

## Safe Hiring Guideline

An outline of steps that you can take during the recruiting, hiring, training, and post-hire stages to minimize any surprises concerning the background of one of your employees.

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The following is a compilation of safe practices and hiring policies that can make the recruitment task an enjoyable and beneficial one.

### APPLICATION STAGE

#### Do you use an application form?

(Note: Use of an employment application form is considered a best practice. Resumes are not always complete or clear. Applications ensure both uniformity and that all needed information is obtained, prevents employers from having impermissible information, and provides employers with a place for applicants to sign certain necessary statements.)

#### Does the application form have all necessary language?

- a. Broadest possible language for felony and misdemeanor convictions and pending cases. (This helps discourage applicants with something to hide and to encourage truthful applications. One of the biggest mistakes employers make is to only ask about felonies on an application form. Employers may inquire about misdemeanors to the extent allowed in their state.)
- b. Statement that criminal records do not automatically disqualify.
- c. Statements that lack of truthfulness or material omissions are grounds to terminate the hiring process or employment no matter when they are discovered. (This is particularly important if a criminal record is found. Under current law, a criminal record may not be used automatically to disqualify an applicant unless there is a sound business reason. However, if an applicant has lied about a criminal matter, the falsehood can be the basis for an adverse decision.)
- d. Statement that employment is at will.
- e. Release for references and other background materials
- f. Other standard statements (e.g. no discrimination, mandatory arbitration, etc).

#### If you do not have a formal application process, is there a supplemental form that contains the language above?

#### Do you require a release for a background check in the application process?

(Note: Have each job applicant sign a consent form for a background check, including a check for criminal records, past employment and education. Announcing that your firm checks backgrounds may discourage applicants with something to hide, and encourage applicants to be truthful and honest about mistakes they have made in the past.)

**If using an outside background screening service, does the firm have a separate form as required under the FCRA?**

**Does application or form provided by a screening service request listing of all past addresses for seven to ten years?** (This is also needed for a criminal search.)

(Note: Include future screenings in the consent language. This becomes important if a future investigation is required for some form of workplace misconduct.)

## **APPLICATION REVIEW STAGE**

**In reviewing the application, look for the following ten (10) critical factors:**

- Applicant does not sign application.
- Applicant does not sign consent or background screening.
- Applicant leaves criminal questions blank (the honest criminal syndrome).
- Applicant self-reports a criminal violation.
- Applicant fails to explain why he or she left past jobs.
- Applicant fails to explain gaps in employment history.
- Applicant gives an explanation for an employment gap or the reason leaving previous job that does not make sense.
- Excessive cross-outs and changes.
- Applicant fails to give complete information (i.e. insufficient information to identify a past employer, leaves out salary, etc).
- Applicant failed to indicate or cannot recall the name of a former supervisor.

**In reviewing applications or resumes, be sure to look for employment gaps.**

(Note: It is critical to verify past employment to determine where a person has been for the last 5-10 years, even if you only get dates and job titles. Look for unexplained gaps in employment. Generally, if you can verify that a person was gainfully employed for the last five to ten years, it is less likely the person spent time in custody for a serious offense, although this does not eliminate the possibility of lesser offenses.

**In reviewing applications, examine reasons for leaving each job.**

## **INTERVIEW STAGE**

Treat all applicants in a similar fashion.

Do not pose questions that may not legally be asked (i.e. questions that are discriminatory or prohibited by law.)

Do not make promises about the job to potential applicants.

Keep uniform notes. (e.g. do not make notation on resume.)

## **Ask key questions that are designed to ensure honesty and integrity.**

(Note: Ask the following "security questions." Since applicants have signed releases and have been told such checks may occur, they may be motivated to reveal information about past jobs. Good applicants will normally not be concerned, where applicants with something to hide may be feeling compelled to either abandon the process or to reveal information that they otherwise would rather not reveal.)

- **“We do background checks on everyone we make an offer to. Do you have any concerns that you would like to discuss?”**
- **“We also check for criminal convictions for all finalists. Any concerns about that?” (Make sure the wording of the question reflects what an employer may legally ask in that state.)**
- **“We contact all past employers. What do think they will say?”**
- **“Will your past employer tell us that you were tardy or did not perform well?”**
- **(Then ask questions about any unexplained employment gap.)**

## **BACKGROUND INVESTIGATION STAGE**

### **Check references.**

(Note: Verifying past employment is one of the single most important tools for an employer. Past job performance can be an important predictor of future success. Some employers make a costly mistake by not checking past employment because they believe past employers may not give detailed information. However, even verification of dates of employment and job titles are critical because an employer must be concerned about unexplained gaps in the employment history.

In addition, documenting the fact that an effort was made will demonstrate due diligence. Although there can be many reasons for a gap in employment, if an applicant cannot account for the past seven to ten years, that can be a red flag.

It is also important to know where a person has been because of the way criminal records are maintained in the United States. Contrary to popular belief, there is not a national criminal database available to most employers. Searches must be conducted at each relevant courthouse, and there are over 10,000 courthouses in America. However, if an employer knows where an applicant has been, it increases the accuracy of a criminal search, and decreases the possibility that an applicant has served time for a serious offense.)

**Take any other necessary steps, such as checking court records, or outsourcing to a background firm.**

(Note: If outsourced, the Fair Credit Reporting Act (FCRA) applies. If background screening is done in-house, the investigation falls under rules governing privacy rights of employees.)

**Before outsourcing to a third party service provider, take the following into account:**

- a. Expertise/knowledge of the service provider.
- b. Legal compliance--There are numerous issues surrounding legal compliance. A screening service must understand the laws surrounding pre-employment screening and hiring, and make a commitment to provide an organization only with information an organization may legally possess. An outside firm should also be able to provide FCRA compliance.
- c. Personal service and consulting--It is critical to keep in mind that pre-employment screening is much more than just providing raw data. A screening company should be able to assist the human resources department in the same manner as any other consultant.
- d. Training/consulting services available.
- e. Pricing.
- f. Turnaround time.
- g. Internet order/reporting options.

**Mechanics of the screening process:**

- h. Is there a specific person in charge of mechanics of the screening process?
- i. Process to send requests to screening company and to track progress.
- j. Determination at what stage in hiring process is screening is conducted (not all applicants are screened--typically only the finalists are subject to screening).
- k. Determination of the degree of screening for types for position (not every position needs to be screened at the same level).
- l. Uniform screening procedures (are similarly situated applicants treated the same i.e. no discriminatory practices).
- m. Privacy protected in the manner reports are transmitted to employer.
- n. Policy that only persons in organization with proper authority will review the report.
- o. Policy concerning storage of background reports (should be stored separately from personal files).

**ANALYSIS OF INFORMATION STAGE**

**If negative information is located:**

- a. Policies -- are there written guidelines to follow?
- b. Documentation -- are all procedures and decisions documented to file?
- c. Review -- is there a review process, with a particular person in the organization in charge of the process?
- d. Uniformity -- are similarly situated applicants treated the same?
- e. Privacy -- is there a mechanism to ensure that information remains private and secured, and only appropriate decision makers view the information (i.e., reports with negative information are not sent through office mail to a hiring manager's desk)?

- f. Legal compliance -- If a third party obtains information under the FCRA is there a procedure to ensure pre-adverse action and post-adverse letters are handled as required by law?

**If the negative information is a criminal record:**

- g. The firm understands and follows the Equal Employment Opportunity Commission rules concerning the use of Criminal records. Under EEOC rules, an employer may not deny employment to an ex-offender unless it is a business necessity, determined by reviewing the following three (3) factors:
  - 1. the nature and gravity of the offense;
  - 2. the amount of time that has passed since the conviction or completion of sentence.
  - 3. the nature of the job being held or sought.
- h. Be aware if your jurisdiction has a prohibition on considering arrests not resulting in convictions. (If your jurisdiction allows consideration of arrests, then an employer must independently verify the underlying behavior and may not use an arrest all by itself as an indication of lack of fitness. The critical inquiry is the behavior, not the police action.)
- i. That the firm has independently verified the nature of the offense and has not merely taken the word of the applicant at face value or relied upon the information in court records solely. (A court record all by itself may be insufficient to determine the true nature and of the offense, since the final outcome could have been influence by a plea bargain or some other resolution not reflecting the true behavior. A firm should attempt to verify the true nature of offense by contacting or at least attempting to contact a person in authority, such as parole/probation officer, police officer, and prosecuting attorney).
- j. The firm has conducted additional due diligence to discover if there are other offenses in addition to any that are self-reported. (Just because an applicant self-reported an offense does not eliminate the possibility of other offences the applicant did not report).
- k. Did the applicant lie in the application and fail to disclose a criminal record in response to a direct question. (Note: this is the reason why it is important for an application to ask the broadest possible permissible question about a criminal record, and to advise applicants that any dishonesty is grounds to terminate the hiring process or employment. If an applicant lies about a criminal record, then the reason to deny employment can be on the basis of a false application.)

**If you make a decision to hire someone with a criminal record or some other negative finding:**

- l. Examine the type of support, supervision and or structure that may be needed for the individual to improve the chances of success with the organization (i.e. that the firm is proactive in taking steps to reduce any potential difficulties)
- m. Consider the nature of the job and the circumstances of the past offense, in order to take appropriate measures to protect the firm, co-workers and the public from harm. This involves a determination of whether the particular job is a good fit for the ex-offender in view of the nature of the job and the nature of the offense. (For example, a person with a history of theft may not be a reasonable fit for a position that involves access to cash, assets, or confidential information.

However, that person may be well suited to a number of other jobs within an organization.)

**If employment begins before the background check, is there a conditional offer to the applicant?**

(Note: If employment begins before a background check is completed, state in writing that employment is conditioned upon receiving a report that is satisfactory to the employer.)

**POST-HIRE STAGE**

**Have documented policies and procedures that recognize a legal obligation to continue due diligence even after a person is hired. You can be liable for negligent retention, negligent supervision, and negligent promotion.**

**Have policies and procedures to govern post-hire workplace situations.** (Timely and attentive management of potential problem situations along with appropriate follow-through and documentation are the keys to avoiding legal claims of negligent hiring/supervisor)

- a. Have policies and procedures in place concerning workplace misconduct.
- b. Conduct periodic performance reviews of workers that include issues related to workplace conduct.
- c. Make sure supervisors are trained to recognize, report and deal appropriately with workplace misconduct.
- d. Make sure supervisors are periodically trained and educated regarding the employer's liability for negligent retention, supervision or promotion.
- e. Have a procedure to investigate workplace misconduct.
- f. Make sure there is a mechanism for workers or managers to report and record workplace misconduct
- g. Make sure that part of written job descriptions for supervisors is to record, report and address workplace misconduct.
- h. Make sure compliance with the duty to record, report and address workplace misconduct part of the periodic performance appraisal of supervisors, so that they understand that they are evaluated in part upon monitoring workplace misconduct.
- i. Make sure there is periodic training on workplace violence, so that supervisors are aware of the importance of prevention and signals to watch for.

This Safe Hiring Guide was provided courtesy of The In-House Group. If you are in need of a professional applicant screening service, please contact The In-House Group. 216-766-5780.