

Factual Employment Screening Part One

By Tom Lawson

Factual Employment Screening Part One

Tom Lawson
tomlawson@apscreen.com

APSCREEN <http://www.apscreen.com>

Factual Employment Screening – Part One

You have the author's permission to reprint this information only with the complete byline attached.

We have all heard in recent years that the need for a substantive policy of conducting pre-and post-employment background checks exists in more than just defense contractor and fiduciary-based enterprises. Today, with the overwhelming preponderance of employer liability litigation, and with negligent hiring being the focal point of round-table discussions of some of the plaintiff's firms, the need for thorough background checks has been substantiated. This is a common sense perspective, not only from the standpoint of getting the best possible people for the job, but also to protect a company from this type of litigation.

In 1979, our company set out to learn how to not only provide the best possible background checks, but also to determine just where "factual employment screening" would fall in the scheme of things. To understand why "screening" is where it is today, one needs a little history of the subject.

In the beginning, screening usually started with the security department. These were typically highly qualified, deeply motivated, wholly energetic, recently retired

law enforcement professionals who were completely inundated. After being given the entire responsibility for the safety and security of the company, its executives and their families, they were given the task of qualifying those who would pass through the gates each day as employees. Since these individuals were for the most part "old boys," they sometimes used, in today's politically correct terminology, "improper" methods of "checking out" the applicants.

This responsibility typically stayed in the security department until about the late 1970s, when what are now called human resources departments saw the need to get in the loop for what was to become "employment screening." Needless to say, those "improper" methods referred to have all but disappeared in smart companies. However, due to the lack of knowledge of some human resource personnel when it comes to things like criminal records, credit reports, and driving histories, some have fallen prey to those who would sell them "employment screening" at the touch of a button. As you will see later, this can pose a big problem.

Why do you need to know this simplified history? Simple – not all companies evolve equally, and in order to understand whether or not you are going to get your pilot program of employment screening to fly, you need to know where the exposure for negligent hiring will rest in the scheme of things.

Talk about inner conflict – try to become thoroughly knowledgeable in either the security or human resources area, let alone both! These are two disciplines, which may rarely see eye to eye on anything. But you are going to have to know both equally well if you are charged with spearheading the drive to get your company's management to commit to a competent policy of factually screening employment candidates, regardless of your position.

In this era of "political correctness" we are often reminded that, more often than not, something cannot be "right" or "wrong" because of the judgmental

connotations those words convey. Employment screening is not immune to this distinction, but as well all know, facts are facts, and even the best con artist can't dispute them. This is why you must be thorough in conducting a background check.

This article will not address drug testing, psychological testing referencing, or verification work, as these areas do not yet have as many legal implications surrounding them, and most employers have their own methods which are about as unique as fingerprints. However, the following recommendations are suggested for a comprehensive screening program.

Three "Must Knows"

You must know the person's true identity by obtaining positive candidate identification. Major recent studies have shown that as much as 20% to 30% of the population maintains undisclosed aliases or AKAs. This is critical, since checking a wrong name for criminal convictions will yield a "no record" response almost every time. There are many ways that an identity can be verified and cross-checked without breaking the law. These are usually proprietary to the vendor, but can include social security number traces, driver's license number checks, address-telephone verifications, and a myriad of other attainable bits of research.

You must grasp the person's responsibility attitudes. This is usually best determined by a person's payment attitudes (credit history and driving history. Beware! One argument that is encountered against running credit reports is that "minorities have it tougher." While studies do exist that set forth deficient societal and employment opportunities which plague certain groups, the fact is that if an employment candidate agrees to pay someone back after borrowing money from them, but doesn't, it doesn't matter what their color, race, sex, or persuasion is.

That person defaulted, and they should have a good explanation as to why.

Judge this explanation on the merits of the individual situation, not the argument that a certain class of people may be disadvantaged. If they borrow, they should pay it back; if they can't, there's usually a good (or bad) reason why.

As far as driving histories go, even if the person will not be driving a company vehicle, you still need to know the manner in which they drive and the manner in which they resolve issues that may arise while they are driving. These are nuts and bolts responsibility attitude indicators here – nothing fancy, but good common sense, and very important if you want to make a good hiring decision.

You must know the full extent of the subject's criminal history. This can only be done jurisdictionally, and you must see all levels, not just felonies. The courts today are downgrading many felonies in order to stop the logjam occurring everywhere in the higher courts, so if you don't research at the lower levels you may miss some eye-openers.

Don't forget that people commit federal crimes, which do not appear in the local or state court indices. They have to be researched at the U.S. District Court level. Most screening companies don't do this, and if they do, it's usually through databases of microfilm. Beware! You need a company that checks all levels, or the search is no good.

Many times our company has been hired after an "\$8.25 criminal check" failed and someone was subsequently murdered, raped, maimed or defrauded. In these instances, we sometimes not only perform employment screening from then on, but also testify as an expert witness against the firm who did the faulty job of screening.

Beware of companies that offer a newspaper or police blotter clipping service in the form of "nationwide" criminal checks. These firms do not cover all areas of the U.S., just the major metropolitan areas. Most important is the fact that the

root company is many times resold through distributors who might not fully convey that the search, while touted as "nationwide," is actually limited to these more populated areas.

Database Services

Let's also take a moment to further address the growing industry called "database." It is very important to understand some basic things about database services that they will never tell you.

Databases, no matter how good, are only as good as the search logic used to retrieve the data that's put in. That's the rub. What you are really buying when you buy a database service is how much the database company invested into its search logic. And this is usually an area where these companies are tempted to scrimp, because good search logic is very expensive.

You simply can't use off-the-shelf software to retrieve this type of publicly compiled repository information. It simply comes in too many forms, and the search logic must be able to delineate between the different languages that are bridged into the database company's archival system, because all jurisdictions maintain different hardware, software and archival philosophy. It's a wonder the sometimes anything comes back, given the diversity of the data that goes in the front end.

Any computer expert will tell you that no matter how much money you put into the best of the best, you can never expect 100% storage of information. These are the things called "data drops" where bytes mysteriously disappear into thin air. There are also viruses, different from the kind you may be aware of which can reside undetected in mainframes for years and which eat data to survive.

All in all, computers are still not fool-proof enough to be relied upon, especially where such an important decision is concerned.

At this point, you're probably wondering how to handle getting employment screening into the mainstream of the hiring process without exposing the company to possible litigation for privacy and discrimination issues, not to mention how to use what you have been taught that you need to get to evaluate a candidate's worthiness.

You've probably also wondered how to maintain the records, as well as how to qualify the firm you are considering to do your screening. [Click here to read Factual Employment Screening – Part Two, An Employment Screening Outline](#), a roadmap that will help you handle both of these critical issues.

Thomas C. Lawson, CFE, CII is President and Founder of APSCREEN International, the world's leading full service Consumer Reporting Agency. Lawson is called "one of the real pros" as he has helped to reshape laws including employment screening permissible credit reporting, asset discovery and fraud examination. Tom is a Life Member of: ACFE, ASIS, SHRM, PIHRA, PNRRA, PRRN, CII, WAD, WIN, FCAOC and OCEMA.

[Get-Articles.com : 1000's of reprintable business and internet marketing-related articles.](#)

[Submit your article for reprint.](#)