The seemingly simple task of running background checks gets more daunting the more you know about it. Answers spawn more questions as both new and veteran users try to get a handle on how the background screening industry is changing and what it means to them. With as much help as GIS | HireRight already provides there are still some questions that crop up again and again.
The basics:

- Why should my company use background checks?
- Why should I use a professional screening company rather than running the checks myself?
- What are the different types of background checks?

The head-scratchers:

- What is the FCRA and what bearing does it have on my screening program?
- What is the EEOC and what bearing does it have on my screening program?
- Is there a standard background check package?
- How much control do I have over the grading process?
- What are my responsibilities regarding the applicant?
- How far into the past can I check?
- When and how often should background checks be run?
- What happens if I choose to decline an applicant for employment based on a background check?

Why should my company use background checks?

To put it simply, background checks help employers remain compliant, find the applicant best-suited for the job, protect your business’ reputation and, most importantly, keep you, your employees and your customers safe. This is true whether your company is big or small, public or private, for-profit or non-profit.

Abide by the Law

Many industries are required by law to run background checks on applicants. For example, most states require businesses to perform criminal background checks for any person working directly with children, the elderly or the disabled. Similarly, many states regulate background checks in the financial sector because those workers often have direct access to the personal and private data needed to wreak havoc on someone’s identity. These laws are in place to protect businesses, employers, employees and customers. States vary in what industries are legally required to run checks and more specifically what checks need to be done, so always keep current on whether or not you are required to investigate some or all of your employees.

Avoid Costs of a Bad or Negligent Hire

Aside from legal requirements, the sheer cost of a bad or negligent hire is a compelling reason to perform checks. First there are bad hires. In this sense, it refers to someone incapable of doing the job for which he was hired. Everyone knows the frustration of hiring someone only to find out that skills and responsibilities were highly inflated on the résumé, but even beyond that frustration is the cost. A survey conducted by CareerBuilder found that 69% of companies had made a bad hire. Of those, 41% reported that the bad hire had cost them $25,000 with nearly 25% reporting that the bad hire had cost them more than $50,000. These numbers factor in loss of productivity, the time and cost to recruit and train another worker, how morale was affected and more.

Yet by performing some combination of reference checks, employment verifications and education verifications, this can easily be avoided. In fact, research conducted in July of 2012 by The Society of Human Resource Managers reported that 53% of resumes and job applications contain falsifications. The same study also revealed that 21% of résumés include fraudulent degrees. By verifying this type of information pre-hire you can have a better idea of whether an applicant is well-suited to a job – before you hire them and waste thousands of dollars in the process.
Another consideration is the bad hires that are bad hires purely because of substance abuse. Aside from the detrimental health effects, substance abuse causes a slew of problems in the workplace ranging from poor work performance, decreased productivity, absenteeism, injuries, fatalities, to increases in health care and workers’ compensation costs and overall large costs to employers. In fact, the National Council on Alcoholism and Drug Dependence, Inc. (NCADD) estimates that drug abuse can cost employers up to $81 billion annually.iii This means you either have to go through the process of wasting thousands to replace these employees or hire someone else to pick up their slack. Neither are ideal situations.

Even worse than a bad hire is a negligent hire, where the new hire’s past behavior is indicative of an unacceptable amount of risk to your clients, your employees or your business. Suppose, for instance, that you unknowingly hire a convicted identity thief and give him unlimited access to information that he uses to steal your client’s identity—that client would be within his rights to sue you for negligently putting your employee in a position of such trust.

According to the National Institute for Prevention of Workplace Violence, negligent hiring lawsuits can have verdicts as large as $40 million.iv A settlement of this magnitude could severely damage a large company and cripple a smaller company. Plus, the $40 million figure is just the verdict. That doesn’t include the costs you’d incur defending your company in court, nor does it factor in possible business losses due to a damaged reputation.

Preserve Your Reputation
This brings us to the next point: protecting your business’ reputation. Think like your target market for a moment. If you heard that an in-home worker for an appliance repair business had raped someone in the victim’s own home and that the worker was able to get the job because the business didn’t do background checks, would you hire that company or would you call their competitor? No comprehensive studies exist to drive home this point, but common sense would dictate that most people who heard that story would call the competitor. In the internet age, a story like that can permanently damage a company’s reputation.

Promote Your Clients’ and Employees’ Safety
Part of negligent hiring is the possibility that everything could go horribly wrong and one of your clients or employees could end up injured, abused or dead. This is the most important factor in doing checks: protecting everyone who interacts with your business.

Take, for instance, the 2011 case where a church’s music minister raped an unnamed female minor.vi The man had been hired for the position as music minister in 2007 and then arrested in 2008 for raping and molesting a different unnamed female minor at a different church. As part of his probation, he was required to stay away from minors unless supervised by an adult who had been made aware of the issue and approved by the Probation Department. He violated this mandate and served jail time, after which he was rehired by the same church that had employed him in 2007. In his job he was involved in Youth Choir practice and had access to minor female parishioners’ contact information. He picked his newest victim up from school, drove her to his apartment where he sexually assaulted her, and then returned her to the school.

This case does, admittedly, have the baffling twist that the church knew of the conviction and hired the music minister anyway. However, most cases like this could have been avoided by running a background check and using common sense. Because of this fiasco, this girl’s life has been irreparably damaged.
Why should I use a professional screening company rather than running the checks myself?

Using a professional background screening company can ensure compliance and help you get the answers you need more quickly than doing them yourself.

Eliminate Compliance Guesswork
A professional screening firm can help eliminate the guesswork of regulation compliance. This is especially beneficial for small business employers without the legal staff on hand to advise them of the various background screening laws. For instance, some employers may perform education and employment validations, criminal checks, credit checks and more when it's not legal to perform such detailed checks. Similarly, some employers may not perform checks that are as in-depth as required by the government. A professional screening company can advise clients on the legalities of background checks. With this know-how in your corner, screening practices become less challenging.

Decrease Turnaround Time
In a professional screening firm you get a company that is wholly focused on getting you the results quickly (and accurately). Specialists dedicated to finding information are equipped with the latest technology to complete background checks correctly the first time, providing peace of mind and saving time and energy. Our relationships with courts and court researchers, our focus on court interfaces that are simply not feasible for companies outside of the background screening industry, and our innovative solutions mean shorter turnaround times than a company that doesn’t specialize in checks could achieve on their own.

What are the different types of background checks?
While there are many specific types of background checks, they can generally be broken into a few main categories: criminal checks, verifications and references, and civil checks.

Criminal Checks
Criminal checks reveal criminal history records through a mixture of county, state and federal criminal records searches and national criminal database searches. National criminal databases can house a broad network of these records in the U.S. including records from the Department of Corrections, Administrative Office of Courts, state sex offender registries and government and terrorist watchlists, among others.

Verifications and References
Verification and reference checks confirm information about an individual and provide a comprehensive evaluation of a person’s work history, capabilities and character. Among these are education, employment and military verifications, professional license and certification verifications, and personal and professional reference checks for a more subjective look into an applicant’s character.

Civil/Other
Civil searches provide a mixture of information found in civil records, all with the purpose of helping you determine if the applicant is a high-risk individual or someone not necessarily suitable for the job. This can include civil history searches, bankruptcy reports, credit reports, media searches, commercial and non-commercial Motor Vehicle Records and any previously filed records of workers’ compensation claims.
What is the FCRA and what bearing does it have on my screening program?

The Fair Credit Reporting Act (FCRA) is a national consumer protection law enacted to ensure that consumer reporting agencies were careful in their reporting of consumer information, specifically regarding “confidentiality, accuracy, relevancy and proper utilization of such information.”

The FCRA puts limits on what can be reported and used in determining whether you want to hire or retain someone. It also governs the various notices you must provide to the subject of the report, including authorization and disclosure notices before the report is run and adverse action notices if you choose to take adverse action against a subject of a consumer report based on what is found in the report. The adverse action process is covered in the question “What happens if I choose to decline an applicant for employment based on the background check?”

What is the EEOC and what bearing does it have on my screening program?

The Equal Employment Opportunity Commission (EEOC) exists to combat employment discrimination in the U.S. Its Prohibited Employment Policies/Practices states that pre-employment inquiries should be limited to those essential in determining if a person is qualified for the job, and that protected class information is not essential.

Not only does EEO guidance prohibit employers from using blatant discriminatory measures during hiring, it also prohibits unintentionally unequal treatment of protected groups. In 1987, the EEOC determined that overly invasive questions regarding criminal history, credit history and more have a disparate impact on protected classes and therefore that background checks need to be limited to what is necessary to the job. They have reiterated this guidance as recently as April 25, 2012.

With this in mind, employers must be able to show that their screening policies are necessary to running their business as explained in response to the question “Is there a standard background check package?”

Is there a standard background check package?

There is no standard background check package because different industries, and even different companies within the same industry, will have different criteria regarding what constitutes an eligible candidate.

Your company should have packages set up based on business necessity, packages that should be different for different types of jobs. When creating the packages, remember that if screening guidelines are too lenient you may hire criminals and bring unnecessary risks to your business, but if screenings are too stringent you may miss opportunities to hire well-qualified applicants who pose no threat – and you may even run afoul of the EEOC.

Best practice is to identify potential risks that applicants may present to your company and employees and then assess these risks by position. You should also identify and assess the regulations associated with the positions. You can then create a scorecard to identify possible risks and determine which checks to run based on those conclusions.

After you’ve determined potential risks and analyzed conclusive scorecards, you can group positions with similar risk profiles. Then on the job description you should state which positive behaviors are required per position (e.g. "Must be able to work safely with children."). Once you’ve grouped jobs appropriately and determined what the employee must be able to do, you can then determine what checks to run per group.
How much control do I have over the grading process?

You should have full control over the grading process. The ideal time to set grading parameters is once you have determined your risks and what background checks every group will undergo.

When setting grading parameters, you would determine what would disqualify an applicant. You should know whether a criminal conviction poses a risk and how to grade accordingly. For instance, while a felony conviction may disqualify an applicant for employment in one case, the same felony conviction may disqualify an applicant in another situation only if it happened within a certain period of time (i.e. 10 years).

What are my responsibilities regarding the applicant?

You have a few responsibilities to the applicant. First, under the FCRA, employers are required to formally notify the applicant of the upcoming background check, obtain the applicant’s authorization to access the records, and inform the applicant of any adverse action as necessary as explained in response to the question “What happens if I choose to decline an applicant for employment based on the background check?”

Now we turn to the EEOC. They have issued guidance indicating that they believe it is a best practice to give applicants a chance to explain why they have a record. This process of explaining and evaluating, called Individualized Assessment, is different from disputing the record. Instead, Individualized Assessment gives applicants the chance to explain that yes, they have a record, but that they have done something that essentially invalidates the record – for example, successfully completed probation. Your responsibility here is to give the applicant the chance to explain and to seriously consider their explanation. This, too is explained in response to the question “What happens if I choose to decline an applicant for employment based on the background check?”

How far into the past can I check?

The FRCA limits bankruptcies to 10 years and civil lawsuits, judgments, tax liens, collection amounts and any other adverse information (excluding criminal convictions) to 7 years unless you have legal authorization to access records farther back. Criminal convictions can be reported indefinitely.

State laws, however, can place more restrictions on reporting. In California, for example, criminal convictions can only be reported for 7 years. For this reason, the industry standard is to only go back 7 years unless specifically agreed upon to do otherwise.

When and how often should background checks be run?

The industry standard is to perform background checks on contingent job offer and not before. A large factor is that more than 35 state/local jurisdictions across the US have “ban-the-box” initiatives to eliminate employment barriers for qualified job-seekers with criminal backgrounds. Many ban-the-box laws prohibit inquiries about criminal history on job applications and prevent use of a background check until the final stages of hiring.

In addition to pre-hire background checks, the industry best practice is to perform background checks upon promotion or transfer from one job class to another with different requirements, and periodically during tenure (every year or so).
What happens if I choose to decline an applicant for employment based on the background check?

If you decide to decline an applicant for employment or if you decide to terminate a current employee based upon findings in a background check, you are legally obligated to take the following steps:

1. Before finalizing a decision based on the report, provide the consumer (applicant or employee) a pre-adverse action letter, including a copy of the report and a statement of consumer’s rights. This must include details on how the consumer can dispute the report if they feel it contains inaccurate information. Per recent guidance from the EEOC, the letter should also present the opportunity for an individualized assessment, allowing the consumer to acknowledge that a record exists and to provide further evidence that the record will not have the negative impact on your company that you anticipate.

2. A. If the consumer chooses to dispute the report, temporarily suspend the adverse action process until the consumer reporting agency finalizes their result. If the consumer chooses to submit an individualized assessment, seriously consider whether he has made a strong enough case to warrant hiring him in spite of the record. In either situation, if the case is resolved to a pass, offer the job. If, however, the case is resolved to a fail, send the final adverse action letter immediately.

B. If the consumer chooses to neither contest the report nor asks for an individualized assessment, wait a “reasonable period” and then send the final adverse action letter notifying the applicant of the decision not to hire him and of his rights. The FTC, which governs the FCRA, has previously stated that 5 business days is a reasonable amount of time to wait between sending the pre-adverse action notice and the adverse action notice.

Many background screening companies offer adverse action services which cover pre-adverse and adverse action letters. Some offer a process that includes individualized assessments. In the very least, background screening companies should have sample pre-adverse and adverse action letters available for you to send out on your own. In addition, each company should have some sort of dispute process, which you should be aware of and know your part in.

Sources:

v Riverside Superior Court (Settlement Outside of Court) Result: Confidential Seven-figure Settlement. Retrieved from http://www.bc-llp.com/Riverside-Superior-Court.shtml