a global watch list of monitored individuals, they

will not make a trustworthy employee. In fact, they could be a very serious danger to you, your employees, your customers, and the entire company.

The Statewide and County-Level Criminal Records Searches

Because of the potential blind spots in the national criminal database, I always recommend that in addition to the multi-state criminal database search, clients use a combination of county-level and/or statewide criminal searches. These differ from the multi-state search in that they are not run through a single database. Instead, they involve a direct check at local courthouses. In this situation, we actually send someone down to the necessary courthouse and check the records ourselves (although, as you'll see later, some of this process is also going digital).

The benefit of these checks is immense. They are extremely accurate and extremely up to date because we look at the court's exact records. This also limits the potential for error because the information isn't transferred anywhere. If a conviction occurred and the court recorded it, we'll know about it.

Since this is an actual courthouse search you have the benefit of having a human eye doing the research, which can in turn pick up on a slightly misspelled name or minor changes in the date of birth.

However, there are a few downsides to these checks as well. In the first place, because they involve physically going to a courthouse, the scope is naturally limited. We aren't going to visit every single courthouse in the country

to check for every applicant. So employers need to think about the most relevant courts they want checked, usually their own municipality and state as well as potentially checking neighboring municipalities and states where an applicant may have lived or committed a crime in the past seven to ten years. The Social Security trace mentioned above is a great reference for previous addresses.

Additionally, because of the man-hours required, this check takes longer and is more expensive. We can usually get it done in a day or two, but results are far from the instantaneous turnaround you get with the multi-state criminal database search.

The results, though, speak for themselves. It was a county-level check that Jordan's background check company failed to run in the introduction. If the company had gone down to the local courthouse, they would have found a long record of convictions for Jordan's new hire.

So while these checks are a little more costly in time and money, they are definitely worth running.

The Federal Criminal Record Search

A federal courthouse search covers another blind spot found in the multi-state criminal database. With this check, you get far more information about potential white-collar crimes like embezzlement and wire fraud. Obviously, not every applicant needs this search run, but when hiring for positions of significant responsibility—particularly for those who will have access to money or are C-level hires—it is worth considering.

The online system for this search is called PACER—which stands for Public Access to Court Electronic

Records—and technically, you can search it yourself. Be forewarned, though, it's extremely complicated to use. There are very few identifiers within the database that you can use to find your applicant. This often requires a bit of detective work to hunt down any records.

No Check Is 100 Percent or Covers Everything

Running these checks will give you most of the essential criminal history information you need in order to make an informed decision about an applicant. However, I want to remind you that this is not an exhaustive list of your criminal background check product options—for instance, we also offer products for global criminal background checks—nor is it a guarantee that every possible record is covered.

Unfortunately, there are no 100 percent guarantees in background checks. It's always possible for something to slip through one way or another. What this mix of checks will give you is the best possible assessment of an applicant for a reasonable price and on a reasonable timeline—so long as you learn from Deborah and actually check the information.

This is really just the start, though. Because when you're hiring, you aren't necessarily only interested in an applicant's criminal history. What about education verification or checking their driving history? What about their credit history?

That's a whole other set of checks we're about to dive into.

One Essential Search

Keeping track of all the background checks covered in this chapter can be overwhelming. It's a lot of information coming from many different sources. To simplify, you can ask your background check company

whether they offer effective coverage in a single package of checks.

For instance, at our company, we offer the multi-state alias criminal search. This is an option for those who want more robust results from the multi-state criminal database. The multi-state alias criminal search combines a Social Security trace with our multi-state criminal database search to uncover and review all names associated with your applicant. With this one product, you can get a criminal search on all aliases and maiden names your applicant may have used in their past.

This helps employers catch those applicants who give false information to trick the system. It is very common for applicants with criminal records to change their names or date of birth in order to fool the system. As we'll discuss later, these changes can be quite clever and difficult to notice without access to these searches.

Two Screening Beyond the Criminal Record

Recently, a client of ours sent me an alarming email. They have a reasonably thorough background check process that includes a number of our products. Despite their thoroughness, a person with a very serious criminal record nearly made it through the cracks. The applicant had made it through all the standard recommended checks with a clean record. Luckily, someone in HR at the company discovered, by chance, that this wasn't the whole story. The applicant had a record in another state. And it was quite a record—including a long history of convictions for violent crimes.

Hearing this, I went into panic mode. How did we miss this?

The truth is, it was no one's fault. In addition to the multi-state criminal background check, this company based in Kentucky had chosen only to run state-level background checks for that state. After all, most people who had applied

for positions had been living in Kentucky for years. They assumed any other records would be caught using the multi-state background check.

Normally, they would be right. But the area of Illinois where the applicant committed all his crimes happens to be one of the few areas that doesn't report much information to the national database. It was a blind spot—one that could have been covered if the company had also run a Social Security trace, but HR hadn't thought that was necessary at the time.

In the end, no harm was done, but it was a valuable lesson. If you don't understand the checks you're running—whether it's a multi-state, a county search, a drug screening, or a job-specific check—you leave yourself open to serious risk.

Moving beyond Criminal Records

Because of stories like the one above, employers are always concerned about missing important information. Ask an employer what they'd like to know about an applicant, and they're likely to tell you "everything." But what does that "everything" really include? We covered a huge chunk of it in the last chapter with the options available for criminal background checks, but that's far from the full extent of background information available to an employer. In fact, the screenings available to you are far more varied than you might think, and they can cover everything from drug use to social media behavior.

Of course, not every applicant requires these screens and checks. But the more you know about your options, the

better prepared you are to make those choices when considering your new applicants. So let's find out what tools are available beyond criminal history.

Drug Testing

After criminal history, drug testing is probably the second most well-known check, and for good reason—it is often a requirement when hiring for many job roles. For instance, if your company is hiring a driver, the Department of Transportation (DOT) may require that you do drug and alcohol testing. Whether the position is for a bus driver, truck driver, or a pilot, you have to test for drugs and alcohol up front—and periodically afterward. According to the DOT, there is a minimum random drug-testing requirement of at least "50 percent of the average number of driver positions and a minimum of 10 percent for random alcohol testing per calendar year." So if you are in transportation or logistics, this is probably a test you are very familiar with.

There are similar legal requirements in manufacturing and nuclear energy, as well as most government jobs. This screening is also an extremely common part of the health-care hiring process. And it isn't a terrible idea to run it in other industries either. In any position where a person's judgment can affect the health and safety of others, it's good to know whether their judgment is being impaired by drug use. It's important to note that many states place strict restrictions on how and when an employer can test for drugs.

Although there are different methods of testing for drug abuse, the most common one is the urine specimen test. Since this test is so prominent in major industries, it has

been at risk of fraud and has had to evolve over time. In order to ensure the integrity of the results and avoid those unfortunately accurate situations that you see in the movies—such as people using someone else’s urine to avoid detection—the process generally requires the person being tested to go to a secure location to provide a urine specimen. The specimen can then go through a temperature check to make sure it isn’t an older sample or from another person. In addition, the samples are tested to make certain they are not diluted with an outside substance.

By law, if a sample tests positive, it must be reviewed by a Medical Review Officer (MRO). The MRO will generally reach out to the applicant to make sure they are not taking a legal prescription medication that could have skewed the results. In other words, the MRO checks whether the applicant has a legitimate legal need to use the drug they tested positive for.

Be sure to check whether your background check company is using these sorts of sophisticated systems so you can be confident your results have not been tampered with.

Results of tests using these techniques provide an accurate assessment of the drugs in an individual’s system. Most drug tests cover all the most commonly used drugs, including marijuana, cocaine, amphetamines, opioids, barbiturates—although, as we will discuss in chapter 5, the rules may change for marijuana.

Job-Specific Checks

Unlike drug testing, which can be used for nearly any position, some checks have to be related to the job you’re offering.

Surprisingly, this includes some of the most popular checks, such as driving history. We’ll discuss why this is job-specific in the next chapter. For now, it’s simply important to recognize that anyone who will be driving on behalf of your company should be checked using a Department of Motor Vehicles (DMV) license search. For legal reasons, restrict DMV license searches only to those employees who will be working in that capacity. In the transportation and logistics world, this is heavily regulated by the DOT, but even if you’re hiring a delivery driver, this is an important check to run.

However, it’s important to note that this check is not uniform across the country. Like the national criminal database, each state determines what and how much information it will provide to employers. Some states only provide driving history going back three years; others may offer information going back five or seven years. In addition, the state determines how long various offenses remain on a driving record.

Aside from the different limitations on driving history, though, the information you receive is similar, if not uniform. A driving history check will tell you about any DUIs, fines, tickets, suspended licenses, accidents, and points on a license that a driver has over that period of time.

Similar—but separate—a Preemployment Screening Program (PSP) crash and inspection history can be run on a commercial driver’s license as well. A further check for commercial drivers can look into whether their commercial license is valid.

The government also requires businesses in the health-care industry to run certain background checks. In particular, the Department of Health and Human Services maintains

a database of individuals who are excluded from working in the health-care space; it is called the List of Excluded Individuals/Entities (LEIE). There are additional government and state lists that should be checked as well. The reasons that individuals end up on these lists can vary widely, covering everything from fraud to drug abuse.

Now technically, you can still hire this person. However, if you do so, government programs such as Medicare and Medicaid won't work with your organization. Furthermore, if you are accepting federal funds and your company is found to have an employee who is currently on one of these lists, get ready for some heavy fines and the possibility of losing future government money. Since government money makes up a substantial amount of income for almost all medical organizations, this is a pretty effective cudgel.

Outside those fields, there's a bigger need for education verification. Perhaps you have an excellent candidate for an elite position. They say they graduated with a master's degree from Harvard with a 4.0 GPA in the exact specialization you require. A perfect fit, right? The only question is whether that claim of academic excellence holds up.

This is where education verification comes in. Through this process, you can make sure that any claims of educational achievement are true. Education verification reviews the academic credentials of any applicant, including not just whether they graduated but how they did in their classes.

Equally important is the employment verification process to check an applicant's work history to make sure they not only did work at a particular company but that they held

the position they claim with the reported responsibilities and that they left on good terms.

And then there's the credit report. This report is a common request from employers, although it doesn't necessarily provide the information they think it does. To be clear, a credit report for the purpose of employment is different from the Fair Isaac Company (FICO) score that financial institutions use when offering a loan or a mortgage. In fact, that score doesn't show up on a credit report for employment at all because, according to the government, it shouldn't have an effect on a decision to hire someone. Instead, the credit report will provide a list of debts and information on which of those debts are in default (if any). It will also show instances of bankruptcy.

Companies often run a credit report when hiring for positions that include responsibilities directly tied to money and those that will have a high level of authority, such as managers and C-level employees. For those positions, a credit report can let you know how well a potential employee has managed their own money. When that person will hold significant responsibility for financial decisions within your company, it can be reassuring to know their personal history in this area. However, as you'll see in chapter 3, there are limits placed on which applicants can have this search run on them. In particular, many states only allow running a credit report in very limited situations.

Newer Searches



We've covered a lot of ground on background checks, and amazingly, we're still not done. In fact, there are new background checks coming out all the time. For instance, in recent years, we've developed a social media background screening. This screening can be valuable for a number of reasons. To begin with, you absolutely want to know if someone you are considering hiring has made violent, extremist, racist, or sexist remarks online, because they could be a threat to your work environment in one way or another. Whether it's possible violence or a toxic culture, you want to avoid bringing in people who can cause any harm in your workplace.

However, that isn't the limit of the usefulness of this search. As the country has drifted into a very politically charged climate, it's important that you know the people who represent your company are not making comments online that could cause trouble for your organization. It isn't just politics either. You want to know if your employees are posting terrorist threats or anecdotes about getting drunk or using drugs.

This is no longer a niche consideration. Up to 90 percent of employers are now reviewing social media profiles

before hiring. Usually, these employers simply look at social media profiles themselves, but cutting out a background check company here can put you at serious risk of a lawsuit. As I will detail in the next chapter, there are legal issues you need to consider when checking someone's social media. So it's far better to let another party do the review and give you the crucial information.

Tenant Background Checks

Before we finish, it would be wrong of me not to mention tenant background checks. These aren't particularly related to employee-focused checks, but they are widely popular for anyone in the rental industry, and many background check companies get their start doing tenant checks—for better and for worse.

Most landlords these days will run a tenant credit report that provides the FICO score. Additionally, they may use an employment verification to make sure the person holds the position they claim to and has money coming in regularly to cover rent.

Increasingly, many will also run the multi-state criminal database and check the national sex offender registry. These checks have the benefit of being affordable and fast, which landlords need because they have to make decisions quickly. If they take too long, many of the best potential tenants will sign up for another property. The important thing is to make sure the applicant is not a hardcore criminal, that they have money coming in, and that they have proven themselves financially responsible in the past.

For those landlords who are inclined to go further, there are also products that allow them to find out what previous

landlords have to say about the tenant as well as a housing records search that lets the landlord know whether the potential tenant has had any eviction notices filed against them.

As with other background checks, it's important to find a balance with these products. Use too many, and the costs may become untenable. Skimp too much, and you can run into trouble when someone sneaks through the system. Each landlord has to decide how much they can afford and how much risk they are willing to take.

One of my clients, Eric, owns an apartment complex. He came to me after a very unfortunate situation in which one of his tenants discovered that her neighbor down the hall was on the sex offender registry. (Eric hadn't run a criminal search with us but, instead, had only done a credit report and a search of landlord tenant records.) If he had turned down the application before offering the apartment, he would have been fine. Once that person was a tenant, though, Eric had few legal options to remove them.

When he asked my advice on how to resolve the situation, I told him to simply offer the guy \$5,000 and pay for his move.

"You know," he responded, "that's exactly what my lawyer said."

"Of course it was," I said. "That's really the only legal option you have left."

You certainly don't want to end up in that position, whether you're looking for tenants or employees.

Why Not Run Everything?

If you want to avoid Eric's nightmare happening to your business, the obvious solution is to simply run every check

you possibly can and go as far back as you can. Unfortunately, that's not very realistic.

To begin with, the checks and screenings I've covered here are only the essentials—you can see a complete list of available background checks in Appendix 2 if you are curious. This is not an exhaustive list. There are many more background check products out there, some of which you'll learn about in the next few chapters but many that haven't been included at all because they are too niche, too expensive, or too complicated for a book on essentials.

Also, you have to consider the time and expense involved in running these checks. To use every background check product, you'd spend a decent amount for every candidate. You would also have to delay your decision on a potential hire for what could seem like an uncomfortable amount of time. And even then, there would still be some risk (less but still some) that a record would be missed.

Further, you could end up with more information than you need. Sometimes, it's possible to have too much data because the information you really should focus on can get lost in the pile. Running every check and screening may mean you miss a critical detail hiding in the middle of the multi-state background check.

Finally, the main reason you shouldn't run all of these background checks is because you usually can't—legally. While you might want to know everything about a potential hire, the government has been very clear that you are not allowed to know some things. And if you push to find that information out anyway or use anything you discover without following strict legal processes, you risk exposing your whole organization to costly lawsuits.

It's great that you now know your essential background check options, but remember, you can't simply head to a background check company and ask for everything. The next thing that is essential to know is how to make sure you're always on the right side of the law. And that is trickier than you may think.

Three Legal Concerns with Background Checks

I met with Mike, the CEO of a wholesale electronics company in New Jersey, a short while back. Mike planned to hire a large number of new employees to cover his company's increase in sales, and he wanted to get some advice on the best mix of background checks for his application process. I'm always happy to provide what guidance I can, so we scheduled a meeting.

In the midst of our conversation, Mike produced his company's application for context. I glanced over it while responding to some question or another.

I stopped speaking midsentence.

"What is it?" Mike asked anxiously.

"Your application," I said. "You ask your applicants about their criminal record."

Mike gave me a confused look. "So?" he asked. "It's something we want to know. If someone's got a record, that's going to influence my hiring decision."

“You may want to know,” I responded. “But you can’t legally ask it. And if you’ve been planning to make hiring decisions around that topic, it may be time to reexamine your process.”

I explained to him that New Jersey had passed a ban-the-box law a few years ago that made it illegal to ask an applicant whether they had ever been convicted of a crime. The state government felt that knowing this information up front was discriminatory.

“Are you sure?” he asked. “Our lawyers reviewed these applications.”

“It seems your lawyers missed something, then. And you’re lucky I caught it now. Because if it had been an applicant instead of me who noticed, you could have been in for one serious lawsuit.”

The Risk of Ignoring the Background Check Process

With the essential menu of background check options laid out in the first two chapters, you might now feel like you know enough to move on from this topic. After all, you have a decent understanding of the major products out there. Why not simply go to your background check company, order your preferred mix, and focus on running your business?

That’s a very tempting proposition. I’m sure you’re an extremely busy person, and your work is important. You don’t have a lot of minutes to spare on any topic, let alone one aspect of your hiring process. However, there are a number of reasons you need to learn more about background checks.

To begin with, this field is constantly evolving—in technology, innovation, process, and focus—and it’s important to

keep up with the changes, as you’ll see in the next couple of chapters. Even if you ignore the changes, choosing the ideal set of checks for your business can still be more difficult than you might imagine. Don’t assume that the people you trust to run this process—within your own company and the background check company you work with—are the right fit. To avoid these types of oversights, you need a clearer idea of what you need and whom you can trust.

Guidance on all of those topics is ahead as well, but none of those concerns touch on the main reason you should keep reading this book—the potential cost of getting the background check process wrong.

Every day that you delay making a decision on your background checks exposes you to more and more significant legal risk. Lawsuits can hit you from all sides. You could potentially fail to follow compliance laws or get hit with a dreaded discrimination lawsuit, which would double as extremely poor press for your company.

Those lawsuits are far more common than you know and far more costly. And if you are going to avoid a costly lawsuit, you’ve got to pay attention to the risks now.

The Litigation Risk Is Real . . . and Expensive

If you still think this isn’t a serious issue, I have some facts to share with you. According to CBS News¹, in the last decade, companies have spent more than \$325 million settling lawsuits related to preemployment background checks. This isn’t just happening to small businesses either. Companies as large

1 Cerullo, M. (2019, June 28). *What everyone should know about employer background checks*. CBS News. Retrieved February 17, 2022, from cbsnews.com

as Target, Wells Fargo, and even Amazon have all had to settle cases in this area.

How can this happen? How can some of the largest and best-run businesses in the world be facing a constant stream of litigation over something as seemingly straightforward as a background check?

The truth is that background checks are far from simple or minor in the hiring process. These are complex instruments with significant regulatory systems policing their use. Because background checks can be used to determine whether someone gets employed or not, there's plenty of risk of abuse, whether intentional or not, and the government has determined the law should play a major role with their use.

To be perfectly clear, this is a serious risk. I believe it should rank as a major goal in your leadership to minimize the chance that your company is added to that list of companies above. Luckily, this effort at minimization of risk is absolutely within your power. It starts with brushing up on your knowledge of the laws and regulations surrounding background checks, as well as the motivations for the system we have in place. At that point, you can begin making some important changes in how your business uses checks and update your hiring process to reduce any chance of mistakes or discrimination occurring.

Reasonable Isn't Good Enough

The first thing you have to do if you want to protect your business from background check-related lawsuits is understand one critical fact: What you consider reasonable information

to know about an applicant is not a standard—or even a defense—against discrimination in this area.

Let me show you what I mean. A nanny company came to ApplicantSafe® a couple years ago. They wanted to impress the high-end clients who were hiring nannies for their kids. It was very important to prove that the nanny company had done as much digging into each nanny's background as possible. So they wanted us to run as many background checks as possible. They wanted a thorough criminal background check that included every product we had for sale.

"We want everything you can throw in there. We want your report to be a hundred pages long, so our clients know we've covered everything. We want to know their driving record. We want their credit report."

I had to stop them right there. "We can't do that."

The company's representative couldn't believe what I was saying. "Why not?" they protested. "Don't we have a right as an employer—and don't our clients have a right as parents—to know who these nannies are? Leaving us to guess whether they are responsible . . . that just seems unreasonable!"

"I can totally understand where you are coming from," I told them. "What you're saying makes a lot of sense. But that isn't how the law works."

As I explained to them, a background check can only be run if it connects to the responsibilities a new hire will take on. If the background check you want to run doesn't directly relate to an essential task in that job, you run the risk that an applicant will claim discrimination. Say the nanny company had an applicant who met all the qualifications but had bad

credit. They may have come from a household that struggled with finances—perhaps they had an impoverished background. If that credit check disqualified them, they could claim they were not judged on their skills or experience but were discriminated against.

“Far from helping you,” I said to the nanny company, “these checks could set you up for a lawsuit.”

It took some time, as it often does, for them to wrap their heads around this because it doesn't make immediate business sense. I encounter this kind of thinking all the time. Many business owners and HR departments think only about the information they want about their applicant. They never consider whether there could be legal or ethical constraints. They aren't purposely discriminating, so the idea that some information could be discriminatory doesn't cross their minds.

From the government's perspective, though, certain information can be used to discriminate against applicants, whether that discrimination is intentional or not. For instance, a business sees a driving background check as an opportunity to learn about a particular individual's history of responsible decision-making, but the government knows that people from certain communities are more likely to have issues with their driving records. Therefore, those checks can be used to “weed out” individuals from those communities. Again, this doesn't have to be intentional. The government is concerned about the overall affects such information can have.

The solution the government has come up with to the potential for discrimination is that you can only review

certain information if the check relates to work responsibilities. If part of the applicant's job is to act as a driver for your company, you have every right to know about their driving record. If they will be working as an accountant for you, you may have a right to know about their credit. Otherwise, the government feels it's more likely that information will be used for the wrong purposes than the right ones. And for that reason, they have created strict laws to punish those who seek out that information when it isn't necessary.

This may seem like an unfair standard to you, but consider how the government must approach it. Imagine a company that doesn't want to hire young people. They can't legally refuse to hire young people, but they can run DMV and credit reports. Since younger people are more likely to have speeding tickets and haven't yet built up good credit, that company could avoid hiring most young people without technically discriminating against them by refusing to hire applicants with speeding tickets or low credit scores. That's the situation the government is trying to avoid.

Some state governments take this concern so seriously, they simply won't let you have a credit report on an applicant at all unless you can prove that person will have significant financial responsibilities.

These legal limits go beyond credit and driving, as well. In some cases, you may not be able to access certain information in a criminal background check because the government is concerned that those who have committed minor crimes will be unable to find employment and thus risk returning to crime.

You may or may not agree with this thinking, but it is

the reasoning you are bound to. In other words, when you think about a background check, your standard has to be whether the government considers it legal, not whether you consider it reasonable.

Essential Questions to Ask Yourself before Using a Background Check

1. Does this information directly relate to potential job responsibilities or other legitimate business interests?
2. Is there a risk that this information could bias me against a group of people instead of an individual applicant?

Who Makes the Rules?

Where do all these restrictions come from? Above, I said “the government,” but who is the government in this case?

All of these rules start with a federal law called the Fair Credit Reporting Act (FCRA). This is the federal legislation that governs the background check world, and everyone and everything associated with checks and screenings must follow these rules. Interestingly, when the law was originally enacted, the FCRA imposed requirements exclusively on credit reporting agencies, such as credit bureaus, but it has since been expanded to cover every form of background check and screening.

The Federal Trade Commission (FTC) is the governing body responsible for enforcing the FCRA. If that isn't enough acronyms for you, here's another. The Equal

Employment Opportunity Commission (EEOC) places further restrictions on background checks when the FCRA hasn't kept up with necessary governing rules.

For instance, one of the newer restrictions from the EEOC has brought criminal background checks more in line with the standard I addressed above. Now a criminal record must relate to the job role. If you find a criminal record, you have to consider whether that crime has any bearing on the job you are hiring for, as well as when the crime occurred.

On top of these federal laws and enforcement agencies, each state and municipality can place further restrictions on the process. Some states—in particular, New York and California—impose significantly more aggressive restrictions. Since these states have large populations and large economies, their laws often become the de facto policies for large companies across the country.

For instance, the specific ban-the-box law that caught Mike and his wholesale electronics company off guard is now in thirty-seven states, the District of Columbia, and over 150 cities and counties. They have all adopted a ban-the-box (“fair chance”) policy. However, many large companies have removed criminal history questions from their applications nationwide to avoid any future legal trouble regardless of the state.

With federal, state, and local laws in place, this is obviously an extensive and complex process to navigate. Laws can cover everything, including personal data such as what you can review on someone's social media without risking discrimination or violation of privacy lawsuits, and these laws can differ from one location to another.

And it's a danger to your company any time you assume things are as simple as deciding to buy a background check product.

Five Essential Hiring Questions Answered by the EEOC

1. Can employers disqualify a prospective employee because he or she has a criminal record?

Federal civil rights laws prevent employers from denying employment on the basis of a past conviction unless the offense is viewed as job related. This rule permits employers to consider convictions to the extent that they are relevant to the work the employee would undertake and allows employers to ensure safety on the job. But the EEOC takes the position that federal civil rights laws prohibit employers from adopting policies that categorically reject prospective employees with past convictions. The reasoning behind the EEOC's position is that "National data supports a finding that criminal record exclusions have a disparate impact based on race and national origin." Therefore, since a blanket exclusion of all candidates with a criminal history adversely impacts a disproportionate number of otherwise qualified minority candidates, it has a discriminatory impact and consequently is a violation of federal civil rights laws.

2. Can employers ask employees about past convictions?

Employers may conduct background checks and may ask prospective employees about their criminal history.

However, the EEOC requires employers to consider all the facts. The new guidelines require that a prospective employee must be given a chance to explain a past arrest or conviction before the employer can reject an applicant.

3. To what extent can employers consider past arrests?

The EEOC discourages employers from denying employment on the basis that a prospective employee has been arrested, because an arrest does not indicate that criminal conduct has occurred. That said, employers may nonetheless ask about and consider the conduct underlying the arrest to the extent that it has bearing on the individual's capacity to perform a job.

4. Can employers screen applicants on the basis of convictions?

To the extent an employer wishes to develop a policy to screen out applicants with criminal backgrounds, the EEOC requires that the policy must be carefully tailored. Employers are cautioned to take a holistic view when considering past infractions. The EEOC requires employers to consider all available facts on the nature of the conviction or arrest, the specific job duties, and the amount of time that has passed since the conviction. The EEOC further recommends that employers should give prospective employees, who will otherwise be denied a position on the basis of their past criminal conduct, the opportunity to submit information explaining why they should not be rejected.

5. What else should employers keep in mind?

Employers should ensure that all information about applicants' and employees' criminal records is kept confidential. It is also prudent to consult an attorney before establishing a policy or procedure for screening out prospective employees with criminal backgrounds.

Cleaning Up Your Process

Now that you have a general understanding of how the system works, it's time to start looking for ways to protect yourself. The first and easiest thing you can do is check whether you've followed the ban-the-box laws and removed questions about criminal history from your application—whether you live in a state that's changed that law yet or not. Removing that question is certain to immediately reduce your risk of legal headaches.

But that is only the beginning. Once you've plucked the low-hanging ban-the-box fruit, you have to start doing the harder work of digging into your process. The hiring and background check process is often where companies leave themselves most exposed to lawsuits.

One of the main ways to protect yourself against such lawsuits in this complex world is to make any job offer contingent on a clean background check. For some employers this is an intuitive choice, but I've encountered plenty of companies that either run background checks before making a contingent offer (going against some state or local laws) or wait to run their background checks until after they've already hired someone. And that can be a huge mistake.

Background checks on existing employees require

additional steps. You can either, at the time you first offer the employee a job, get them to sign an authorization consenting to continual background checks or get their consent each time you run one. Even if you do get continual consent at the beginning, you will need to check the laws in the state(s) in which your employees work to see whether any of those states' laws impose additional requirements. Once you run the background checks, both the EEOC guidelines and many state laws limit how much you may use or rely on the information you obtain to make any employment-related decisions.

This is the case even if you read an article about a crime committed in your town by someone with the same name as your employee. Even with the most reasonable concerns, you have to follow the process and get signed consent. If an employee refuses a background check, you may have the option of terminating their position—although this depends on state and local laws.

This is why it's far better to make any offer of a job contingent on that clean background check. However, there is still a process you have to follow. For instance, running preemployment background checks requires that you provide every applicant with standalone disclosure and authorization forms. The applicant must then sign the forms and give consent.

With drug testing, policies must be written down, accessible to employees, and applied equally and consistently to all current or potential workers. Potential employees can refuse a drug test as part of a background check. In some states, however, they can be denied employment for

that refusal. Current employees can also refuse drug tests, and they can be fired for that refusal if testing requirements are spelled out in the employer's written policies.

This is only the beginning. The FCRA has rules for how you present the disclosure and authorization forms, as well. The forms must be on their own piece of paper, and background checks have to be the only topic covered on those pages. The information can't be stuffed in the back of a 400-page company manual or at the bottom of another document. It has to be separate so that anyone who signs it knows what they are agreeing to.

Once you have permission, you are allowed to run your background check. However, this is not the end of your legal considerations. If you discover something on that background check—whether before or after the hiring decision—you can't simply act on it. You can't deny the applicant the job or fire them outright as soon as you have that check in hand. Instead, you have to follow another process. Because background checks can never be 100 percent accurate, you aren't allowed to immediately dismiss an applicant or throw away an application.

In that situation, you have to send out what is called a pre-adverse action letter. This letter notifies the candidate that information contained in their background report may negatively affect a decision about their employment. The letter must also include an FCRA summary of rights, a consumer copy, and the company that ran the background check. (Some states may require additional notices.)

This information allows the applicant or employee to dispute or explain the information you've found. To give

them time to make their case, the FCRA mandates that you wait a "reasonable amount of time" before following through with your adverse action. The exact amount of time that is "reasonable" isn't defined by the FCRA, but the general rule is five to seven business days.

During that time, the applicant or employee can contact the background check company and provide details for their dispute. The background check company then has to do a thorough investigation to see if the applicant's or employee's claim holds up or not. If it does, then the CRA is required to remove the adverse findings and notify the employer and the applicant of the outcome. If the applicant or employee does not explain or refute the record within five to seven business days, the assumption is that they do not intend to do so—and you can move forward with termination of employment.

Importantly, the applicant or employee doesn't have to dispute the entirety of what showed up in the report. They may simply dispute some aspects of it. For instance, let's say you ran a criminal background check on an applicant, and the report you received said that they had been convicted of a particular crime. The applicant may dispute the report, not because the entire record was wrong but because the case was dismissed and there was no conviction or if the record included a prison sentence when the applicant was only required to do fifty hours of community service.

It's only once this process has played out, only if there is still proof that there was a conviction, only if the record complies with state and local FCRA restrictions, and only if the criminal record relates in some way to the job role they would fill that you can move forward with your adverse action notice.

According to the FCRA, this notice must:

- » Advise the applicant that employment has been denied (or whatever other adverse action is being taken) based in whole or in part on the information contained in the background screening report.
- » Contain the name, address, and phone number of the consumer reporting agency (or third-party background screening company) that provided the report.
- » Include a statement that the consumer reporting agency did not make the decision and is unable to provide the applicant the specific reasons why the action was taken.
- » Inform the applicant of the right to obtain another free copy of their background screening report any time within sixty days of receiving the notice.
- » Inform the applicant of the right to dispute the accuracy or completeness of the information contained in the background screening report with the identified consumer reporting agency.

Also, importantly, the example above relates to a criminal record with an actual conviction that the applicant disputes, but the FCRA and some states have strict guidelines as to how far back background check companies can report non-conviction and, in some cases, conviction information.

I know this process seems burdensome, particularly in circumstances in which you unearth a serious crime during a background check, but trust me, you want to follow this to

the letter of the law. I've seen many companies get sued—and end up making big payouts—for getting this wrong. You don't want to be the next one.

Ten Essential Steps to Running a Preemployment Background Check

1. Consult with a legal advisor.
2. Develop a strict policy.
3. Use a Professional Background Screening Association (PBSA)–Accredited preemployment screening company.
4. Inform the applicant.
5. Make a contingent job offer.
6. Conduct the background check.
7. Carefully review and consider the findings.
8. Be consistent.
9. Make your decision.
10. Abide by FCRA requirements throughout the entire process of rescinding the job offer.

The Best Way to Protect Yourself

A close friend works for a midsize insurance company. At the company, they don't really run many background checks, but something about a particular applicant didn't sit right with my friend, so he contacted me.

“His credentials are great, and he has the right experience, but I just have a hunch there's something off. So I'd like to run one criminal background check to find out.”

I was skeptical, but I let my friend describe all the circumstances. As I got a clearer picture, one particular fact stood out: The applicant in question happened to be Black.

Instead, focus on the order of your process and what happens at each step of the process. Which background checks do you run? When do you run them? What do you do when a record comes back? Give as much detail as possible and then give it to your lawyer to make sure everything is legally defensible.

Make sure rules are clear and are strictly followed. Mistakes will happen, because no one is perfect, but if your policies are well laid out and you can prove they are always followed, you can avoid a huge amount of risk for a major lawsuit.

But once you have a set of policies, that doesn't mean you can put it in a drawer and forget about it. Background checks are constantly changing, both in the technology used and the priorities of applicants and employers. Laws and interpretation of laws also change. So you need to keep up with those changes and adapt your policy whenever necessary.

That's the only way to continue to limit your legal risk—and also to get the most from your background check process.

Six Essential Concerns to Address to Limit Your Risk of Lawsuits

1. Lack of proper policies and procedures in place
2. Failure to obtain consent
3. Failure to create a proper standalone disclosure and authorization form
4. Mistakes with the adverse action process
5. Failure to provide a copy of the background check and Summary of Rights under the FCRA
6. Lack of consideration for ban-the-box laws

Four Technology in Background Checks

We took over a home health-care nursing client account a few years ago. As per usual, we had a whole list of potential upgrades they could introduce to their background check process to save time and money. To our surprise, though, Lee, their CEO, wasn't interested.

“We've already got some high-level systems in place on the HR end,” Lee told me. “And I don't think we really have the bandwidth to make further changes at the moment.”

He didn't want to hear a word about streamlining or integrating with us. He wasn't interested in talk of savings or speed. He had a process, and he liked it.

Despite Lee's confidence, though, that system had some significant lag to it. Their applications were still printed on paper. Once they were filled out, someone in the office would fax them over to us. The results of our checks had to be faxed back over to them. No matter how many times I suggested

changes to improve this very twentieth-century system—even something as small as switching to digital applications—Lee didn't want to discuss it.

"I'm simply too busy to consider anything right now. All I know is, what I have now works," he said, brushing me off.

It wasn't until I brought up our new app that I finally got his attention. The upgrades offered were simply too impressive for him to immediately shut it down.

I told him that our app-focused new process would email applicants directly using his company's name to show that the background checks were legitimate. Then, they would apply directly through us. They would put in their personal information and sign off on all the necessary legal documentation. If need be, we can even have the applicant upload any extra documents you need. All private information can be truncated, so no one in our office sees the full date of birth or Social Security number of an applicant. By limiting who sees the personal information of your applicant, both you and the applicant are protected against ID theft.

"As soon as we have the checks done, the information is uploaded to the app, along with the application and extra documents. All you have to do is log in to the system, put in the applicant's name, and you get the results."

Lee sat back in his chair, mulling over what I'd just said.

After a moment, he said, "Now, that really would speed up the process. That's quite a bit more of an upgrade than simply switching to a digital application."

I nodded. "Plus, the system is fully customizable, so we can make sure the app collects all of the paperwork your

company needs while, at the same time, fulfilling the requirements of your legal team."

"I'll be honest with you," Lee said. "I had no idea such technology was out there. That's why I wasn't giving you much of a listen before. Seems like maybe I ought to pay a bit more attention next time."

You Have to Keep Up

It can take some convincing, but clients always eventually realize that background checks aren't one of those areas they can continue to ignore forever. One way or another, they eventually come to understand that they have to keep updating their application and background check process. I don't win over these hard-nosed, decisive executives because I'm a particularly compelling salesperson; it's simply the nature of business. If you refuse to change, you're undoubtedly wasting money and time—at the very least. Even worse, you are potentially exposing yourself to the risk of fraud and lawsuits.

Think about all the steps in the background check process that we covered in the last chapter. Each one of those steps represents a moment when things can go wrong. Let's say you use multiple background check companies for various services. For the most part, that's fine, but if you don't have those companies in direct communication and integrating their information, any number of problems can develop. Information can fall through the cracks because one party didn't know it had to share that information with another party. You might also simply be paying for the same information twice. Far worse, though, you could fall into potential liability issues with all that private information and all

those passwords floating around. Think of every person who is coming into contact with an applicant's information. The less coordinated and targeted your system is, the more risk there is that someone shares or reveals the wrong information. And then you will be facing a lawsuit.

But maybe you avoid all of this by using a single company. That's great, but if you are still relying on outdated technology, your process is still slower and more disorganized than your competitors. And those extra hours or days of delay can mean your best applicants take a job elsewhere.

Think about how the standard hiring process works. It often involves an application, an interview and a request for more documentation, a background check, and then potentially a second interview. This is a fairly laborious, extended process for the twenty-first century, and plenty of applicants simply won't see it through.

It's not always easy to take time off for that second interview or to return extra documentation, if necessary. If there were no other options, as was the case twenty years ago, we'd simply have to shrug our shoulders and get on with it, but now that you *can* speed up and digitize the entire process—and your applicants know that—there's no excuse to stick with the older process. Applications and documentation can be done online and immediately begin the background check process. An interview can be done online and streamlined into a single event. Hiring can become a lot quicker and easier for all parties without sacrificing any of the information you'd gather from the process.

And those improvements can further insulate you against the risk of lawsuits. With fewer hands on an

applicant's personal information and less time searching, collecting, and reviewing that information, there's simply less chance for mistakes to happen.

This transition is more important to reckon with than it was a few years ago. We're likely heading into a medium-term trend in which employees have a bit more power in the hiring process than they did before. There are simply not enough potential hires for the number of jobs out there. This is on top of industries that have been in chronic shortages for years. So you have to be competitive in the process you use. If you want the top applicants, you have to be aggressive in hiring quickly and making the process as easy as possible.

At the same time, applicants are far savvier these days, and information about their rights in the hiring process is far easier to access. It's now much more likely that mistakes can be noticed by applicants and lawsuits are filed.

All of which is to say that you can't afford to cut corners or fall behind anymore.

The good news is that streamlining the process doesn't have to be expensive or burdensome for you. The technology is there to make it easier for everyone. You just have to learn about it and implement it.

The Big New Advances in Background Checks

Keeping up with technology isn't something I really have to sell business leaders on. They know it's important—in their own industries. The harder sell is to open their eyes to the need to follow tech advances in the background check industry as well. Once they accept that, though, the possibilities very quickly become enticing. Again, the advances here have

been enough to win over skeptics like Lee. And I'm confident they can win over your company as well.

However, it's important to recognize that, like all technology, advances are always coming down the line. As with the background check products I laid out in chapters 1 and 2, I'm going to stick with the essentials here instead of trying to be exhaustive. This is certainly not the limit of what is available or what is possible in this industry.

With that said, there have been two big waves of changes in the last decade, with a third one on the horizon. The first advance was digital integration with HR. This innovation has allowed for every part of the application process to work within a single system and appear on a single dashboard. Our app in this space is what won Lee over. Essentially, an application no longer has to involve multiple parts that are scattered across paper and digital locations. Instead, it can all come together in one place, reducing time and cost, complexity, risk of missing information, and the risk of lawsuits. These advances also included features like applicant tracking systems (ATS) that manage lead flow, along with the background checks and HR information.

The industry has made further strides than that, though. In particular, in recent years, we've taken a massive leap thanks to automation. Nowadays, many parts of the background check process can run automatically, with data found, organized, and sent to the potential employer without a single person involved. Where automation is possible, it speeds up the process immensely while removing the risk of human error and liability issues. For instance, many courts have digitized their records, and we have an automated program that

can review those court records as effectively as if we'd sent someone to the courthouse. This program allows us to get the information to clients faster and at a lower cost.

Of course, these updated digital records aren't available in every jurisdiction, so the system is still slightly limited, but I expect it will continue to grow.

Perhaps just as importantly is the automation process in the education and employment verification systems. Before we had the technology for a computer to run these searches, verifications could be extremely time-consuming. Colleges can take weeks to respond to a request. Even when we could get through, many colleges wouldn't directly comply with our requests and would instead send us to The National Student Clearinghouse, which charges clients more fees for that same information. The same holds true with employment verifications and the high cost of The Work Number. Employment verification also had further risks. Because we were looking at years of employment and job-role history, there was always a risk of accidentally sharing information—such as previous salary—that employers aren't always legally allowed to see in some states.

Verifying employment has become much more difficult over the past few years. Many employers, if not all, will only verify that the employee worked for them. At most, they will verify position and the start and end dates. In this day and age, it seems everyone is afraid of a lawsuit.

With automation, though, a computer can solve all these problems. It can do the work almost instantaneously, with the program designed to only review the key information and never reveal anything else.

This is how it works. The system sends an email directly to the potential applicant with an introduction email that explains who we are and who we represent. That email also requests, via a secure link, the username and password that the applicant uses for their college or former employer. The program takes this information and logs into the system, pulls the necessary data—and *only* the necessary data—and logs out.

No security risk. No litigation risk. And it's all done as soon as the applicant shares their login information with no additional fees from the likes of The National Student Clearinghouse or The Work Number.

But for all its promise, there are still limits to automation in this industry. For instance, the government doesn't allow us to integrate with their databases. To get access, we have to create technology that queries each system one-on-one, very often using technology that scrapes the data from the state or county sites. And since this is only available for some municipalities and states, we have to keep track of which jurisdictions have up-to-date information online and which have special restrictions. We have to know which courts are reliable and what data is available. Additionally, many jurisdictions use multiple sites. Still, where we can use it, this is a vast improvement over our old process.

Fine-tuning automation won't be the end of the technological development in background checks. In the years ahead, Artificial Intelligence (AI) is likely to evolve enough to radically change our industry. However, it's important to recognize that that technology isn't available yet. So don't let a background check company woo you with promises of

AI-run processes. At the moment, that is a false promise. The technology will exist someday, but it doesn't exist yet.

When Not to Use Technology

Technology has and will continue to play a huge part in the evolution of the background check process across every industry, but that doesn't mean every opportunity to employ technology is necessarily an improvement. In fact, sometimes technology can lead companies to make very risky choices.

For instance, here's a straightforward question for you: When you are considering a candidate for a job, do you Google them?

Be honest. If you do, you're probably like the majority of companies out there, and you're probably opening yourself up to a lawsuit. Because Google searches can give you all sorts of information—not all of it accurate either—it's extremely easy to come across information you aren't legally allowed to use as a basis for your decision to hire or reject a candidate. If an applicant fails to get a job and their lawyers can prove you looked the applicant up on Google, you could easily be facing a serious discrimination case.

The same is true for social media. Looking up someone's Twitter account seems the most obvious thing in the world to do, but similarly, you may unintentionally come across information you aren't allowed to see, influencing your decision-making in ways it shouldn't legally be influenced.

Rather than search yourself, it's best to rely on an experienced and knowledgeable background check company—and to double-check everything with your employment lawyer. Let them guide your use of technology in this area. That's the only way to avoid putting your company at risk.

Changes Go Beyond Technology

The background check world is clearly constantly changing and innovating—but this isn't just because of technology. In fact, the whole background check system evolves with society. Society shifts perspective on some drug use, and background checks adapt. Employees use social media more frequently, and background checks adapt. Employers see new post-hiring needs, and background checks adapt.

Once you see that adaptable potential, background checks take on a whole new set of uses in business. That's how it was for Lee. After we updated his process to utilize the latest technology, he realized he needed to be able to keep up with potential risks posed by the people under his supervision.

I recommended we look at monitoring options to help him keep tabs. This time, there was no brushing off. He was ready to sit down and talk through the details right away.

“The world is changing,” he told me. “And if we want to be the best, we have to keep up.”

I told him that I couldn't have said it better myself.

Five How Background Checks Are Changing

It's hard to imagine a better place to work than a cookie company. Just the idea of it brings to mind warm, sweet smells; images of smiling children; and Willy Wonka. The idea is about as charming as they come, but it turns out, it's a more grueling business than you'd expect.

That's what I learned when Derek called me. For him, cookie-making wasn't a whimsical concept but his actual business. He ran a national cookie company, and he had problems.

His managers had recently found pieces of metal in the cookie dough. The pieces were large enough and unique enough in shape—and the incidents frequent enough—that it was clear this wasn't an accident. It wasn't a matter of pieces falling off of machines in the factory, and it wasn't down to flaws in their process. Derek had run the same cookie-making process for years, and he knew it was nearly foolproof.

There was only one possible conclusion: Someone was purposefully sabotaging his cookies.

Derek knew he needed to do something, and he thought he might start with background checks and drug screenings. But background checks would potentially lead to a whole new problem in his workplace.

“This work is surprisingly difficult,” Derek admitted to me. “And we know that some of our employees are probably smoking weed. We can’t afford to run background checks and drug screenings because we can’t afford to lose those workers.”

He thought he was trapped in a corner, but he was lucky; times were changing.

“That may have been a problem years ago, Derek, but it’s not now. Since marijuana is legal in this state, you might not have to worry about a positive result—unless they’re high on the job. That means you can focus on who is doing something more serious and has more serious problems in their background.”

The Possible Changes Ahead

At this point in the book, we’ve already covered a lot of changes. We’ve seen how asking applicants about prior convictions went from a standard question on an application to one that could potentially lead to a lawsuit. We’ve also looked at the evolution of integration and automation in the application process. It’s a lot to take in, but there’s still more going on in this field.

Take drug screenings. Marijuana has long been item number one on a drug screening for employment. That’s

why Derek assumed he’d run into problems if he ran these tests. But these days, it’s legal in half the country. It may become legal on the federal level within the decade. That process is going to continue to have an impact on background checks. To begin with, it’s possible that screenings may someday no longer look for signs of marijuana use, and that may not be the limit of the changes. State laws may even someday ban the reporting of previous convictions for marijuana possession.

Or that may not happen. This is an extremely live issue, which means we simply don’t know where we will land on it. All we know is that things will likely change.

And it isn’t the only live issue.

The next question on the docket seems to be questions about salary history. New York State, among others, has already made it illegal to inquire about an applicant’s previous pay because legislators view it as unnecessary information. According to them, an applicant shouldn’t be paid what another employer thought they were worth, particularly if that employee tended to earn less than others in the same position—possibly due to discrimination. Basing an employee’s salary on history would then be perpetuating discrimination. Once a state like New York weighs in on something like this, it can very quickly become standard across the country.

It’s also possible that laws will get even stricter on what criminal history a background check can report. With so much focus on issues like recidivism within the system, we’ve already seen how some states are restricting which information they’ll share. It’s very possible that the accessible information will continue to be reduced further. That’s certainly

the impression some lawyers I've talked to have on the issue. In fact, some states such as California and Michigan have recently introduced legislation requiring their court systems to remove or redact dates of birth. Background check companies and the PBSA are fighting vigorously against this legislation. As you can imagine, not being able to use DOBs as an identifier will have a huge impact on the quality of the data that screening companies will be able to provide.

Changes to access to information about marijuana use, credit and salary history, and criminal history all started a number of years ago, but we are also seeing new changes pop up suddenly. (In many cases, it is illegal in some states to run a credit report for employment purposes and ask an applicant for current or previous salary information.) We're living in unique times, and those times are changing needs and priorities. Florida has recently introduced new legislation that requires landlords to perform background checks on all employees following the death of a nineteen-year-old tenant named Miya Marcano. Police believe a maintenance worker attacked and killed Marcano in her home in September. He was able to gain access with a master key—a possibility that only occurred because he had been hired. It's possible these stricter requirements will spread to other states.

During the pandemic, we saw a rise in fraud and ID theft. As people fell further behind, more applicants began representing themselves as other people in order to wipe their slate clean and get back to work. This was made easier by the fact that there were fewer in-person interviews and applications have more often been digital. It's now easier to portray yourself as someone else. These issues of fraud

aren't restricted to low-level positions either. I've heard about instances occurring in banking and finance, as well as a number of issues with tenant screening. This may be a short-term surge, or it may become a trend. And in that case, more rigorous products like Social Security traces (mentioned in chapter 1) and ID fraud searches may become necessary for every company.

Also because of the pandemic, we may find that vaccination verification becomes a new company priority. It's looking likely that mandates are coming for COVID-19 vaccines, and this may become a trend for other vaccines as well. In that case, we'll need new verification products to protect businesses from liability issues if they guarantee a vaccinated staff and someone hasn't gotten the shots.

Or that may not happen. We really don't know. Nothing in this section is a guarantee, and I am certainly not an expert at predicting the future. However, it's likely that at least some of these trends become permanent changes. And you have to be prepared for that eventuality. You may not want to make a change to your policies today, but you will have to be ready to make those changes tomorrow.

From Checks to Monitoring

Here's one trend I'm confident is going to become standard in the near future: Companies are beginning to expand their focus on checks and screenings beyond the moment of hiring and into a monitoring system that continues throughout an employee's career.

This system is already in place to a certain extent for professional drivers, thanks to standards set by the DOT.

For instance, the DOT requires employers to pull a motor vehicle report (MVR) once a year for all commercial drivers. Other industries, though, are beginning to develop similar priorities. And the reasons are pretty obvious. There's clear risk in assuming that an employee, once hired, won't commit a crime, begin using drugs, default on debts, or accrue traffic violations. If it's possible to cheaply and legally check in on employees in these areas, why would you choose not to?

We now have a number of monitoring products that companies can use to keep tabs on employee behavior. To begin with, it's now possible to do regular monitoring for any recent criminal activity. You don't want harassment to occur in your office only to find out the person who committed the offense has also been charged with a similar crime in the time since they became your employee.

We also offer driving monitoring that we use to make sure those with driving responsibilities maintain a clean record. This can be valuable, because in many states a DUI won't show up on a criminal report if it is a first offense. That means an applicant may have a single DUI that you don't know about. You'll want to monitor whether a second or third offense occurs, at which point there would be a record. Driving monitoring would also let you know if someone is getting speeding tickets, and you'll certainly want to know if their license is suspended.

We can also continually monitor the exclusion lists for health-care companies to make sure a current employee hasn't found their way onto the list after you hired them. In fact, it's pretty common in the health-care industry to monitor professional licenses for doctors, nurses, and certified nursing

assistants to make sure they do not have any board actions taken against them or a lapse in the renewal of their license.

These are all valuable tools at an employer's disposal, but one in particular has risen in popularity in the last few years: social media monitoring. This is far less intrusive than it may sound. In fact, it works almost in partnership with employees, helping them make sure that they don't post something in the heat of the moment that damages their reputation as well as their employer's. This could very likely become a major product in industries such as sports, entertainment, and journalism, where social media is a critical—and much used—tool and in which blowback from a bad tweet can really hurt an individual's and a company's marketability.

Because monitoring is quick, relatively cheap, not particularly intrusive, and offers a lot of reassurance to employers, I expect it will soon become the norm in industries far beyond transportation. Whatever your industry, you'd surely rather spend a few dollars than deal with a serious situation at your office that you could have avoided.

An Ever-Changing Industry

The possibility of monitoring drug use and criminal activity is what finally allowed Derek to not only catch the person responsible for his troubles but to gain peace of mind that he wouldn't face a similar situation again.

In some ways, he was lucky. Monitoring has come a long way in a few years. It's just one example of how fast this industry changes.

Another change are ban-the-box laws. In chapter 3, we looked at how ban-the-box laws are expanding across

the country and how companies are trying to stay ahead of the curve by removing criminal history questions on applications even in states where the law hasn't been passed. But that isn't the end of the story. In fact, not only are states passing or expanding on ban-the-box laws, but many counties and municipalities are passing their own similar laws. You now have to be aware of if the localities in which you employ people have ban-the-box laws—because if they do, you will have to comply with them.

Not only are ever more states and localities passing this particular type of law, but some states are also expanding them. New Jersey, for instance, just passed a ban-the-box law called the Fair Chance Act (FCA), which places similar restrictions on landlords. Landlords now have to hold off on running criminal records background checks until after they've offered someone an apartment. New York also recently expanded its own version of the FCA. Essentially, the new law requires employers to now complete the non-criminal portion of their background check process—and confirm that it poses no impediments to hiring—before extending a conditional job offer and launching the criminal history inquiry.

As with every topic in this chapter, this is a very live question, and each state is coming up with its own unique solutions.

Of course, along with great promise, this is also the problem with background checks. With so much in flux and so many details to keep in mind, I know it can be exhausting trying to keep up with this field. It might feel easier to throw

up your arms, simply keep doing what you've been doing, and accept that it exposes you to risk.

That may be tempting, but you don't have to do that—in fact, doing so puts you at great risk of liability. There are better ways to approach the complexity of background checks. And that's where we're heading next. At this point, you've passed Background Checks 101. Now it's time to find ways to cut through some of the difficulty, first by narrowing in on what products your company really needs and then by finding the right companies to work with so that you have people you know you can trust to handle the details.

Like everything in background checks, these steps won't be easy, but there is a way to a solution. We just have to follow the essentials to get there.

Part II.
**Making It Easier to Find
Good Help These Days**





Six What You're Up Against

A number of years ago, Mary came into my office facing her worst nightmare. She ran a vocational school, and she'd been struggling for some time to hire enough quality teachers to cover all the classes her students needed. She finally had a great candidate in mind for a top position that had remained open for far too long. He had the right degree and had given a flawless interview. He was perfect—except something extremely serious had come up on his background check.

How serious? It appeared her applicant might have committed murder thirty years ago. In fact, a record that might be his suggested he had only recently been released from prison.

Mary's problem was that she wasn't sure this was the same person. The applicant's name was John Smith—a name so common, we use it as a stand-in for common names. Wasn't it possible that this record belonged to a different John Smith? Couldn't there be two John Smiths born on

June 30, 1968, in the state of New York? Perhaps applicant John Smith had a clean record. She was desperate for us to find out.

“Unfortunately,” I told her, “We can’t tell you 100 percent one way or the other. The fact is that the record is old, the candidate’s name is common, and there’s always a chance there are two John Smiths with that date of birth. But we’ll see what we can find.”

A few days later, I called her back.

“Here’s where it stands, Mary,” I said. “As far as we can tell, it’s the same person. We haven’t found another record for a John Smith. The name matches, the date of birth matches, and the rest of our information matches. We can’t guarantee anything. We’re at 80 percent likelihood here.”

Her best option, I explained, was to speak it over with John and ask him if he in any way was connected to or knew about this record. I cautioned her that she couldn’t accuse him of the crime, but she could ask if he knew anything about it.

They had a conversation, and John freely admitted it was him and that yes, he had committed the murder over thirty years prior. He had taken courses in teaching while he was in jail and had, in fact, received his teaching degree in jail as well. He hadn’t immediately been forthright because he was trying to start his life over.

Mary told me afterward that she’d decided against employing John, not because of his record but because he’d tried to withhold the information.

“You know what,” she told me. “If he’d told me up front, I might have hired him. I believe in second chances.

But since he lied to me—and he made this process so difficult—I’m glad I decided to look for a different candidate.”

Nightmares Can Happen to You

Unlike most business owners, Mary knew a great deal about background checks. I’d talked her through the various products available and a lot of the legal and technological details. But even she found that the process was more complicated than what she’d bargained for.

I’ve told some stories in this book that would give any business leader pause, but I’m sure plenty of you will dismiss my warnings about the complexity and risks associated with background checks at this point. Sure, *some* companies face lawsuits, and *some* companies see people sneak through the cracks in their hiring process, but it’s a rare event that affects a small minority of all businesses, and it likely won’t affect you. For the majority of CEOs and heads of HR, it’s best to simply continue on with business as usual. Why waste resources overhauling this whole system? It can’t really be this difficult.

These may be comforting thoughts, but they’re more wishful thinking than accurate assessments. You may not want to believe that getting the details wrong here will affect your business, but the longer you delay attending to your hiring process, the more likely you’ll come to regret putting this off.

Again, some of the biggest and best-run companies in the country are struggling with this issue. You absolutely should assume this same issue could affect your business. And unlike AT&T, FedEx, and Whole Foods, your company

may not have the resources to handle the fallout of those mistakes. Can you afford to hire someone who steals from your company or harasses a customer? Can you afford a lawsuit and ugly headlines about discrimination?

Most likely you cannot. And that means that a small mistake can easily turn into a huge nightmare. You simply can't afford to throw up your hands, no matter how difficult this space is. You have to face the fact that there are people out there constantly trying to outsmart your system and people who will contact a lawyer if they sense they are being discriminated against on any level. You have to accept that while no solution is 100 percent effective in background checks, the closer you get to that perfect score, the more protected you are.

And ultimately you have to accept that you have a responsibility to make the tough choices in this space—to protect your employees, your clients, and your entire business.

People Are Smart

One of the comforts business leaders tell themselves is that they'll somehow be able to detect when someone is trying to cheat them. "After all, most criminals are dumb," the thinking goes. "How could they possibly outsmart a well-run organization?"

Unfortunately for such business leaders, this simply isn't true. The people trying to get around this system and the people who may be accidentally discriminated against are not as stupid as we might like to think they are. And assuming they can't understand or work the system can lead to a lot of negative repercussions.

To begin with, those who wish to elude the system often think about that system far more than the employers they want to fool. For instance, we often find individuals with criminal records who have made slight changes to their date of birth, name, or Social Security number. The fact that these changes are minor and in those particular areas suggests that they are aware that slight changes can make it very difficult to find their real history.

At the same time, technology is making it easier for those who wish to hide their identity to do so. We've all heard about fake vaccine cards, but there are all sorts of ways to delay the discovery of criminal history or drug use if you know how to use the system and if the employers aren't using the best resources.

This isn't only about scams either. You don't just have to worry about those who would sneak through the system. You have to worry about those who are far more aware of your potential failings in the hiring process than they used to be. Many people who could face potential discrimination have grown far more aware that there are laws in place to punish those who might reject their application. This makes perfect self-interested sense. When an individual sees their perfectly decent application rejected multiple times, they may become curious as to why, and it doesn't take long to find out all the ways employers may be cheating the rules—intentionally or not. Increasingly, individuals know they can turn to a lawyer, and lawyers know there's a decent chance at a settlement simply based on how prevalent mismanagement of this process is across every industry.

It would be great if you could take all these concerns

and simply buy a background check process that can 100 percent follow the law and is 100 percent able to capture anyone trying to get around the checks. Unfortunately, that's simply not in the cards.

There Is No Bulletproof Background Check

If you were hoping to find out what the perfect, one-and-done background check is in this book, I have bad news for you: There are limits to what we can accomplish in this space. No matter how much you would like an easy solution to your hiring problems, there is no 100 percent foolproof background check and there never will be. Even the FBI check—the gold standard that we can't access— isn't perfect. There will always be limits to the information available and the accuracy and clarity of that information. This is particularly true because there will always be the smart people either trying to evade the system or willing to punish you if you cross the line.

Your aim has to be to do the best you can with the options available and to find the best possible partners so that you minimize your risk and maximize your chances to catch as much as possible without exposing yourself to legal difficulties.

This is a two-part process. First, you should refine your focus on what products you believe would best serve your company. As I mentioned in the first part of this book, even if you wanted to, you couldn't realistically run every background check for every position. At the same time, you don't want to stick with just one check or another. Databases can have blind spots and information can be inputted incorrectly.

Each state reveals different information on people with criminal records, and some local crimes never make it to the larger data sets.

So you'll want to decide on a general path forward for your business that covers as much as possible as quickly as possible while maintaining a reasonable budget.

That will put you in great shape for the second part of the process: finding the right partner with the right experience and knowledge to help guide you through background checks.

It's Time to Start Making Tough Choices

The days of letting whatever background check company you work with provide whatever products they deem worthy is over. You can no longer afford to get only half the information you need or to add risk of expensive lawsuits for violating hiring laws. Given enough time and enough new employees, you too will face a nightmare like Mary did.



And you don't know whether that nightmare is coming in five years or next month. You certainly can't afford to assume it's sometime in the distance. That means you've got

to take a deep breath, absorb everything we've covered so far, and start making some tough choices about what background check products your company needs to use so that you can take that list to a background check company you can trust.

Making those choices starts with narrowing down your background check priorities and comparing those to the hard numbers at your company to see what you can afford to spend in this area and what products will deliver the most information for that budget.

Seven How to Start Making Choices

In chapter 3, I mentioned how rarely employers can actually use credit checks when considering an applicant. State and federal governments have come to see this check as a serious risk of potential discrimination. Often, the only time a company can review this information is when the position they are trying to fill has a crucial financial component. In most cases, the applicant's history with money can be deemed important if the position will put them in charge of significant amounts of money.

Knowing this, you'd think that credit checks would be the easiest background check to remove from your list of products. After all, why even consider it if you can't legally run it?

But before retiring the credit check forever, you should remember that there are exceptions to every rule. And this rule is no different. In fact, one of the organizations we run credit checks for has very little to do with direct financial

responsibilities. It is a prominent police department, and they use credit checks when hiring new officers.

Despite the fact that new members of the police force aren't going to be directly handling money, their financial history is important to the job. The decision-makers in the organization are insistent on bringing in only those individuals who can prove they are organized, practical, and upstanding. And to the minds of those doing the hiring, that requires effective money management skills, along with other types of proof.

Further, when investigating serious crimes and apprehending criminals, it is important to the decision-makers on the force that their officers are not being particularly at risk for corruption and bribery. Serious debt can tempt even upstanding individuals to make poor choices, and this department doesn't want anyone facing that temptation.

This isn't the limit of their background checking either. The department runs all the basic criminal history checks and drug screenings. They also send someone to each applicant's house to interview family and friends to get a full picture of the individual.

It is a far more intense, drawn out, and expensive process than most organizations run, but the position warrants it. For that police department, this is the right mix of products and investigations to make sure they always make the best possible hires.

They ran the numbers, looked at their priorities, and they found the mix that matches their needs. Now it's your turn.

Choose Your Priorities

Since you likely aren't running a police force for a large, urban area, the mix of products and the process used above probably won't work as a blueprint for your needs. Instead of copying what another organization does—as you might have up to this point—now is the time to consider exactly what you need to make a hire for each position in your organization.

To arrive at that information, let's look over some key questions you should ask yourself when deciding which background check products to use in your hiring process.

What Is the Job Role?

This has to be a top concern when developing your process for a few reasons. To begin with, as I've stated before, you legally can't use every background check. According to the EEOC guidelines, you can only use checks that directly relate to the responsibilities within the role. One can argue that an employer should not use driving history reports if the job role does not require driving.

But that's only one reason to prioritize this question. Another is the fact that you may not need every single check for every single position. This is a great way to save money and redistribute resources so that your background check investment does as much good as possible.

To make these calculations, you have to focus on what you need to know in order to trust someone in a particular job role. Are they going to be interacting with other employees or customers? Will they have access to homes or offices? Will they be alone with others? Are they watching

over children? If the role requires a lot of interaction and trust, you really want to make sure you've got a clear picture that this person hasn't committed violent or sexual crimes.

Are they going to be responsible for money? Do you have to trust their decision-making abilities? Will they be in a position to learn important company secrets that they could betray for their own financial gain? In that case, you want to get as much access to their financial information and history as you can, including double-checking any chance they've been convicted of white-collar crimes like fraud.

Will they be driving on behalf of the company or operating a company vehicle from time to time? In that case, you should run a DMV search to make sure they are not going to be a liability for the company.

Will they have a public-facing role? Will others associate their behavior with your company? Will they be in a position in which they could create a toxic work environment for others? It's time to look into social media.

Obviously, not every role will check all of these boxes—while some might check every box.

At the same time, you'll want to make a call on how important each area of concern is for your company. What are the primary concerns you have when filling each position? Where are you least concerned? Only you can make those choices.

How Extensively Do You Need to Search?

When choosing background check priorities, it isn't simply about the checks you need to run, it's also how far back you search. In some cases, this is decided for you. For instance,

the FCRA doesn't allow us to show dismissed records that occurred more than seven years ago. So even if you wanted that information, no background check company can legally provide it for you.

But where the FCRA doesn't set a limit, the choice is often left up to the background check company or its clients. In the case of convictions, we can go further back if the client requests it, although most background checks still default to that same seven-year limit. Some clients request we go back ten years, particularly when a job role requires particularly high levels of trust. Most companies don't want to pay the extra costs of this more in-depth search, but on occasion, we run into clients who need that information. But even then, we can only go back so far. Whatever information we provide must comply with time-limit guidelines set forth by the FCRA and/or state laws.

For instance, we have a utility company that uses subcontractors for maintenance work in more-remote areas. By the very nature of the work, those subcontractors will require access to people's homes. For that reason, they require every company they subcontract with to run criminal checks that go back ten years in order to have the highest level of certainty that their customers are safe.

Going further back than ten years is technically possible but doesn't happen much. The thinking generally goes that if someone has kept a clean record for ten years, anything further back should be left in the past. This is at once an admirably forgiving attitude and a means of saving employers. Searching for records that are more than a decade old can become costly because we have far more records to review, which requires increased man-hours.

However, it should be noted that in the case of particularly serious crimes further back in the record, we will usually make a habit of revealing those details to a client. That all depends on state and federal laws, of course, and not every background check company will do that. So you'll need to check whether your background company offers that same courtesy service.

Ultimately, this question is how to balance your personal priorities, the costs and time involved, the state and federal guidelines, and the policies of your background check company. You'll want to have an idea of how far back you want to go before speaking to a background check company, and you'll need to find out how much they'll reveal from further back in the past.

How Much Can You Afford to Spend on This?

If background checks were free and immediate, there'd be no real reason to skip any of the products that you can legally run for every position, and the decision to be as extensive and to go as far back as possible for each check or screening would be easy. We could limit this book to the first two chapters, and then all you'd have to do is click "all of the above" on your next background check request form.

That's not the world we live in, though. While many checks are relatively affordable, that's not always the case—and even when it is, those costs can stack up when run at scale. So it's good to know how much room you have in the budget. Then you can try to fit the priorities you've laid out above into it.

Budget shouldn't ever be your only concern—safety and

decreasing risk always have to be considered first—but it is a concern, so you want to have an idea what your financial parameters are.

To get some perspective on what your company can afford, start by taking a look at what you are currently spending on background checks. Is that a hard, final figure, or is there room to add more if necessary? For instance, if you found out you needed to run one or two more checks to really get the best mix of information, speed, and budget, could you afford it? If not, are there other areas you could consider drawing resources away from in that situation?

With a number in mind, you can start shopping. You'll want to have an idea of what that budget can afford on the market. That's easier said than done in some cases. Prices can vary on many checks. For instance, the cost for state-level criminal records checks depends on the fees each state places on reviewing court records. Many states are reasonably affordable. Florida, for instance, currently sets their rate at twenty-four dollars. Other states can be almost prohibitively expensive. New York's fee is ninety-five dollars at the moment.

In general, the states that have court access fees have prices that fall somewhere between Florida and New York. Since this is such an important check, I always advise clients to simply accept it and find a way to cover the cost. If your business is in New York or on the border, you really need to know what that state's records show for your potential hires.

Since this is almost always a check you want to run, you should get a price on each state and county you need to run a check in and subtract the total from your budget. You

should also immediately add the multi-state criminal database for criminal history, which thankfully is more affordable and tends to cost somewhere between ten and fifteen dollars.

From there, you have to make some harder decisions. If you're interested in drug screenings, those usually cost between thirty to fifty dollars. A driving history check can max out around twenty dollars but may be as low as seven dollars. More expensive but increasingly invaluable, the social media search is often closer to forty dollars simply because of the work involved in running it.

Keep in mind, these numbers will absolutely change and almost certainly go up over time. As you shop around, you'll also find that there are often prices that background check companies can't really go below. We have very little control over these figures. States and databases set the fees, and we can only adjust prices to meet their costs. There will obviously be companies that add quite a bit on top of those fees, but once you find a partner who keeps their additional charges modest, there's not much you can do about the cost other than find a way to pay for everything you need.

And here's one final point that is very important to remember: It's always better to run the checks you need to run, even if it squeezes your budget a bit. Once you settle on a background check company, you should work with them to understand the risks that come from your selection of products. They may see better options available within your financial limits. The value of running multi-state searches or checking multiple counties may vary depending on your hiring history. You should be open to what your background

check company has to say on this—even if it isn't the best news for your budget.

The main lesson here is that these checks are far from free. That's why it's so important to settle on the checks you really feel you must run to mitigate serious risk and look for room in the budget to add more where necessary.

How Long Will This Take?

As I've mentioned before, timelines on background checks have to be a concern for companies. The longer the delay on a background check—and the more burdensome the process—the more likely it is that a top candidate will choose a position at a rival company.

While this concern should fall below your need for information and your budget, it should find a place into your ultimate calculations on this issue.

Thankfully with all the advances in technology, background checks are speeding up and becoming far less burdensome for the applicant. As mentioned in chapter 4, it's now possible to run the entire process through an app that involves the applicant e-signing to allow background checks and verifications to go forward. With that in place, many checks are instantaneous, including the multi-state criminal database. Other checks can take anywhere from a day to a few days; these include education and employment verification as well as county, state, and federal criminal searches. Some checks depend on how advanced a particular location is with their data. When a municipality has up-to-date digital records, local criminal background checks can be nearly as quick as the multi-state criminal database. But when we

still need to send someone to a courthouse, that often comes with a lag of a day or two, and in some cases longer, particularly when it is strictly a court-assisted search.

Drug screenings, likewise, usually require a day or two, and of course, also require the applicant to go to a secure location where they can provide a urine sample.

In general, where a process can be completely automated, the results will be extremely quick. The more a human being has to be involved, the longer it takes to get a result.

However, this is potentially an area where the background check company you use makes a difference. We work hard to keep these timelines tight by investing in keeping up with all the latest innovations in this field, but there's no guarantee that another background check company will do the same. So be sure to inquire about timelines with the company you use. An extra day—or even, in some cases, a few extra hours—can be the difference between a great hire and a waste of budget.

Will You Need Monitoring?

Also mentioned in chapter 4, monitoring has increasingly become a concern for companies. The good news is that monitoring is often relatively affordable. In the case of criminal history, you really just need a surface look at updates to criminal records to make sure no one is committing serious crimes while working for you.

However, as monitoring potentially becomes the standard across industries, you'll want to budget those costs—low as they may be—into your ultimate background check costs. At some point, you may not have much choice over this. If

monitoring becomes widespread and affordable, there may be liability concerns if you choose not to use it.

This isn't yet the case, but it's worth keeping an eye on changes in the law over the coming years and deciding now if you want to get ahead of the game and install a process immediately.

The Basic Criminal Package

While many organizations require unique background check products, if your head is swimming after all we've covered, it's worth slimming this down and simplifying your options. Unless you are in a specific field with unique demands from the government, most of the time, you can stick with a basic package for your criminal background check needs.

That package would include a Social Security trace, the multi-state criminal database search, a statewide criminal records search for the state the applicant lives or lived in, county-level criminal records searches for all nearby countries to cover any gaps in that data, and a check of the national sex offender registry. For those who are hiring for a white-collar job or wish to enhance their current prehire package, it might make sense to add the federal criminal records search to their set.

These products together represent a strong, robust set of tools that will cover most needs and give you fairly extensive information. Results are also reasonably quick to obtain and relatively affordable.

So when in doubt, if you can't work through all the details above or decide between the various products we covered (and those we haven't), this mix will give you decent coverage at a price most companies can afford.

Don't Do This on Your Own

To recap, when considering the right balance for background checks, there are a few big considerations up front:

The job role and the information that can legally inform your hiring decision

- » How far back or how deep you want to search?
- » How much money you want to spend?
- » How much time you want to wait?
- » How likely you are to run ongoing monitoring?

The amount of time and energy you spend on this is entirely up to you. The police department we work with is incredibly extensive—and they aren't even our biggest spenders. Some companies we work with are willing to spend in the hundreds per applicant in an effort to get the clearest possible portrait of their new hires. Many other businesses, though, stick with the basic package laid out above.

It's all up to you. So long as your choices meet the speed, cost, and thoroughness requirements for your business, that's the right choice for you.

However, whatever mix of background check products you decide is right, it's important to recognize that you need the right people running these checks. If you have the wrong experts in place, it won't matter how smart your product choices were.

So now that you have an idea of what searches you need from a background check company, it's time to choose the company you should be working with.

Ten Essential Practices When Making a Hiring Decision

1. Consider the job role.
2. Know what reports to run.
3. Don't cut corners.
4. Know when you should run the background check.
5. Understand the background check results.
6. Know the law.
7. Be consistent.
8. Engage the applicant.
9. Use a professional background check company.
10. Avoid discrimination.



Eight

Background Checking Your Background Check Company

After getting an overview of the essentials for background checks in this book, you may assume that the company you work with isn't that important. After all, don't they all offer similar products at similar costs and with similar timelines? Now that you know what you're looking for, you just have to place the order, right?

Not really. To begin with those products, prices, and timelines will not necessarily be so similar. Even if they were, though, there's a definite risk in working with anything but one of the elite background check companies.

This has to be a partnership between your business and an experienced, knowledgeable, and professional background check organization. If you choose the wrong partner or fail to maintain thorough communication, disaster can still strike, even if you have gotten every other detail covered in this book right.

About ten years ago, Greg came to me to talk about his hospital staffing company. He was deeply unhappy with the background check company he was partnering with—a big, national name in this space. The quality of the work had been questionable, the costs seemed suspiciously high, and Greg had personally caught a number of errors over the past few years.

“We just don’t have confidence in these people anymore,” Greg told me. “We’ve heard great things about you from other companies, and if it was up to me, we’d jump over to you today. But there’s a hitch.”

The hitch was this: Greg was worried that the hospitals he worked with wouldn’t accept a background check done by a company they didn’t immediately recognize.

“I don’t care about big brand names, but the hospitals do. And the hospitals are who pay us. If I could think of a work-around, I’d make the switch. But it seems like I’m stuck.”

At the time, ApplicantSafe® wasn’t nearly as big or well-known as we are today, and Greg’s concerns were legitimate. After all, what good was a better background check if your clients reject it because of the label?

I mulled over the dilemma.

“I tell you what,” I said. “I’ll give you a free background check for a nurse. It’ll have my company’s logo at the top. If the hospital rejects it, we’ll look for another solution. However, if the hospital doesn’t object, I think that’s a pretty clear sign that we can do business.”

Greg agreed, and at the very next opportunity, he submitted our background check for one of his nurses. Lo and

behold, the hospital had no problem at all, and a great business relationship was started that has continued to this day.

But that’s not the end of the story. About two years ago, Greg and I ran into a little trouble in our previously happy relationship. A new law required his company to work with a certain percentage of businesses that had minority or female ownership. Since we didn’t qualify, Greg was forced to switch background check companies again.

“It really isn’t personal,” he emphasized on the phone.

“I understand,” I told him. “The law is the law. No one knows that better than me.”

Six months later, though, I got another call from him. This time, he sounded desperate.

“Can you take us back on?” he asked.

When I told him we could, he sounded relieved.

“We’re going to shuffle some things around so we can come back to you immediately. The company we were using nearly led us right into a lawsuit with an applicant, and I am not putting my whole company at risk over a background check.”

Creating a Partnership Matters

Here’s an example that will chill your bones. We’ve worked closely with a nationwide youth organization for years now. They’ve always been extremely thorough in their background check process. Because they work with children, they always make sure to check every applicant’s background.

However, there were still cases where they decided to let things slide—without ever communicating that to us. Despite clearly knowing better, the leadership at that

organization decided that they didn't really need to run background checks for their summer camp. Most of the people they hired were straight out of high school and still in their late teens. Their thinking was that no one would have a record anyway, so why waste money on checks?

One employee who ran their camp for a few years in a row was so good they hired him full-time after he turned eighteen. Since he'd come in through the camp system, they didn't see any reason to check his record. He'd already worked for them for years. Again, why waste the money?

You can probably see where this is going.

A few years later, the FBI raided that employee's house for child pornography.

The fallout from this event was terrible. The local media picked up the story, and it eventually made the national news. Furious parents were calling nonstop. This wouldn't have been as bad if the employee had committed these acts without warning, but to their horror, the organization later found out that he had a record.

They had no defense when confronted by parents or lawyers. People in leadership positions had to resign, all because they failed to share this decision with their background check company and, therefore, let this one kid slip through the system.

This organization had done almost everything right. They used the best background checks. They were invested in the process. But because they weren't working in partnership with us, one small mistake turned into the biggest scandal in their organization's history.

Why It Matters Who Runs Your Checks

But why not choose whichever background check company offers the lowest prices and simply remain very active in the process? That would have solved the problem for that youth organization.

That may sound great in theory, but tell that to Greg. He'll be sure to respond that it matters who you work with. You know this in every other aspect of business. You don't choose any old company to provide you with supplies or any old law firm to draw up your contracts. These are carefully considered choices because one supply company or lawyer can definitely be better than another.

This is equally true with background checks. I've already mentioned the risks that come with using a background check company that simply doesn't know much about the products it offers. But even if you rule all of those out, there are still significant differences among the more experienced and knowledgeable companies out there.

This often comes down to the quality and thoroughness of the work they provide. While most well-run background check companies will offer the same products, they don't necessarily pursue their work as rigorously as some of their competitors.

Within this complicated process that I've laid out in this book, there are plenty of opportunities to be meticulous or a little careless. Take, for instance, a situation in which an applicant makes slight changes to their name and date of birth. To provide a client with the most thorough information, the company must go beyond inputting the basic

information into a database and reporting it back. In that case, a background check company has to work something like a detective agency.

Getting the information to be as precise as possible often requires rigorous searching through court documents and doing comparisons with the various reliable information we have about this individual. We have to consider similar names or look into whether someone with the same name but a slightly different date of birth could be the same person.

To add to this complexity, the person may have—or report to have—a common name. We also have to sift through potential situations such as a person living in one county and committing a crime elsewhere. The crime could be recent or fairly far back in the past. Where information is incomplete or contradictory, we have to investigate more to iron out as much as we possibly can. We may have to ask for a government-issued ID to get some concrete details that we can use for our searches. Sometimes, we even have to call up the applicant and discuss the situation directly with them.

Using all of the tools at our disposal, we may not be about to 100 percent say a criminal record belongs to someone, but we can present the likeliest scenario. But to get to that scenario takes a lot of work, and not every company will put those hours in—or know how to track the information down.

It takes a lot of experience and knowledge to know where and how to look for this information. We run information through hundreds of millions of records from private databases, using public information to help fill in our profile.

This is only the start of how background check companies can differ. In the same way some companies can be more or less diligent with their searches, they can be more or less careful about the information they reveal to you. As you well know now, if you have access to certain information before making a hiring decision, it can open you up to the risk of a lawsuit. In a social media world where people often reveal a great deal about themselves online, it can be extremely tricky to cut away the information that could be deemed discriminatory and provide only what an employer can legally use when considering an applicant. You need a background check company that only provides you access to information you can legally view or legally use to make your hiring decision. And you need to know that all the information you review is accurate and refers to the applicant—which some background check companies may be less careful about.

Another distinction comes in how a background check company organizes and presents information. I've mentioned before that we coordinate all background info through a dashboard that provides easy access to information. But not every background check company does this. If they don't put the effort into presenting the information well, it may not matter if their searches were diligent. Poorly organized information can make it difficult to process the most important details without feeling overwhelmed.

Despite the fact that background check companies may look very similar on the surface, there's a lot of art in this science, and that art can make all the difference for our customers. Needless to say, you absolutely want your background check company to excel at the art as much as the science.

Is Your Background Check Company Doing Enough?

Perhaps all this advice seems unnecessary to you. After all, since 96 percent of businesses run background checks these days, the odds are that you already have a company for this service. But now that you know much more about the process and products available, it's worth asking a very basic question: Is that company doing enough?

Some background check companies rely on the fact that their clients know very little about the services they offer—other than the fact that they need it. When your clients only know they should buy something from you, and no one expects you to explain your work in more detail, you have a lot of discretion for the quality of service you offer.

It's very possible this describes how your relationship was with your background company before this book. Now, though, you know enough to grade your background check company more accurately.

So it's time to start asking some essential questions about the company you work with:

- » Do they offer all the products mentioned in this book?
- » Can they speak authoritatively about each one and explain whether your company would benefit from one versus another?
- » Have they kept up with all the innovations mentioned in chapter 4, and do they have advice on the trends developing in background checks that you saw in chapter 5?

With these tools at your disposal, you can now begin to see just how much divergence in quality there really is. And you can protect yourself by avoiding—or moving on from—a company that lacks that extra quality.

If you get the sense that your background check company doesn't quite get a passing grade, this is the moment to start seeking a better partner. Crucially, you want to find one company that can meet all your needs and help protect you from the huge risks you face every time you hire a new employee.

Finding one company that meets all your requirements and has all the necessary expertise and quality may seem fanciful, but such companies do exist, and your business should be using one.

Who Can You Trust?

So how do you know whether your background check company—or a new one you are considering—really offers all the experience, understanding, dedication, and organization you need to be able to rely on the results you get from them?

This is, admittedly, a very tricky question. As with any big-business partnership, it's hard to know whom you can trust.

Unfortunately, many of those upon whom you normally rely will not be much help here. Your C-level partners and company leaders are likely as lost as you—in fact, they're likely more lost since they haven't read this book.

Likewise, you can't necessarily rely entirely on your employment lawyer. While they should know the laws that bind your decision-making process and they are a necessary

partner in background checks, they don't know the best products or strategies—or which companies you can trust to implement those strategies. Remember, there are successful employment lawyers who have missed obvious liability issues like leaving criminal history questions on applications for years after the law has changed. Your lawyer may be very thorough, but you can't trust them to make this choice for you.

So you should leave this to HR, right? There are also limitations in that choice. HR will certainly know a lot about hiring strategies and some about the data available about applicants, but again, they often know as little about background check companies as others in your office.

The truth is that no one you work with today knows everything you need to know about the background check process, products, technologies, strategies, and companies. In this case, you're going to have to take the lead and fill them in. And you'll have to take the lead and make the choice for whom you trust to run your background checks.

To help you in this, here are ten essential questions you should ask every background check company you consider working with. Using the answers they provide, you should have a clearer understanding of the quality of service they could offer your business.

Question 1. Are You a PBSA-Accredited Company?

The Professional Background Screening Association only works with those who know the rules, play by the rules, and stay strictly within compliance guidelines. So if the company

you are considering is accredited by the PBSA, you know you're on the right track.

Keep in mind; the accreditation process is grueling. It took us almost two years to get accredited. And the PBSA only accredits employee background check companies, not tenant screening companies. So if your background check company is PBSA-accredited, you know they focus on employee background checks, and you can probably trust their methods.

This may not be the determining argument for working with them, but it ought to be the price of admission to being considered.

Question 2. Do You Specialize in Preemployment Background Checks?

Even if a background check company manages to get accredited by the PBSA, that doesn't mean their area of specialization will help you. A well-run employment screening company that specializes in one industry may offer the best service in the world for its clients, but that is no guarantee they have the depth of understanding, the quality team members, or the process in place to handle your needs in your sector. Understanding the needs of retail doesn't necessarily correlate to understanding the needs of the medical industry—and vice versa.

You want to work with a company that knows everything about preemployment background checks in your specific industry, so make sure that's what this company lives and breathes for.

Question 3. Do You Provide Regular Compliance Advice? Will You Walk Me through the Process?

This is a two-for-one question because it hits on two aspects of background check partnership that even many elite organizations miss. Just because a background check company follows all the compliance guidelines and knows every aspect of the process, doesn't mean they will share that information with you. Many background check companies prefer to sell a product and deliver the result without spending time explaining what the information says, how they got it, or what process the client should follow if they need to act on the information.

You want a partner in this space, and that means you need someone who is willing to talk you through the details.

Question 4. What Does Your Customer Support Look Like?

Somewhat relatedly: Customer support is as important in background checks as any other business relationship. Even when a background check company is willing to offer advice, it doesn't mean they'll do so in a way that is convenient for you.

When you have questions, you want to know they'll be answered quickly and thoroughly. This is yet another way to find out how much this company sees themselves as a partner in your hiring process instead of simply selling you a product and moving on.

Question 5. How Customizable Are Your Products?

This is one final way you can find out just how willing a background check company is to work directly with you as opposed to taking your money and giving you a generic result.

You want your background check company to listen to your unique needs and do what it can to resolve any issues you're encountering. Finding out about customization shows you whether a background check company genuinely believes in providing that customer service you've already asked about and whether they have the capability to give you the information you actually need.

You can also use this question to dig into their process. If you need information from further back in an applicant's history, can they get that for you or do they draw a line at going the extra mile?

Question 6. How Quickly Do You Integrate New Technology in This Space into Your Business?

With a basic understanding of a background check company's credentials and their views on partnership out of the way, the next things you should find out more about are the company's priorities.

As we've seen, technology can make huge differences in the quality, accuracy, ease-of-use, and speed of background checking. You want to make sure your background check company is using all the latest innovations to give you the best possible results. If they start falling behind, you do too. And you want to avoid that happening at all costs.

Question 7. Do You Use Automation in Your Products?

This is really digging into the question directly above. If you could isolate one technological innovation you want a background check company using, it wouldn't be the one everyone talks about (AI); it'd be automation. This is the technology speeding up background checks while also reducing costs and risk of compliance issues.

Be careful that the company doesn't steer you toward the sci-fi promise of AI as an excuse for their limited use of automation. The automation technology is here and can be implemented immediately. If they haven't done that work, they won't be ready for AI when it does arrive.

Question 8. Do You Have Multi-Industry Experience? Have You Worked with My Industry Before?

It's important for a background check company to not only have experience but to have the right kind of experience for your particular needs. Ideally, you want the company you work with to have experience in your specific industry. If they have that experience, they should know how to best advise you on your particular product and process considerations.

Failing that, they should have experience in a wide variety of industries, which would show they could adapt to the specific demands of your area.

Question 9. How Quickly Can You Get Me Results and How Accurate Are They?

This is probably one of the questions you already knew to ask, yet as you can see, it comes near the end—as does the other obvious question directly below.

The reason for this is simple. There's no point in getting to the obvious questions (which the company will likely have a set answer for) if they can't answer the other questions above.

However, once you have a decent amount of confidence in the quality of the background check company, it's worth getting clarity on this point since time and accuracy remain a major concern. It may be that the answers to this and the

following question are the final determiners for which company you choose.

Question 10. Are Your Prices Competitive?

This is the second major question you would already know to ask. It's still worth asking for the obvious reason: budgets matter. It can also be a tiebreaker if you are still considering a couple different background check companies. All else being equal, you might want to choose the company whose prices are lower.

However, this goes at the very end because it's far more important to get the quality service and products you need than to get the best possible price.

A Good Background Check Company Offers Peace of Mind

We've covered a lot of ground in this book—from the many background check products to the constant changes in law, technology, and society that influence those products and all the way to the various decisions you need to make when deciding on your background check priorities. It's a lot to take in, especially since the industry is always evolving. A new law may pass in Illinois tomorrow that influences background checks across the country. Innovators may find a direct use for AI in this space that changes how you run your entire process.

This is why it's so important for you to do the work in this chapter and find a background check company you can trust to keep up with those details for you. One of the greatest benefits of a well-chosen background check company is that you can have peace of mind. Instead of fretting over

potential compliance risks, you can be confident that you know as much as you legally can without infringing on anyone's rights. You can rest easy with the knowledge that the company you partner with will keep up with any change in the industry, and they'll be happy to explain those changes to you if you need to know more.

You deserve to have a partner in this area who will walk you through every choice that could make a difference to your company. Now that you know the essentials and what to ask, you can find that partner.



Conclusion

My main goal in this book is to help instigate a number of mind-shifts in how companies think about background checks. The first mind-shift was to simply get people to think about background checks at all. Most business leaders and HR departments assume that whatever process they have in place with whatever background check company they currently work with is good enough. They continue to assume that right up until they find out they missed a criminal record on someone they hired who went on to commit a crime on their premises or until they face a dreaded discrimination lawsuit.

In this goal, I think I have succeeded. If you have made it this far, you've certainly given more thought to background checks than almost anyone in your industry.

The second mind-shift I hoped to achieve was to drive home just how complicated this system really is—and how easy it is for things to go wrong. Most people think that criminal background checks are as simple as typing in a Social Security number and getting all the information they need.

Whatever information they find, they assume they have a right to look at it. If they see something they don't like, they don't hire an applicant. If not, they hire the person.

I hope this book has shown that this process is not simple or straightforward in the slightest. Every business could benefit from taking a step back and revisiting their policies and procedures, their compliance rules, their understanding of the law, and the mix of background checks they run.

Most importantly, I hope this book has created a mind-shift in how you approach the choice you make in a background check partner. I hope you've learned that you should vet your screening company to make sure that company has the capabilities and understanding to serve all your needs without leaving you liable for a lawsuit.

If I've done all that, then I believe I've achieved my purpose. But even then, I need to leave you with a word of warning. For as complicated as this book is, I've left out many details and intricacies—all for the purpose of keeping things short, accessible, and essential. There are more background check products than what I've listed (and more being developed even as I write this). We've only just touched on the surface of technology, law, and changing trends.

So if you want to understand this issue in greater detail or if you'd like to discuss partnering up in your background check needs, reach out to me at mwenger@applicantsafe.com.

Regardless, I hope your mind has shifted on this topic, and I hope in the future you can use this information to protect yourself, your business, your employees, and your clients.

Appendix 1

How to Hire a Criminal

When I hired Anne, I didn't know she had a criminal record. In fact, I couldn't know. It would have been illegal to find out. Anne had been arrested, charged, and convicted of a DUI when she was twenty-one. A couple years later, when she applied for a position in my business, her responsibilities did not include driving, so I had no access to her record. I had to hire her based on her application and interview, and she aced those.

Two years into her time at my company, she confessed the truth to me without prompting. When she was pulled over, she had only recently come of age. She was out with a few friends, and they had made a bad choice. It wasn't until she saw the flashing lights that she had realized how big a mistake she'd made.

"I'm telling you all this now," she said, "because it means so much to me that you gave me this second chance. Because

of you, my life is finally heading in the right direction. I can never repay you.”

It was very kind of her to say that, but I didn’t deserve so much credit. It’s likely that if I’d been able to access the information of Anne’s DUI, I never would have given her that chance.

But I’m glad I did. She turned out to be one of the best employees I’ve ever hired. By the time she left three years later for another opportunity, she had proven herself so effective and trustworthy that she was running half the business. She was capable, reliable, and highly motivated.

I couldn’t ask for more from anyone—criminal record or not.

A Decision You’ll Have to Make

Anne’s story is the noble reason behind the government’s efforts to make it harder for employers to learn everything about potential hires. This is precisely the reasoning behind the ban-the-box type laws, for instance. Though we employers bristle at these limitations, the hope is that those who have a record and really deserve a second chance can get one and prove themselves. Whether you want to offer that second chance or not, the government has put policies into place that require you to do so. There are currently over two million people in jail. It is estimated that nearly 100 million Americans have some type of criminal record. As we’ve already covered in this book, there is a huge recidivism problem when an individual can’t find employment or housing and reestablish some sort of life. Studies show that when an individual with a criminal record can’t get employment there

is a huge likelihood that they will end up back in prison. In order to reduce those issues, the government has added—and will likely continue to add—restrictions on how and whom you hire.

On a very basic level, those restrictions start with the government denying you the ability to make a hiring decision based solely on a criminal record, unless that record suggests a direct concern related to the job role you are hiring for.

Even if you discover through legal background check products that an applicant has a record, if that individual meets your qualifications and their record doesn’t pertain to the job role, you could be at risk of a charge of bias.

In 2022, we’re living through a very tight labor market. Unemployment is low and most businesses are understaffed. This is putting massive strain on businesses across the country. In such environments, it will be exceedingly difficult to defend your company against a charge brought up by someone with a record if their résumé fits the job role—particularly if you otherwise don’t fill that position.

It’s likely that this especially tight market will ease over time, but we don’t know by how much or how soon. But whatever the state of the economy, it’s likely that the government is going to continue to pull even more levers to push businesses into hiring those with criminal records. So long as America has an incarceration problem, employers are going to feel this pressure.

This is why ban-the-box legislation is quickly becoming law across the entire country. And more restrictions and requirements are almost certainly just around the corner.

The question here isn’t *whether* you should hire a

criminal but how to do it smartly and protect your company from legal risk—both from the government and the individual you're hiring.

The Legal Requirements

The EEOC guidance discourages employers from making blanket exclusions of all job seekers with criminal records and recommends that, in addition to assessing each criminal record found for job-relatedness and business necessity, employers give applicants the opportunity to explain or resolve a criminal history uncovered in a background check.

Why does the EEOC get involved with your criminal background checks? It isn't because former convicts are protected under antidiscrimination laws. Instead, this is the EEOC's reasoning: Arrests and conviction rates are higher among certain minority groups. A seemingly neutral policy (for example, refusal to hire anyone with a criminal record) will likely have an adverse impact on those minorities, who are protected under federal (and state) antidiscrimination laws. In other words, your seemingly neutral policy could have a discriminatory impact—and that is a violation of federal antidiscrimination laws. That is why the EEOC gets involved in the use of criminal background checks in the hiring process.

So how do you avoid those risks? You start with the legal concerns. The EEOC has a set of guidelines that every employer is required to follow when considering someone who has a criminal record. To begin with, the context of the record is extremely important from a legal standpoint. How long ago was the crime committed? How severe was

the crime? Was it violent or nonviolent? Was it a bunch of kids getting into trouble when they shouldn't have, or was it a premeditated act? Is the record related to something that isn't even a crime anymore—such as marijuana possession? Does the crime directly relate to the job role? Answers to these types of questions matter because they create a profile for how suitable someone might be for the position you're hiring for—and how big a risk you might be taking in hiring the applicant.

For instance, it's possible that with the current laws in place, my company could have been at risk if I had known about Anne's DUI and failed to offer her the job. She was an otherwise outstanding candidate who stood out from the others, and the nature of her record had little bearing on whether I could trust her to fulfill her job safely and effectively.

That connection back to the job is key. The company should have policy guidelines in place for each type of position, and you'll want to make sure you follow those guidelines while also considering whether the criminal record should have any place in your thinking. For instance, the EEOC provides an example of a county community center that prohibits the hiring of anyone with a conviction for theft within the last four years from working in a position where they'll be handling money. They do provide room for an application to explain why such an exclusion shouldn't apply to them. With strong, reasonable rules in place, the EEOC argues that an organization should be in a position to defend any decision not to hire an individual within those parameters.

We can game this out further. If someone has a theft

conviction, for instance, it makes sense that such a record should influence your decision-making process when hiring a supervisor for an apartment complex. After all, they'll have access to cash and the keys to your tenants' homes. However, if you're hiring a janitor or a gardener with no access to rooms where money or valuables are kept, it's harder to justify considering that record. A DUI might not affect your judgment hiring a shift manager at a fast-food restaurant—since they aren't driving or around alcohol—but it should affect your thinking if they're a forklift driver.

If the person has a criminal record for arson, you might not want to hire them for your brick-and-mortar business. But what if the job is remote? It's far harder to argue that the record has any bearing on that position.

The most powerful weapon you have in this is a strong, well-organized, and strictly followed hiring process that helps you prove a lack of discrimination when choosing who to hire.

You Can Give That Second Chance

These are the types of legal restrictions that the government places on you, but there is no legal reason you can't be more open to hiring individuals with a record if you choose. In this market, it may make sense to loosen your internal guidelines a little further. Perhaps the crime was more recent but non-violent, and after an interview, you want to give that person a chance. Perhaps the crime relates to the job but it's far enough in the past that you feel you can overlook it.

More than anything, if you want to be more open to

this possibility, you can start by sitting down with such individuals and hearing their side of the story.

That person with the arson charge might have accidentally started a fire by setting off fireworks inside with friends when they were eighteen. They might now be a reasonable twenty-five-year-old with a desire to prove they deserve that second chance.

That desire to prove themselves can make a seemingly risky hire into one of the best decisions you make. Anne was one of the best workers I ever hired because she wanted to show she deserved that second chance at getting life right—and my company benefited because I was the one who let her prove it.

Beyond the potential high levels of motivation you might bring into the business, there's also something immensely rewarding about being the person who helps get someone's life back on track.

Many of us have made mistakes in our lives that are not so dissimilar from those with criminal records, only we got lucky and didn't get caught—or else we were let go with a warning even though someone else wasn't. The majority of young Americans have smoked marijuana in the past, even though most of them didn't face any consequences. Many teenagers engage in questionable behavior that could, in theory, lead to such a record. For those who were unlucky, you can be the one to help get them back on their feet.

You aren't required to do that by law, but the opportunity is absolutely there if you choose to seize it—and you may gain a valuable employee in the process.

Further, keep in mind that should you for some reason get pulled into a lawsuit related to a preemployment background check, there's no doubt your company will be looked at more favorably in the eyes of the law by adopting some of the policies we discussed above that afford a more lenient hiring process.

Closely Monitor Performance

Many employers would be willing to help people like Anne. The problem isn't the desire; it's the fear of the consequences if they judge a candidate incorrectly.

After all, not every person with a criminal record is ready to put in hard work and choose to follow policy and the law. What if the person you hire isn't like Anne? What if they have a record because they regularly drive drunk or continue to steal, commit assault, or commit some other crime?

How can you safely hire a criminal when you are responsible for so many other people? You have to protect your employees, your customers, yourself, and the finances of your business. How can you justify giving someone that second chance when so much is at stake?

The good news is that with the current background check products available, you can now more safely take the chance of giving a second chance. With the latest monitoring tools, you can run regular criminal record and DMV checks to catch any new charges your employees might have picked up. You can run regular drug screenings to make sure no one is using illegal substances. And you can monitor social media usage to see if anyone has been harassing others online or bragging about illegal behavior.

If monitoring isn't an option, we also have automated searches that can automatically run a new background check or DMV search at intervals your company is comfortable with.

When you put these sorts of products in place in your business, you can afford to be generous and help someone who deserves the opportunity to prove themselves without exposing your company to any further risk.

It massively decreases any potential negative consequences for doing the right thing.

And with that freedom to make the best choice, even if the person has a record, you open your company up to hiring the next Anne. And hiring someone like Anne is always a great business decision.



Appendix 2

Our Most Commonly Used Background Check Products

This list is meant to help show just how vast the background check world is. Below, I've included the most commonly used checks at ApplicantSafe®. This is not exhaustive, but it does give an idea of just how many options are out there.

County-Level Criminal Records Search

County-level criminal records searches examine criminal records in county courts and research any felony and/or misdemeanor cases reported on an applicant. These searches yield levels of offense, charges, file numbers, file dates, dispositions, and sentences.

Statewide Criminal Records Search

Statewide criminal records searches look for felony and/or misdemeanor convictions (where available) in state repositories. Not all states allow public access to statewide criminal records information.

Federal Criminal Records Search

Federal criminal records searches retrieve state-level records (from federal district courts) to discover crimes committed against the United States government. Federal criminal records searches reveal offenses such as bank robbery, tax evasion, Internet crimes, and mail fraud.

Multi-State Criminal Database Search

The multi-state criminal database is a proprietary database compiled from US court records. The data is sourced from county courts, statewide criminal databases, as well as sex offender and correctional databases. The multi-state criminal database is updated on a weekly or monthly basis depending on the original source.

Data is also included from the following:

- » Office of Foreign Asset Control (OFAC)
 - Access is limited
- » FBI's Most Wanted Terrorist list
- » FBI's Most Wanted Fugitive list
- » Wanted fugitive lists published by ten additional federal agencies, such as the US Department of Justice, US Customs and Border Protection, US Marshals Service, US Secret Service, US Drug Enforcement Administration, etc.
- » Wanted fugitive lists published by numerous state and local law enforcement agencies

National Social Security Search/Address Locator

ApplicantSafe's® national Social Security search/address

locator is primarily used to identify counties where applicants reside in addition to any name variations. This search gathers information from a multitude of venues such as credit bureaus, public records (real property), and moving records from mailing houses.

Multi-State Alias Criminal Search

This multifaceted search combines a search through our multi-state criminal database with known aliases sourced from our Social Security search/address locator history based on the subject's Social Security number. The names searched for include the primary name and other names found in the name and address history for your subject, such as maiden names, previously married names, middle names used as first names, nicknames, and other aliases.

Sex Offender Registry Services

ApplicantSafe® searches the most recent, updated information that tracks registered sex offenders. We screen an applicant to discover if they have been convicted of sexually related offenses against adults and children and certain crimes against victims who are minors.

Employment Verifications

Past and/or current employer(s) are contacted on behalf of the applicant. We will verify information provided such as dates of employment, position held, and eligibility for rehire.

Education Verifications

The education verification service confirms credentials earned directly with the schools. Dates of attendance, major,

degree(s) earned, and graduation will be verified from the information provided by the applicant.

Professional References

Professional references help organizations gain an additional level of information on their applicant beyond what is listed on their résumé, which can provide greater insight to a person's work ethic and abilities. ApplicantSafe® will contact these references directly and gather their responses.

Professional License Check

A professional license check verifies professional licenses disclosed by the candidate. By contacting the issuing agency, licensing board, or institution, we will confirm the license type, status, certificate or designation number, date of issuance/expiration, and any disciplinary actions.

Credit Reports

Credit reports search nationwide through one of the credit agencies for individual credit history including places of employment and prior addresses, credit account types, terms, amounts past due, loan types, balances, public records, high credit, dates opened and closed, payment patterns, credit limits, and modes of payment.

Motor Vehicle Reports

A motor vehicle report (MVR) queries the DMV and provides a three-to-five-year driving history on the applicant. These are live feeds to the individual state DMV systems and not database searches.

Driver MVR Monitoring

Continuous MVR monitoring takes a proactive approach to find new suspensions and/or moving violations as they occur. Employers are notified as soon as a new activity appears on a driver's record. Driver MVR monitoring allows employers to identify new citations before high-risk drivers can jeopardize the organization's safety profile and image.

Commercial Driver's License Information System Records (CDLIS)

The CDLIS report verifies the current state and license number of a driver. It can quickly eliminate an applicant who does not hold a commercial driver's license or identify issues that may need to be addressed.

PSP Crash and Inspection History

The Preemployment Screening Program (PSP) allows carriers, individual drivers, and industry service providers access to commercial drivers' safety records from the Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Management Information System (MCMIS)

Automated Drug Testing

We offer a wide variety of automated paperless drug-screening solutions. Clients can easily select a lab from our national network of labs, and drug tests can be ordered directly from our system utilizing our automated, paperless chain of custody (COC) form, which can be emailed or texted to the applicant. All tests are Medical Review Officer (MRO) reviewed. Standard drug tests are five or ten panels. We offer customized panels for an additional cost.

Global Background Checks

We offer a full suite of worldwide applicant screening services in any country in the world where data can be legally obtained.

Office of Inspector General Exclusion Search

Our Office of Inspector General (OIG) excluded parties check searches the OIG's List of Excluded Individuals and Entities (LEIE), the System for Award Management (SAM), and relevant state-maintained Medicaid exclusion lists to identify individuals who are excluded from participation in federal health-care programs, including Medicare and Medicaid.

The list of excluded individuals/entities produced by the check is intended to help health-care providers comply with regulations relating to federal health-care programs. It supports reimbursement claims by health-care providers by allowing organizations to ensure compliance with regulations and helps to reduce potential risks and liabilities from excluded parties.

OIG Exclusion Monitoring

All health-care entities that participate in state and federally funded programs, such as Medicare and Medicaid, are prohibited from employing or conducting business with individuals and companies who have been placed on exclusion lists. The OIG requires organizations receiving government funding to cross-reference their employees, vendors, and contractors against a list of parties excluded from participating in state and federal health-care programs both at the time of hire/contract and at least every thirty days thereafter.

Submitting claims for reimbursement in which an excluded party contributed to the delivery of medical items or services can expose your organization to unnecessary liability.

Monitoring includes a monthly search of the OIG's LEIE, SAM, and relevant state-maintained Medicaid exclusion lists.

Ongoing Criminal Monitoring

An effective screening program doesn't stop after the applicant is hired. Our ongoing criminal monitoring takes the guesswork, cost, and maintenance out of post-hire monitoring, providing assurance that those who were safe to hire to begin with have stayed that way. This monitoring service will scan current employees, tenants, and volunteers for criminal activity and alert you to any crimes that are detected.

Office of Foreign Assets Control Search

This search checks an applicant against the OFAC and other federal and international databases containing economic and trade sanctions against certain nations, entities/businesses, and individuals.

Global Security Watch List Search

ApplicantSafe's® global security watch list report searches information from over 1,800 US and international regulatory enforcement authorities, sanctions bodies, law enforcement agencies, and financial regulators.

Electronic Form I-9

ApplicantSafe® provides an electronic Employment Eligibility Verification (Form I-9) software solution to capture Form I-9 information from new hires as part of the employee hiring process. This allows for the management,

preparation, electronic signature, document storage, and auditing of the Form I-9 to meet US Citizenship and Immigration Services (USCIS)/Department of Homeland Security (DHS) guidelines.

Electronic E-Verify

Electronically compare information entered on the Form I-9 with records contained in Social Security Administration and DHS databases to help verify the identity and employment eligibility of newly hired employees.

Business Credit Reports

If you're extending or looking for commercial credit, checking business credit reports is essential in reducing bad credit risk and improving cash flow. Whether you're a small business owner or a finance expert, our business credit information helps you check for risk signals and make informed business decisions in seconds.

Social Media Background Screening

ApplicantSafe® offers FCRA-compliant social media background checks. Our comprehensive social media background check reports all user-generated information found online regarding the job candidate but omits information that cannot be legally provided. Only publicly available information about the candidate is reviewed and provided.

Appendix 3

Example Documents

Here are some examples of common documents related to background checks and employment. These are meant only for informational purposes.

Sample: Fair Credit Reporting Act Disclosure Statement

By this document, [Employer Name] discloses to you that a consumer report, including an investigative consumer report containing information as to your character, general reputation, personal characteristics, and mode of living, may be obtained for employment purposes as part of the preemployment background investigation and at any time during your employment. Should an investigative consumer report be requested, you will have the right to request a complete and accurate disclosure of the nature and scope of the investigation requested

and a written summary of your rights under the Fair Credit Reporting Act. Please sign below to acknowledge the receipt of this disclosure.

Signature _____ Date _____
 Printed Name _____

Sample: FCRA Authorization to Obtain a Consumer Report (Background/Credit Check)

Pursuant to the federal Fair Credit Reporting Act, I hereby authorize [Company Name] and its designated agents and representatives to conduct a comprehensive review of my background through a consumer report and/or an investigative consumer report to be generated for employment, promotion, reassignment, or retention as an employee. I understand that the scope of the consumer report/investigative consumer report may include, but is not limited to, the following areas: verification of Social Security number; current and previous residences; employment history, including all personnel files; education; references; credit history and reports; criminal history, including records from any criminal justice agency in any or all federal, state, or county jurisdictions; birth records; motor vehicle records, including traffic citations and registration; and any other public records.

I, _____, authorize the complete release of these records or data pertaining to me that an individual, company, firm, corporation, or public agency may have. I hereby authorize and

request any present or former employer, school, police department, financial institution, or other persons having personal knowledge of me to furnish [Company Name] or its designated agents with any and all information in their possession regarding me in connection with an application of employment. I am authorizing that a photocopy of this authorization be accepted with the same authority as the original.

I understand that, pursuant to the federal Fair Credit Reporting Act, if any adverse action is to be taken based upon the consumer report, a copy of the report and a summary of the consumer's rights will be provided to me.

Signature _____ Date _____

Sample: Pre-Adverse Action Letter

Hello [Applicant Name],

We are writing to inform you that in evaluating your application for employment we have received the enclosed consumer report. This notification is provided because we may make an adverse decision that may be based, in whole or part, on this report. We are hereby informing you of certain information pursuant to the Fair Credit Reporting Act and state law.

The report was procured pursuant to an authorization signed by you. A summary of your

rights as a consumer is enclosed. If you have any questions regarding this report or believe that it may contain incorrect information, you may contact the provider of the report, ApplicantSafe®, and they will respond to your inquiry. Their mailing address and phone number are listed below:

ApplicantSafe®
P.O. Box 1195
Jackson, NJ 08527
Phone: (732) 942-1331 / (800) 498-3200
Fax: (800) 596-5594

ApplicantSafe® only provided to us the consumer report and plays no part in the decision to take any action on your employment application. ApplicantSafe® is unable to provide you with specific reasons for any employment-related decisions to be made.

Sincerely,
 ABC Company
 Enclosures: Consumer Rights Notification
 Consumer Report

Sample: Adverse Action Letter

Hello [Applicant Name],
 This letter is to inform you that we find it necessary to rescind our previous offer of employment.

This decision was based, in whole or part, on the

information provided to us in a consumer report or investigative consumer report.

The report was prepared pursuant to an authorization signed by you at the time of application. Subsequently you also received a copy of your consumer report and a summary of your rights under the Fair Credit Reporting Act. The consumer report was used only for employment purposes and prepared for us by a consumer reporting agency. Their mailing address and phone number are listed below:

ApplicantSafe®
P.O. Box 1195
Jackson, NJ 08527
Phone: (732) 942-1331 / (800) 498-3200
Fax: (800) 596-5594

ApplicantSafe® plays no part in the decision to take any action on your employment application and is unable to provide you with specific reason(s) we are not extending an offer of employment.

You may, upon providing proper identification, request another free copy of the report and may dispute with the consumer reporting agency the completeness or accuracy of any information in the report within sixty days of receipt of this notice with ApplicantSafe®.

Sincerely,
 ABC Company

Sample: Summary of Your Rights Under the FCRA

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal FCRA promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check-writing histories, medical records, and rental-history records). Here is a summary of your major rights under the FCRA. For more information, including information about additional rights, go to www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

You must be told if information in your file has been used against you. Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment—or to take another adverse action against you—must tell you and must give you the name, address, and phone number of the agency that provided the information.

You have the right to know what is in your file. You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which

may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:

- » A person has taken adverse action against you because of information in your credit report.
- » You are the victim of identity theft, and a fraud alert has been placed in your file.
- » Your file contains inaccurate information as a result of fraud.
- » You are on public assistance.
- » You are unemployed but expect to apply for employment within sixty days.

In addition, all consumers are entitled to one free disclosure every twelve months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.consumerfinance.gov/learnmore for additional information.

You have the right to ask for a credit score. Credit scores are numerical summaries of your creditworthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit-score information for free from the mortgage lender.

You have the right to dispute incomplete

or inaccurate information. If you identify information in your file that is incomplete or inaccurate and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.consumerfinance.gov/learnmore for an explanation of dispute procedures.

Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information. Inaccurate, incomplete, or unverifiable information must be removed or corrected, usually within thirty days. However, a consumer reporting agency may continue to report information it has verified as accurate.

Consumer reporting agencies may not report outdated negative information. In most cases, a consumer reporting agency may not report negative information that is more than seven years old or bankruptcies that are more than ten years old.

Access to your file is limited. A consumer reporting agency may provide information about you only to people with a valid need—usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.

You must give your consent for reports to be provided to employers. A consumer reporting

agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.consumerfinance.gov/learnmore.

You may limit “prescreened” offers of credit and insurance you get based on information in your credit report. Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt out with the nationwide credit bureaus at 1 (888) 5-OPTOUT [1 (888) 567-8688].

The following FCRA right applies with respect to nationwide consumer reporting agencies:

Consumers Have the Right to Obtain a Security Freeze.

You have a right to place a “security freeze” on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the

personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, or any other account involving the extension of credit.

As an alternative to a security freeze, you have the right to place an initial or extended fraud alert on your credit file at no cost. An initial fraud alert is a one-year alert that is placed on a consumer's credit file. Upon seeing a fraud alert display on a consumer's credit file, a business is required to take steps to verify the consumer's identity before extending new credit. If you are a victim of identity theft, you are entitled to an extended fraud alert, which is a fraud alert lasting seven years.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit-line increases, and account upgrades and enhancements.

You may seek damages from violators. If a consumer reporting agency, or in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.

Identity theft victims and active-duty military personnel have additional rights. For more information, visit www.consumerfinance.gov/learnmore.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state attorney general. For information about your federal rights, contact:

TYPE OF BUSINESS:	CONTACT:
1. a. Banks, savings associations, and credit unions with total assets of over \$10 billion and their affiliates	a. Consumer Financial Protection Bureau 1700 G Street, N.W. Washington, DC 20552
b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the CFPB:	b. Federal Trade Commission Consumer Response Center 600 Pennsylvania Avenue, N.W. Washington, DC 20580 (877) 382-4357

<p>2. To the extent not included in item 1 above:</p> <p>a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks</p> <p>b. State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and Insured State Branches of Foreign Banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.</p> <p>c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations</p> <p>d. Federal Credit Unions</p>	<p>a. Office of the Comptroller of the Currency Customer Assistance Group 1301 McKinney Street, Suite 3450 Houston, TX 77010-9050</p> <p>b. Federal Reserve Consumer Help Center P.O. Box. 1200 Minneapolis, MN 55480</p> <p>c. FDIC Consumer Response Center 1100 Walnut Street, Box #11 Kansas City, MO 64106</p> <p>d. National Credit Union Administration Office of Consumer Financial Protection (OCFP) Division of Consumer Compliance Policy and Outreach 1775 Duke Street Alexandria, VA 22314</p>
<p>3. Air carriers</p>	<p>Asst. General Counsel for Aviation Enforcement & Proceedings Aviation Consumer Protection Division Department of Transportation 1200 New Jersey Avenue, S.E. Washington, DC 20590</p>
<p>4. Creditors Subject to the Surface Transportation Board</p>	<p>Office of Proceedings, Surface Transportation Board Department of Transportation 395 E Street, S.W. Washington, DC 20423</p>
<p>5. Creditors Subject to the Packers and Stockyards Act, 1921</p>	<p>Nearest Packers and Stockyards Administration area supervisor</p>
<p>6. Small Business Investment Companies</p>	<p>Associate Deputy Administrator for Capital Access United States Small Business Administration 409 Third Street, S.W., Suite 8200 Washington, DC 20416</p>
<p>7. Brokers and Dealers</p>	<p>Securities and Exchange Commission 100 F Street, N.E. Washington, DC 20549</p>

<p>8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations</p>	<p>Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090</p>
<p>9. Retailers, Finance Companies, and All Other Creditors Not Listed Above</p>	<p>Federal Trade Commission Consumer Response Center 600 Pennsylvania Avenue, N.W. Washington, DC 20580 (877) 382-4357</p>

STATE LAW DISCLOSURES If you reside in or are seeking work in any of the following states, please review these additional notices:

California: This is the summary of your rights under California Civil Code 1786.22. You have the right to view your file that an investigative consumer reporting agency holds. By providing proper identification and duplication cost, you may obtain a copy of this information in person at the consumer reporting agency’s regular business hours and after providing reasonable notice for your request. Additionally, you can make the same request via mail or request a summary of the file over the phone. The consumer reporting agency can assist you in understanding your file, including coded information. You are allowed to have one additional person accompany you so long as they provide proper identification. “Proper identification” includes documents such as a valid driver’s license, Social Security account number, military identification card, and credit cards. If an investigative consumer reporting agency (ICRA) is unable to reasonably identify you on the basis

of these documents, they may require additional information concerning your employment and personal or family history in order to verify your identity.

Maine: You have the right to ask and know whether a company ordered a background check on you. You can request the name, address, and telephone number of the nearest consumer reporting agency office. Your request will be processed and sent to you within five business days.

Minnesota: You have the right in most circumstances to submit a written request to the consumer reporting agency for a complete and accurate disclosure of the nature and scope of any consumer report the company ordered about you. The consumer reporting agency must provide you with this disclosure within five days after (i) its receipt of your request or (ii) the date the report was requested by the company, whichever date is later.

Massachusetts: You have the right to obtain a copy of any of your consumer reports that your company has ordered on you by contacting the consumer reporting agency for a free copy.

New Jersey: You have the right to submit a request to the consumer reporting agency for a copy of any investigative consumer report the company requested about you.

New York: By submitting a written request, you can learn whether a company has run a background check on you. You are allowed to inspect and order a copy of the report by directly contacting the consumer reporting agency. If you have been convicted of one or more criminal offenses, you can request the company to provide a written statement declaring the reasons for the refusal of hire. This statement must be provided to you within thirty days of your request.

Washington State: After submitting a written request and waiting a reasonable amount of time after receiving the disclosure, you have the right to receive a complete and accurate disclosure of the nature and scope of any “investigative” consumer reports requested by an agency. The Washington Fair Credit Reporting Act requires consumer reporting agencies to provide you a summary of your rights and remedies upon request. Any information requested by a company that deals with creditworthiness, credit standing, or capacity is justified in order for employers to evaluate whether you present a risk for theft or dishonest behavior for the job you are being considered for.

Appendix 4 Important Resources

For further information on background checks, please use these links.



Fair Credit Reporting Act (FCRA)



Federal Trade Commission (FTC)



**Summary Of Your Rights Under the Fair
Credit Reporting Act**



Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act - Equal Employment Opportunity Commission (EEOC)



Background Checks: What Employers Need to Know



Using Consumer Reports: What Employers Need to Know



Background Checks on Prospective Employees: Keep Required Disclosures Simple



The Fair Credit Reporting Act and Social Media: What Businesses Should Know

About the Author



Michael Wenger is the CEO of ApplicantSafe® and one of the leading experts in the background screening industry. He is an original member of the Professional Background Screening Association (PBSA), the voice of the screening industry

Before working in background checks, Michael built a very successful real estate business, managing and investing in multifamily residential properties throughout the state of New Jersey.

He transitioned into screenings with a small, local resident screening company that he founded in 2001, which was soon rebranded as ApplicantSafe® when he added pre-employment services shortly thereafter. Under Michael's guidance, the company has grown into a national resident and preemployment company, boasting thousands of

midsize to big-name brand clients and becoming a prominent member of the PBSA.

Michael has since added numerous businesses that provide additional services for recruiting managers in many major industries. Most recently, he created a new company called Exclugo, which provides a proprietary software that uses AI to streamline the compliance process for companies in the health-care space.

In June 2021, Michael and his team were featured on the cover of *HR Tech Outlook* magazine in an article titled, “Changing the Way Background Checks Are Done.”

A deeply religious individual, Michael lives in New Jersey with his wife and children and takes pride in his devoutly religious beliefs and community relationships. He enjoys spending time with his family and routinely volunteers to help others less fortunate than himself. In particular, he takes pride in the communal outreach study program he created that has blossomed into a multi-state program with over forty communities across the nation.

He believes his religious background and community focus are what provide him with the insights to understand the intricate world of hiring and the justice system that creates the legislation governing that space.

Never one to rest on his laurels, Michael continually strives to make the world a better place to live and do business by incorporating his knack for entrepreneurship, the latest technological advancements, and his ethical convictions into everything he has accomplished.

