

SAFE HIRING TOOLKIT

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Background Screening Can Help Bosses and Applicants

By Les Rosen, Employment Screening Resources

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Employers are increasingly turning to background screenings of job applicants as a way of minimizing legal and financial exposure. Concerns about workplace violence, negligent-hiring lawsuits, wrongful termination and other problems are leading many employers to be more careful about who is hired in the first place.

For applicants, however, background screening can create an uneasy feeling that they are mistrusted from the start or that Big Brother is watching.

The fact is, however, that background screenings of job applicants benefit employers and employees alike. And with the recent changes in the Federal Fair Credit Reporting Act, job applicants have a great deal of legal protection.

For applicants, the advantages of working for a company that requires screening is that efforts have been made to ensure that co-workers have the qualifications and credentials they say they have. In addition, employers typically screen for criminal records, especially those involving violence or dishonesty.

For the employer, screening saves the time and money wasted in recruiting, hiring and training the wrong candidates and eliminates potential difficulties in the work force.

Of course, a background screening is not a full-fledged FBI-type investigation. Screening companies are typically looking for red flags indicating potential problems or resumes that are not factual or omit important information.

Job applicants have recently been afforded substantial new legal rights to ensure the accuracy and fairness of the process. Congress amended the Fair Credit Reporting Act effective last September 30 to allow consumers to know exactly what is going on and to assert their rights in case of errors or mistakes. An applicant's rights are listed in detail on the Federal Trade Commission Web site at www.ftc.gov.

Under the FCRA, when an employers uses a background screening company to prepare a report, several steps must occur:

- The employer must clearly disclose to the applicant in a separate document that a report is being prepared. The disclosure can no longer be buried in an application in the fine print.
- A signed release is required before checking records such as criminal convictions or pending criminal cases, driving records, credit reports or educational credentials.
- An additional notice is required when a background firm checks references, such as asking previous employers about job performance.
- If an employer intends to deny employment based upon information in the report, the job applicant must receive a copy of the report and a notice of legal rights.

- If an applicant believes the information is wrong, the applicant can inform the screening agency, which must remove or correct inaccurate or unverified information, usually within 30 days.
- Applicants have the right to inspect their files.

The law is designed to strike a balance between an employer's need to exercise due diligence in hiring and an applicant's right of accuracy and privacy. For applicants who are genuinely the victims of mistaken identity or bureaucratic errors, there is an opportunity to know what is being said about them and to fix the record so they are not denied opportunities unfairly.

For a job applicant, honesty is always the best policy. Negative information honestly disclosed in an interview with an explanation may well have no effect. However, if the employer discovers it through a third party, then the lack of honesty may be the reason for not getting the position.

Even a criminal conviction cannot legally automatically disqualify a person from employment, without considering the nature of the offense, when it occurred, what the applicant has done since and whether it is related to job performance.

Why Applications are Key

By Les Rosen, Employment Screening Resources

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Although résumés are a valuable addition to the hiring process, human resources professionals and labor lawyers often advise employers to use employment applications. Because employment applications provide legal and practical advantages, some firms even reject résumés and require that job seekers fill out the company's application.

Using an application can provide an employer with legal protection in the hiring process. A résumé may contain information that cannot be used in a hiring decision. For example, a résumé may list affiliations or organizations that reveal details about a person that are irrelevant to a hiring decision or legally cannot be considered.

Employers must exercise caution in accepting résumés with information that an employer should not have. A professionally reviewed pre-printed job application should prevent an employer from receiving impermissible information. Also, all résumés are written differently, and the lack of uniformity in the hiring process can lead to claims of disparate treatment.

There are also practical and administrative problems in using résumés. Typically, résumés do not give an employer all the information that is needed. Also, it is easier to prescreen candidates using a standardized application.

A standardized application makes it easier to spot unexplained gaps in employment. That is an important step in the hiring process and a critical part of exercising due diligence. Even if an employer hires a background company to perform a pre-employment criminal check, records can be missed because there is no national criminal record resource for private employers. Criminal checks must be done in each county where the applicant has lived, worked or gone to school. However, if a person has an uninterrupted job history, an employer can have more confidence that the applicant has not been in serious trouble over the years.

A written application provides a vehicle to ask vital questions and to advise applicants of critical matters. However, some firms still rely on résumés, such as high-tech firms experiencing growth or firms that have never developed an application process.

An employer who accepts résumés still should still provide a standardized supplemental form that addresses these matters:

An application should state that untruthfulness or material omissions are grounds to terminate the hiring process or employment, no matter when discovered. This is critical, for example, when an applicant is not truthful about a criminal conviction. A criminal conviction cannot be used to exclude a job candidate without taking into account the nature of the offense, the nature of the job and when the offense occurred.

The form should clarify that a criminal conviction is not automatic grounds for rejection. However, if a person has lied about a criminal violation, then dishonesty may become the basis for disqualification.

There should be the broadest possible language asking about convictions and pending criminal cases. Some employers make the mistake of asking only about felonies. However, misdemeanor convictions can also be extremely serious, and should be queried, subject to legal limitations.

The form should indicate that the applicant consents to pre-employment background screening, including educational and professional credentials, past employment and court records. Such a release may discourage an applicant with something to hide, or encourage an applicant to be forthcoming in an interview. If an employer uses an outside service to perform a pre-employment screening, the federal Fair Credit Reporting Act requires that there must be a consent and disclosure form separate from the application.

It must indicate that any release for a background investigation is valid for future screening for retention, promotion or reassignment (unless revoked in writing). This is helpful, for example, when an employer needs to conduct a post-employment investigation into allegations of sexual harassment or other workplace problems.

The form should ask about addresses for the last seven years. This is important to determine the scope of any criminal record search.

The form should allow the applicant to indicate whether the current employer may be contacted for a reference.

Finally, an employer can cover other standard matters. Examples include: the organization's at will policy; the applicant's ability to perform the essential job functions; and, if employed, the requirement to provide original documents to verify identity and right to work in the United States.

By using either an application or a supplemental form, an employer can avoid a number of problems in the hiring process and promote a selection process that is fair to everyone.

The Top Ten Signs You are Hiring a Lawsuit Waiting to Happen

By Les Rosen, Employment Screening Resources

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Employee lawsuits often catch employers by surprise. Yet, an examination of the employee's application shows that an employer could often have predicted well in advance that they were hiring a lawsuit just waiting to happen.

By looking for the following ten (10) danger signals, an employer can avoid hiring a problem in the first place.

1. **Applicant does not sign application.** An applicant with something to hide may purposely not sign the application form so they later cannot be accused of falsification.
2. **Applicant does not sign consent for background screening.** When a firm uses an outside agency to perform screening, federal law requires a separate disclosure and consent. A background consent form protects employers in two ways: It discourages applicants with something to hide and encourages candid interviews. If a firm does not perform some sort of screening, they become the employer of choice for problem applicants. If a candidate fails to sign the consent, that is not a good sign.
3. **Applicant leaves criminal questions blank.** An applicant with a past problem may simply skip the questions about criminal record. Every employment application should ask, in the broadest possible terms allowed by law, if the applicant has a criminal record. Most jurisdictions only permit questions about convictions and pending cases only. Employers make a big mistake if they only ask about felonies since misdemeanors can be extremely serious. Although employment may not be denied automatically because of a criminal conviction, an employer may consider the nature and gravity of the offense, the nature of the job and the age of the offense in evaluating whether there is a sound business reason not to employ someone with a criminal record. If an applicant lies about a criminal record however, the false application may be the reason to deny employment.
4. **Applicant self-reports a criminal violation.** Just because an applicant self-reports an offense does not eliminate the possibility of other offences, or that it was reported in a misleading way to lessens its seriousness. An employer is well advised to check it out.
5. **Applicant fails to explain gaps in employment history.** It is critical to look for unexplained employment gaps. There can be many reasons for a gap in employment. However, 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.
6. **Applicant fails to give sufficient information to identify a past employer for reference checks.** If an applicant does not give enough details about past employers, that can be a sign of trouble. Verifying past employment is a critical and important tool for safe hiring. Some employers make a costly mistake by not checking past employment because past employers may not give detailed information. However, even if a reference check only reveals dates of

employment and job titles, this critical information eliminates employment gaps. In addition, documenting the fact that an effort was made will demonstrate due diligence.

7. **Applicant fails to explain reason left past jobs.** Past job performance can be an important predictor of future success.
8. **Explanations for employment gaps or reasons for leaving past jobs do not make sense.** A careful review of this section is needed and anything that does not make sense must to be cleared up in the interview.
9. **Excessive cross-outs and changes.** Can be an indication that an applicant is making it up as they go.
10. **Applicant failed to indicate or cannot recall the name of a former supervisor.** Another red flag. Past supervisors are important in order to conduct past employment checks.

These danger signs assume employers use an application form. Some employers put their firm at risk by just using just resumes. However, using an employment application is considered a best practice. Resumes are not always complete or clear. Applications ensure uniformity and all needed information is obtained. It also protects employers from having impermissible information a resume may contain, and provides employers with a place for applicants to sign necessary statements that are part of the hiring process.

Ten Safe Hiring Tools for Employers

By Les Rosen, Employment Screening Resources

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When recruiters, hiring managers or human resources professionals need to fill a position, its not enough to simply look for the proper skills set, experience or a good fit. Employers must also determine if there are reasons not to hire the candidate. It is estimated that 10% of job applicants have criminal convictions, and up to one-third of resumes contain serious falsehoods or omissions. Without taking some measure to ensure safe hiring, it is a statistical certainty that a firm will make costly hiring mistakes.

Fortunately for employers, there are ten evaluation tools that can be used immediately at no cost. These techniques protect a firm, yet do not discourage good applicants, who also are anxious to work with qualified co-workers in a safe and profitable environment. Here are the tools:

1. 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.
2. Employment applications should ask about criminal records in the broadest possible terms allowed by law, and should not be limited to felonies.
3. Towards the end of an interview, advise applicants that the firm will perform a criminal background and reference check as a standard business practice, and ask whether the applicant has any concerns to share. Good applicants will shrug off the question, while applicants with a problem may either reveal something or withdraw.
4. Applicants should also be asked during an interview what they think a former employer will say about them. For example, "If we were to contact past employers, how would they describe your job performance?" Since the applicant has signed a release and has been told such checks may occur, they may be more motivated to reveal information about past jobs.
5. Applications must clearly state that any false or misleading statements or material omissions are grounds to terminate the hiring process or employment, regardless of when discovered. This is particularly important if a criminal record is found. Under current law, a criminal record may not be used to automatically 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.
6. If employment begins before a background check is completed, state in writing that employment is conditioned upon a background report that is satisfactory to the employer.
7. Verifying past employment is probably the single most important tool for an employer. Generally speaking, past job performance can be an important predictor of future success. Some employers make a costly mistake by not checking past employment because past employers may not give detailed information. However, even verification of dates of employment and job title is critical because an employer must be concerned about unexplained gaps in the employment history. 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. Finally, documenting an attempt to obtain references can demonstrate due diligence.

8. Obtain a listing of all past addresses for seven to ten years. This is also needed for a criminal search.
9. Include future screenings in the consent language. This becomes important if a future investigation is required for some form of workplace misconduct.
10. Check for criminal records. Since criminal records are public information, employers can check at the local courthouse. An employer may consider convictions or cases currently pending, but not arrests. Also, certain cases may not be legally used for employment decisions. There are services that can obtain such information from courthouses all over the United States, as well as provide other assistance.

These ten tools cost nothing, can be implemented by employers almost immediately, and go a long ways towards avoiding workplace problems.

Checking for Crimes--

What employers can - and can't - find out about applicants

By Les Rosen, Employment Screening Resources

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Violence, theft and criminal activity have become greater risks in the workplace, so more employers are performing criminal background checks in addition to asking about criminal records on job applications. In fact, employers who fail to take reasonable precautions about whom they hire can be sued if an employee with a criminal background harms someone.

Do criminal record searches, however, mean that applicants who had a brush with the law will never find a good job, or that employers are assured that they will never hire a criminal? The answer to both is no.

When private employers check criminal records, they normally do not have access to governmental criminal databases (unless the position qualifies for a fingerprint check, such as teachers or child-care workers). Private employers can check criminal records only by going to individual courthouses and looking through the records that are kept by each court. Since there are more than 10,000 courthouses in America, a nationwide criminal check is not practical.

To determine where to search, employers will examine the resume or job application. They can also review records kept by credit bureaus that list addresses associated with Social Security numbers, and they need to verify past jobs to confirm where a person has been and to make sure there are no unexplained gaps in employment. Even with these precautions, however, records can be missed.

When a company hires a service to perform the search, it is regulated by the federal Fair Credit Reporting Act. Searches can be conducted only if an applicant provides written consent. If a criminal record is found, applicants must be given an opportunity to question its accuracy and must receive a copy of their legal rights before the decision to deny the job is made final.

Because of the way public records are maintained, errors are always possible, and cases of mistaken identification have occurred. There are also legal limits on how far back court researchers can go in reporting convictions.

Despite these limitations, employers still find criminal record searches valuable. A search for criminal records discourages applicants with something to hide and limits uncertainty in the hiring process. It also shows that an employer exercised due diligence.

Even if there is a criminal record, there are legal limitations on what information can be used by an employer.

First, an employer may not ask about or consider information about arrests or detentions that did not result in convictions. Only convictions and pending cases can be considered.

Second, an employer may not consider crimes that have been sealed or expunged, or where the applicant participated in a special pretrial alternative program.

Third, there are limits concerning misdemeanors. Most employers will ask about both felonies and misdemeanors on applications, but a misdemeanor cannot be considered if probation was completed and the case dismissed, or for minor marijuana offenses more than two years old.

If a criminal conviction or pending case is located, does that necessarily mean that an applicant is eliminated? The answer again is no.

Courts have found that a policy of automatically denying employment can result in discrimination against certain groups. Instead, employers must examine whether there is a sound business reason to not hire an individual with a criminal record, taking into account the nature of the offense, whether it is job-related, when it occurred and what the person has done since.

What should applicants do if they are concerned about a criminal matter?

First, ask an attorney if the criminal record can be expunged or set aside by going back to court, or whether it is the type of offense that an employer may legally ask about or consider.

Second, applicants can seek to rebuild their resumes by finding employment with people they know, or with employers in a tight job market willing to give them an opportunity.

Finally, honesty is always the best policy. A criminal matter honestly explained during an interview may have much less of a negative impact than hiding it and having an employer discover it later. If an employer discovers an applicant was dishonest, the denial of a job could be based upon a lack of honesty, regardless of the nature of the offense.

Only in California: The Strange Saga of AB 655--Critical New Rules Affecting Safe Hiring in California

By Les Rosen, Attorney at Law and President, Employment Screening Resources

(Taken from article prepared for the October 2002 edition of the Northern California Human Resources Association (NCHRA) Bulletin)

The need for Human Resources professionals in California to keep a close eye on Sacramento was never demonstrated as clearly than by the strange saga of AB 655. That was a well-intended identity theft bill that went into effect this year largely unnoticed, and wreaked havoc on California employers because of unintended consequences. Among other things, the law impacted reference checking and in-house investigations and required employers to provide all background reports to applicants.

The good news is that the "clean-up" bills passed this year show how HR professionals can affectively work with legislators to make positive changes. Thanks to the efforts of Assemblyman Ronald Wright and his staff (who authored AB 655), two clean-up bills, AB 1068 and AB 2868 were passed unanimously by the California legislature and were signed by the Governor on September 28, 2002. Because the bills contained urgency clauses, they would go into effect immediately.

AB 655 was part of an effort to protect against identity theft. The bill amended the California Investigative Consumer Reporting Act (Civil Code Section 1786 et seq.), the law that governs pre-employment background screening in California. The legislature expressed concern that **identity theft** had become the fastest growing white-collar crime in America, and that providing pre-employment background reports to applicants would help people to protect themselves sooner.

Another factor behind AB 655 was the concern of privacy advocates that employers could conduct their own in-house background investigations, without any regulation by the federal Fair Credit Reporting Act (FCRA) or state law. **Before AB 655, an employer had no obligation to inform an applicant that the employer found a criminal record when not using a background screening service. This loophole has lead to documented cases of people being blacklisted because of incorrect records. AB 655 closed that loophole by requiring employers who do in-house investigations to provide certain notices to applicants.**

However, the plain language of AB 655 appeared to place an onerous burden on employers. Employers were placed under the obligation to provide to all applicants any information obtained about them as part of the hiring process, including past employment verifications and references. The law went beyond just providing criminal convictions or matters of public record. According to Civil Code 1786.53, all information had to be provided at either the first meeting or interview between the employer and applicant or within seven days, whichever was sooner.

This new burden created a nearly impossible task. The physical process of hiring, especially for larger organizations with hiring managers and multiple locations, made it nearly impossible to comply. In addition, it added a new barrier to the already difficult task of obtaining employment references. It also made it more difficult for employers to conduct internal investigations of employees suspected of misconduct or wrongdoing.

The law contained other requirements as well. Any employer who obtained a background report had to provide a copy of the report to the applicant. Some law firms took the position that this task had to be performed by the employer, and could not be outsourced to a screening firm. AB 655 imposed additional requirements on disclosure forms to applicants, required employers to certify to background firms that they would comply with California law, and mandated a cover sheet on background reports. AB 655 also

contained substantial damages that could be awarded to a consumer against an employer or background firm that failed to comply with the new rules.

After Assemblyman Wright and his staff were made aware of the unintended consequences of AB 655, they immediately took up the difficult task of gathering opinions from various parties, and crafting new legislation that addressed various concerns. They received input from employers, labor lawyers, HR and security professionals, staffing firms, background experts and other groups that were affected. Assemblyman Wright and his staff then successfully shepherded the “clean-up” through the legislature.

California’s Human Resources Associations also played a key role in the effort. The author of this article, with the support and assistance of the NCHRA Legislative Action Committee (LAC), was very involved in working directly with Assemblyman Wright’s office, and assisted in drafting some of the language in the new bills, as well as testifying before the state legislature on behalf of the NCHRA as to why California employers needed these amendments. There were also significant efforts by representatives of PIHRA.

Some of the more important changes in the clean-up legislation for employers and HR professionals are:

1. **References:** The new law clarifies that under Civil Code section 1786.53, in-house **references** obtained by an employer DO NOT have to be turned over to applicants. Under AB 1068, an employer would have to turn over any public records, such as criminal convictions that it found on its own, but not reference checks.
2. **Providing Reports to Applicants:** Based in part upon a proposal from the author of the article, the law no longer requires employers to provide every background report to each applicant. Instead, each applicant will have the ability to check off a box on a disclosure sheet and have a background-screening firm send the report directly to the applicant. A similar rule already exists in California for credit reports.
3. **Special Cover Sheet:** The law revises the rules about a special cover sheet. A screening firm is allowed to post the required notice on the first page of the report instead.
4. **Employee Investigations:** There is also language in new section 1786.55 that clarifies that the new law is not intended to modify existing law concerning internal investigations of current employees suspected of misconduct or wrongdoing (except for obtaining public records), or employer reference checking. However, the federal FCRA still applies to investigations by third parties.
5. **Limitations on “do-it-yourself” investigations:** If an employer does their own investigation of an applicant or current employee without using the services of a background-screening provider and collects public records such as criminal records, there are new rules that are in effect. Any information must be turned over to the applicant/employee within seven days unless the employer suspects misconduct or wrongdoing in which case supplying the information may be delayed. In addition, an employer who uses this procedure must provide a form to all applicants/employees with a box that, if checked, permits a person to waive the right to receive the copy of any public record. If the investigation results in an adverse action, there are additional requirements as well. This procedure is only in effect if an employer does its own investigation.
6. **Limitation on Criminal Record Searches:** The new law retains the seven (7) year limitation on a background-screening firm obtaining criminal records. However, the new law clarifies that

there is an exception for employers that are required by a governmental agency to go back further when checking qualifications. This addresses a conflict between California law and situations where certain employers are required to go back further in some cases.

7. **Employer forms used for background screening:** Employers that utilize the services of a background screening firm should have received, shortly after AB 655 was effective, a revised certification form required of all California employers as well as a revised Disclosure from that applicants must receive. Because of the changes in the law, employers should receive a new set of forms reflecting the new requirements

As employers and HR professionals begin to deal with the new laws, there will undoubtedly be issues raised. However, this article is intended as a general introduction and not legal advice. For more information, contact Employment Screening Resources at 888-999-4474 or visit our web site at www.ESRcheck.com or e-mail us at esr@esrcheck.com

Summary of Legal and Illegal Interview Questions

Published by the California Department of Fair Employment and Housing
 This helpful chart indicates questions that are unlawful to ask at an employment interview. As a general rule, a pre-employment background-screening firm should not provide an employer any information that an employer could not ask about at a face-to-face job interview. Many states have similar rules.

NOTE: Any inquiry, even though neutral on its face, which has an adverse impact upon persons on a basis enumerated in the Fair Employment and Housing Act (race, sex, national origin, etc.), is permissible only if it is sufficiently related to an essential job function to warrant its use.

Acceptable Questions	Subject	Unacceptable Questions
Name "Have you ever used another name?" /or/ "Is any additional information relative to change of name, use of an assumed name, or nickname necessary to enable a check on your work and education record? If yes, please explain."	NAME	Maiden name.
Place of residence.	RESIDENCE	"Do you own or rent your home?"
Statement that hire is subject to verification that applicant meets legal age requirements. "If hired, can you show proof of age?" "Are you over eighteen years of age?" If under eighteen, can you, after employment, submit a work permit?"	AGE	Age. Birth date. Dates of attendance or completion of elementary or high school. Questions which tent to identify applicants over age 40.
"Can you, after employment, submit verification of your legal right to work in the United States?" /or/ Statement that such proof may be required after a decision is made to hire the candidate.	BIRTHPLACE, CITIZENSHIP	Birthplace of applicant, applicant's parents, spouse, or other relatives. "Are you a U.S. citizen?" /or/ Citizenship of applicant, applicant's parents, spouse, or other relatives. Requirements that applicant produce naturalization, first papers, or alien card prior to a decision to hire.
Languages applicant reads, speaks, or writes, if use of a language other than English is relevant to the job for which applicant is applying.	NATIONAL ORIGIN	Questions as to nationality, lineage, ancestry, national origin, descent, or parentage of applicant, applicant's parents, or spouse. "What is your mother tongue?" /or/ Language commonly used by applicant. How applicant acquired ability to read, write, or speak a foreign language.

<p>Name and address of parent or guardian if applicant is a minor. Statement of company policy regarding work assignment of employees who are related.</p>	<p>SEX, MARITAL STATUS, FAMILY</p>	<p>Questions that indicate applicant's sex. Questions which indicate applicant's marital status. Number and/or ages of children or dependents. Provisions for child care. Questions regarding pregnancy, child bearing, or birth control. Name and address of relative, spouse, or children of adult applicant. "With whom do you reside?" /or/ "Do you live with your parents?"</p>
	<p>RACE, COLOR</p>	<p>Questions as to applicant's race or color. Questions regarding applicant's complexion or color of skin, eyes, hair.</p>
	<p>CREDIT REPORT</p>	<p>Any report which would indicate information which is otherwise illegal to ask, e.g., marital status, age, residency, etc.</p>
<p>Statement that photograph may be required after employment.</p>	<p>PHYSICAL DESCRIPTION, PHOTOGRAPH</p>	<p>Questions as to applicant's height and weight. Require applicant to affix a photograph to application. Request applicant, at his or her option, to submit a photograph. Require a photograph after interview but before employment. Videotaping interviews.</p>
<p>Statement by employer that offer may be made contingent on applicant passing on job-related physical examination. "Can you perform (specific task)?"</p>	<p>PHYSICAL OR MENTAL DISABILITY</p>	<p>Questions regarding applicant's general medical condition, state of health, or illnesses. Questions regarding receipt of Workers' Compensation. "Do you have any physical disabilities or handicaps?"</p>
<p>Statement by employer of regular days, hours, or shifts to be worked.</p>	<p>RELIGION</p>	<p>Questions regarding applicant's religion. Religious days observed /or/ "Does your religion prevent you from working weekends or holidays?"</p>
<p>Job-related questions about convictions, except those convictions which have been sealed, expunged, or statutorily eradicated.</p>	<p>ARREST, CRIMINAL RECORD</p>	<p>Arrest record /or/ "Have you ever been arrested?" (This is a violation of California Labor Code Section 432.7, which is enforced by the Labor Commissioner.)</p>

Questions regarding relevant skills acquired during applicant's U.S. military service.	MILITARY SERVICE	General questions regarding military services such as dates and types of discharge. Questions regarding service in a foreign military.
"Please list job-related organizations, clubs, professional societies, or other associations to which you belong - you may omit those which indicate your race, religious creed, color, disability, marital status, national origin, ancestry, sex, or age."	ORGANIZATIONS, ACTIVITIES	"List all organizations, clubs, societies, and lodges to which you belong."
"By whom were you referred for a position here?" Names of persons willing to provide professional and/or character references for applicant.	REFERENCES	Questions of applicant's former employers or acquaintances which elicit information specifying the applicant's race, color, religious creed, national origin, ancestry, physical or mental disability, medical condition, marital status, age, or sex.
Name and address of person to be notified in case of accident or emergency.	NOTICE INCASE OF EMERGENCY	Name, address and relationship of relative to be notified in case of accident or emergency.

Description of Pre-Employment Screening Tools

Type of Information	What it will Tell	Reason You need this Information	Limitations/Notes on Using this Information
Criminal Record Search (County Courts)	<p>Felony and Misdemeanor convictions, and pending cases, usually including date and nature of offense, sentencing date, disposition and current status. Generally goes back seven years. Can also search federal court records.</p> <p>It is critical to search both for felonies and misdemeanors in state court, since many serious violations can be classified as misdemeanors.</p>	<p>Critical information to protect your business and employees. Protects employer from negligent hiring exposure and helps reduce threat of workplace violence, theft, disruption and other problems. Failure to honestly disclose a prior criminal conviction can also be the basis not to hire. For the maximum protection, all jurisdictions where an applicant has lived, worked or studied in the past seven years should be checked.</p>	<p>Some restrictions on having certain information (such as arrests not resulting in convictions), or certain minor offenses. Employment cannot be automatically denied based upon a criminal record, but must show some sound business reason. Contrary to popular perception, criminal records are not available by computer nationwide for private employers. Background firms must check the public records at each individual county courthouse that is potentially relevant. Also, be very careful in using databases. If there is a "hit" file must be reviewed for identifiers and details. There can be delays when a court clerk pulls a file. Some counties charge a court fee.</p>
Driver's License Search	<p>Driving history for three years, verification of driving privilege, other names used, identification verification and physical description.</p>	<p>Gives insight into applicant's level of responsibility. Determine whether applicant keeps commitments to appear in court or pay fines, has a drug/alcohol problem, and license status. Also helps verify identity. "Driving for work" is very broadly defined in most jurisdictions and is not limited to driving positions.</p>	<p>This information can be accessed by an outside agency on an employer's behalf. The alternative is having applicants personally go to the DMV to obtain their own records, which is not practical and is subject to fraud. DMV also has a program for firms that would like updates. Background firms can also help interpret the DMV record.</p>
Social Security Number Check/ Identity	<p>Provides names and addresses associated with the applicant's social security number, and may indicate fraudulent use. May verify other applicant information.</p>	<p>Helps verify that applicants are who they say they are. Critical to ensure employer not the victim of a fraudulent application by someone with something to hide. Helps determine where to search for criminal records.</p>	<p>Where employer does not have a sound business reason to obtain a business credit report, the social security check gives information to help confirm identity and to uncover fraud.</p>

Credit Report	Credit history and public records such as judgments, liens and bankruptcies. May include previous employers, addresses and other names used. (However, differs from commercial credit report-employment version does not have age, credit scoring or actual account numbers on credit cards)	Helps determine whether an employee is suitable for a position involving handling cash or the exercise of financial discretion, as well as a possible way to gauge trustworthiness and reliability.	A credit report should only be requested when it is specifically relevant to a job function and the employer has appropriate policies and procedures in place to ensure that the use of credit reports are relevant and fair.
Employment Verification	Basic verification includes dates of employment, job title and reason for leaving. Some employers will verify salary. Usually obtained from HR, Personnel or Payroll. Some employers have the information recorded on a 900 service.	This information confirms your applicant's resume, and verifies their previous job history. Helps eliminate any <u>unexplained gaps</u> in employment, which ensures that appropriate jurisdictions have been checked for criminal records and reduces likelihood of incarceration for serious offense.	Employers are often hesitant to give recommendations and may limit prior employment checks to the basic information. This service can be limited if not allowed to contact current employer, employer will not return call, past employer is out of business or cannot be located, or if employee was working through an agency.
Employment Reference	This is a more in-depth reference check that seeks job duties, performance, salary, strengths and weaknesses, eligibility for rehire and other detailed information.	Allows an employer to have a realistic assessment of a candidate from former employers. It promotes a better fit, confirms the hiring opinion and protects the expensive hiring investment.	Although most employers would like references, few will give them due to concerns over legal liability. However, an employer should still attempt to obtain verifications and references in order to demonstrate Due Diligence.
Personal Reference Check	Contact personal references to ascertain additional information about your applicant concerning fitness for the job in question.	Personal references can provide valuable information as to a person's character as it relates to the job opening.	Should also inquire about the applicant's relationship to the reference and how long they have known each other in order to evaluate the information. Can also contact "developed" references for a better picture.
Education Verification	Will confirm degrees, diplomas or certificates and dates attended.	Confirms education and ability to do the job.	Industry sources show that 30% of all job applicants falsify information about their educational background. Some schools require a fee, or will only fax to an 800 number.

Professional Licenses	The type of license, whether currently valid, dates issued, state and licensing authority.	Confirms whether an applicant has the required credentials or licenses.	There is a high rate of job applicants making up or falsifying licenses or credentials.
Civil Records	Date of filing, case type, case number or file record, jurisdiction and if available, identity of parties involved.	Discover whether your applicant has sued former employers or has been sued for reasons that are relevant to employment.	An employer should use this information where it is relevant to job performance. It is advisable to have standard policies and procedures for use.
Workers' Comp	Information about Workers' Compensation Claims and previous injuries.	This information allows the employer to conduct <u>post-job offer</u> reviews in compliance with strict standards of the Americans with Disabilities Act.	Federal and state laws regulate the use of these records. You should have policies and procedures in place before requesting or utilizing these records.