

Cost-effective Employment Screening and Safe Hiring Techniques for Large Employers

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American industries that hire large numbers of hourly, temporary or seasonal employees are caught in a Catch-22.

On one hand, they know that if they don't take measures to conduct pre-employment screening and exercise due diligence in hiring, it is a statistical certainty they are sitting ducks for expensive litigation, workplace violence, false claims, theft, embezzlement and economic loss.

Just one bad hire can cost a firm literally millions. Studies show that screening reveals criminal records for up to 10% of job applicants, and at least one-third of all resumes contain materials falsehoods. For food establishments, manufactures, hotels and other business that have a national brand, one negative employee caused event can result in damaging national publicity and significant harm to the brand.

In addition, certain industries are under government pressure to implement safe hiring policies since 9/11. For example, the Food and Drug Administration (FDA) published Guidance for Industry in January 2002 with appropriate measures for the food and restaurant industries to safeguard food from tampering or criminal or terrorist acts. Pre-hiring screening was a recommendation, including criminal checks and obtaining and verifying work references.

The catch, however, is that large hourly employers face enormous financial and logistical challenges in implementing safe hiring programs. Screening large numbers can be expensive and time consuming. Some industries hire at multiple locations, and can experience large turnover. The problem is compounded when firms hire seasonal, temporary or contract workers as well. Such industries can include hospitality, manufacturing, service, retail, food and restaurants, and tourism.

The challenge is how industries with a large numbers of hourly, seasonal, temporary or contract workers or significant turnover, can protect themselves in a cost-effective and efficient manner.

The answer is probably less complicated than it first appears-due diligence and safe hiring does not require a large budget when employers implement a safe hiring system, as opposed to buying background checks.

Many firms make the mistake of believing that in order to show due diligence, they need to spend a great deal of money to perform background checks and criminal record research. These firms view pre-employment screening as a

process that starts after a hiring manager has selected an applicant, and the name is submitted to security or human resources for a background report. Depending upon the employer, it is either outsourced to a background company or investigated internally through corporate security.

An effective background-screening program, however, does not need to cost a great deal of money because it is much more than just checking background and criminal records after a candidate has been selected. In fact, in an effective safe hiring system, the primary tools are the **application, interview and reference checking process**, also known as the **AIR process**. These processes are performed in-house as part of the routine hiring program, and do not cost employers a dime, as long as it is followed. A brief review of the **AIR process** is contained in the attached **Safe Hiring Checklist**.

AIR PROCESS

Application Stage –Use and carefully review application forms

1. **Use an application form, not just resumes.**
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.
2. **Make sure the application form contains all necessary language.**
 - a. Use the broadest possible language for felony and misdemeanor convictions and pending cases. One of the biggest mistakes employers make is to only ask about felonies on an application form since misdemeanors can be very serious. Employers should inquire about misdemeanors to the extent allowed in their state.
 - b. Statement that criminal records do not automatically disqualify an applicant. This is important for EEOC compliance. It is critical for employers to understand that the background screening is conducted to determine whether a person is fit for a particular job. Society has a vested interest in giving ex-offenders a chance. However, an employer is under a due diligence obligation to make efforts to determine if a person is reasonable fit for a particular position. For example, a person just out of custody for a violent crime would not be a good candidate for a job that require them to go into people's home, but may perform very well on a supervised work crew. If a criminal record is found, an employer must determine if

there is a business reason not to hire the person, based upon the nature and gravity of the offense, the nature of the job and when the crime occurred. There are also limitations to the use of arrests not resulting in a conviction, and a number of states also have rules about criminal records.

- 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. Although a criminal record may not be used automatically to disqualify an applicant, the fact an applicant has lied about a criminal matter can be the basis for an adverse decision.

3. **Require a release for a background check in the application process.** 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 a firm outsources to a third party vendor, then under the federal Fair Credit Reporting Act (FCRA), there must be a disclosure on a separate standalone document

4. **Review the application carefully.** In most instances, when there is an employee problem or lawsuit, a careful review of the application would have alerted the employer in advance that they were hiring a lawsuit waiting to happen, Look for the following red flags:

- Applicant does not sign application.
- Applicant does not sign consent or background screening.
- Applicant leaves criminal questions blank (the honest criminal syndrome-dopes not want to lie about a criminal past).
- Applicant self-reports a criminal violation (Applicants can self-report matters incorrectly.)
- 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 (as though making it up as they go along)

- 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.

6. In reviewing applications, look for unexplained employment gaps.

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, or their whereabouts can be verified it is less likely the person spent time in custody for a serious offense, although this does not eliminate the possibility of lesser offenses.

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

Interview Process-the Five Questions

- 8. Always ask these five questions (during housekeeping stage of interview).** Since they have signed a consent and believe you are doing checks, applicants have a powerful incentive to be truthful. These questions are the equivalent of a New Age Lie detector test. Good applicants will shrug it off and applicants with something to hide may reveal vital information.
- a. We do background checks on everyone we make an offer to. Do you any concerns about that you would like to discuss? (Good applicants will shrug off)
 - b. 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)
 - c. We contact all past employers. What do think they will say?
 - d. Will past employer tell us that e.g. your were tardy, did not perform well etc.
 - e. ALSO, use interview to ask questions about any **unexplained employment gap**

Reference Checking Stage:

9. Check references and look for Unexplained Employment Gaps: **Verifying** past employment is one of the single most important tools for an employer. It can be as important as doing criminal checks. Past job performance can also 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 critical 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 private 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 as a result of past employment checks, it increases the accuracy of a criminal search, and decreases the possibility that an applicant has served time for a serious offense.

After the **AIR process**, a firm is well advised to perform a criminal check. The good news is that with an effective **AIR process**, the possibility of locating a serious criminal record is greatly reduced. A firm can dramatically lower their cost by concentrating on the most recent counties where an applicant resides or spent a long period of time. Some experts contend that statistically, a person is more likely to commit a criminal offense in their county of residence. As a result, a check of the county of current residence gives an employer the most return for the expenditure.

An employer may wish to do a more in-depth search depending upon the type of position. An employer may want to review those positions with a greater risk for increased scrutiny, such as:

- a. Supervisors
- b. Workers handling cash
- c. Remote or unsupervised workers
- d. Workers that go into people's homes
- e. Workers with Access to assets
- f. Vendors
- g. Temporary workers
- h. Contractors

Employers who hire vendors, temporary employees or contractors can insist that the provider of these services do screening. Many firms may have janitorial crews in the faculties at night, or vendors supplying vital parts or services. Employers are within their rights to insist that third party provider certify that they have performed checks as well.

Implementing a Program throughout the company

The biggest challenge for an organization is to promote safe hiring and due diligence across an organization. The goal is to ensure that hiring managers across different divisions and sometimes across different physical locations follow procedures and pay attention to safe hiring.

The answer is to set up a **S.A.F.E. Hiring System**. It stands for:

S-Set-up a program, policies and procedures to be used throughout the organization, including the AIR process

A-Acclimate/train all persons with safe hiring responsibilities, especially hiring managers.

F- Facilitate/Implement the program.

E-Evaluate and audit the program by making sure that everyone responsible understands that their compensation and advancement is judged in part by the attention they pay to the hiring process. Organizations typically accomplish those things that are measured, audited and rewarded. The attached chart will help supervisors implement the program and for management to audit hiring practices.

By following the **AIR process** as part of an overall **S.A.F.E. Hiring System**, employers can demonstrate due diligence in the hiring process and protect themselves from bad hires in a cost-effective manner.

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Check-off list for safe hiring (AIR Process)

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(To be placed in every applicant's file prior to a new applicant coming on premises)

Applicant: _____

Position: _____

Hiring Manger _____

Task	Yes/ No/ NA	Date/ Initials	Notes/Follow-up
Application Process			
Did applicant sign consent for background investigation?			
Is application complete?			
Did applicant sign and date application?			
Did applicant clearly answer criminal questions?			
Did applicant indicate a criminal record?			
Did applicant explain why left past jobs?			
Did applicant explain gaps in job history?			
Were there any excessive cross-outs or changes?			
Interview			
Did applicant explain any excessive cross-outs/changes?			
Leaving past jobs: Did applicant explain satisfactory?			
Leaving past jobs: Was reason left consistent with app?			
Employment Gaps: Did applicant explain satisfactory?			
Employment Gaps: Explanations consistent with app?			
Security Question. 1-"Our firm has a standard policy of background checks and drug tests on all applicants. Do you have any concerns you would like to share with me about that procedure?"			ANSWER:
Security question 2-"If I were to contact the courthouse or police department, would we locate any criminal convictions or pending cases?"			ANSWER:
Security question 3-"If I were to contact past employers pursuant to the release you have signed, what do you think they would tell us about you?"			ANSWER:
Security question 4-"If I were to contact past employers pursuant to the release you have signed, would any of them tell us you were terminated or were disciplined?"			ANSWER:
Security question 5- "Please explain any gaps in employment."			ANSWER:
Reference Checks (by employer or third party)			
Have references been checked for at least last 5-10 years, regardless of whether past employers will give details?			
Have efforts been documented?			
Discrepancies between information located and what applicant reported in application: a. Dates/title salary/job title b. Reason for leaving			
Background Check			
Submitted for background check?			

Check completed?			
Background check reviewed for discrepancies/issues?			
If not CLEAR or SATISFACTORY, action taken per policy and procedures?			Describe:

Notes: (use back if necessary. Sign and date all entries)