world compliance

Employee Screening

Employee Screening

Contents

www.fcpa-worldcompliance.com

A good employee screening program ensures that employers can find the right fit for their organization, while diminishing the risk of exposure to negligent hiring claims. Besides, certain employment screening processes are required of the employer by law.

On the negative side, some requirements can be both time consuming and expensive. In addition, some procedures may be so numerous and invasive that candidates may decide not to apply at all. Finally, employers must be careful to follow a comprehensive checklist of requirements to ensure that they do not open themselves to any legal liabilities.

Screening methodology

There are many techniques which can be employed, of course simplest is the interview. Even this however needs to be tempered by using a guide for acceptable question content. Employers should always start the screening process by using a standardized application form to check references, perform the background check and pose questions directly to the candidate.

Using the application for as a screening tool

Using the job application form can be an effective tool when used appropriately. To do this the employer needs to ensure that they ask the right questions. For this purpose, every application should contain two requirements:

- The candidate should provide a complete work history that includes gaps in their employment

- Permission authorizing the employer to contact previous employers to obtain information. Said form should also indemnify the previous employer for their responses. This will ensure that they provide accurate information as many are reticent to do so for fear of law suits

Testing applicants

Testing is an effective tool to determine an applicant's skill set, however the employer should exert care in verifying that the tests being applied are in compliance with local regulations. There are four types of tests most commonly used, these are:

Ability test: These are useful to determine a candidate's technical or cognitive skill. Employers must be careful not to violate anti discrimination laws. Under U.S. law, an exam cannot disproportionately disqualify candidates of a protected class status. The exemption to this requires that the employer prove that the results are job related and consistent with the businesses necessity. Employers in this situation must implement validation studies to prove that the tests have a predictive relationship to the positions future performance. These tests are expensive; therefore historically speaking a general aptitude test is probably more feasible.

Personality tests: Once again, under U.S. laws, employers using this type of test must ensure that the test is compliant with the Americans with disabilities Act (ADA) and the EEOC guidelines. Care must be exerted to avoid questions pertaining to the existence of a disability or questions pertaining to sexual orientation or religious affiliation. In addition, physiological tests aimed at revealing candidates mental capacity would be considered discriminatory too. However, tests designed to assess a candidate's preferences, habits or honesty that does not mention the previously mentioned areas are acceptable.

Medical tests: U.S. law prohibits the use of medical tests as a requirement for employment. This is due to the fear that employers will use the results to discriminate against disabled persons. Medical tests include; psychological evaluations, physical fitness tests, HIV testing, test for alcohol use, genetic testing as well as vision tests. Employers can extend a conditional offer of employment to a candidate based upon the completion of a medical exam. This is okay as long as all candidates are subject to the exam and the results are kept confidential. Drug tests

as a pre condition to employment are allowed as long as all candidates are subject to them and the tests are administered at the same stage in the application process.

Polygraph tests: U.S. law prohibits the use of polygraph tests as a condition for pre employment. In 1988, the U.S. passed The Employee Polygraph Protection Act that made it illegal to require job candidates to take a polygraph.

Background checks

Background checks are an effective tool for employers to screen potential candidates. There are several types in use:

Credit checks: This is widely used however because of the screening methodology it is also heavily regulated. Employers must exert care in exercising this option as the rules surrounding its use are complicated.

Criminal records: Employers commonly check a candidate's criminal record; however there are several legal issues which must be addressed when doing so. Under U.S. law, it is prohibited to disqualify a candidate if it disparately affects applicants from a protected class. Employers must also be careful to distinguish between a conviction and an arrest record to decide not to select a particular candidate. Arrest records must not be used as these do not indicate that the candidate actually committed the offense. Certain factors such as the nature and gravity of the offense, timing of the conviction and the nature of the position may exempt employers from this condition.

Online searches: Surveys indicate that half of U.S. employers go online to vet candidates, however there are compelling reasons why this is not an effective screening tool.

- Information such as age, marital status or religious affiliation that is prohibited under U.S. law can be "discovered".

- Although the law varies by state, employers are generally prohibited from using a candidate's lawful off-duty behavior to disqualify them from employment. Therefore employers should exercise care when using the internet to gather information on a candidate. In addition, employers can put themselves at risk if they circumvent security blocks to gain access to private information.

- It is important to note that information on the internet must be held to careful scrutiny as often it may be untrue and profiles may be intentionally posted to defame a person. To reduce the risk employers should:

  ▸ Design a process for using the internet that includes; whether searches are allowed, sites to be used, information to be gathered and how it should be used.

  ▸ Have a third party, someone not involved in the decision making process to perform the search. This person would be responsible for filtering out discriminatory or irrelevant information and focus on relevant matter.

  ▸ Maintain a record of the searches and results which can be used at a later date to refute any accusations of malfeasance.

  ▸ Ensure that the information gathered online can be corroborated or supplemented via other channels as this could be incomplete or inaccurate.

  ▸ Request the candidate to sign a waiver both authorizing and acknowledging use of the information gathered online to be used in the application

  ▸ The employer should condition an employment offer based upon the successful completion of a search.

Summary

Employee screening policies will vary by organization, however at a minimum employers should:

- Analyze the job and identify the required skill set a candidate needs to successfully carry it out.
- Special qualifications such as a license or degree which will disqualify potential candidates need to be listed.
- The employer should determine whether the qualifications can be adequately screened and whether the tools used to do it are within their budget constraints.
- The employer should evaluate the most effective methods to identify potential candidates and establish a general employment screening policy to guide recruiters. This will reduce litigation risks as well as the associated operating costs. Said policy should include the following:
  - ▶ Rationale for the policy and references to any regulations mandating their compliance
  - ▶ Specify who the policy applies to as different positions require different screening methods
  - ▶ The various types and scope of the processes to be carried out
  - ▶ Provide detail of the specific procedure to be followed for each screening method
  - ▶ Identify the person and or department that is responsible for policy enforcement

A World in Compliance

WorldCompliance[®] offers a complete solution to the increasingly unforgiving task of compliance. As more and more leaders realize 'open source intelligence equals protecting profits', they turn towards WorldCompliance[®] as their preventative solution.

For complete protection for your organization wherever you are based in the world, email:

North-America@worldcompliance.com
South-America@worldcompliance.com
Europe@worldcompliance.com
Middle-East@worldcompliance.com
Asia@worldcompliance.com
Africa@worldcompliance.com
Oceania@worldcompliance.com

and our nearest representative will contact you.

Alternatively call (+1 877 258 1877) in the U.S., or visit worldcompliance.com for further details.

Europe	+49 951 3020 688
Germany	+49 951 3020 688
Latin America	+571 211 9601
Mexico	+52 722 477 3985
Middle East	+971 4 312 4043