



# Current Legal and Practical Issues in the Hiring Process

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Presented by:

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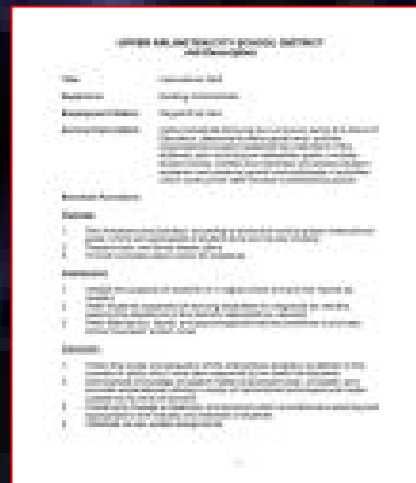
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# The Pre-Employment Process

## ◆ Job Description



# Defining the Job

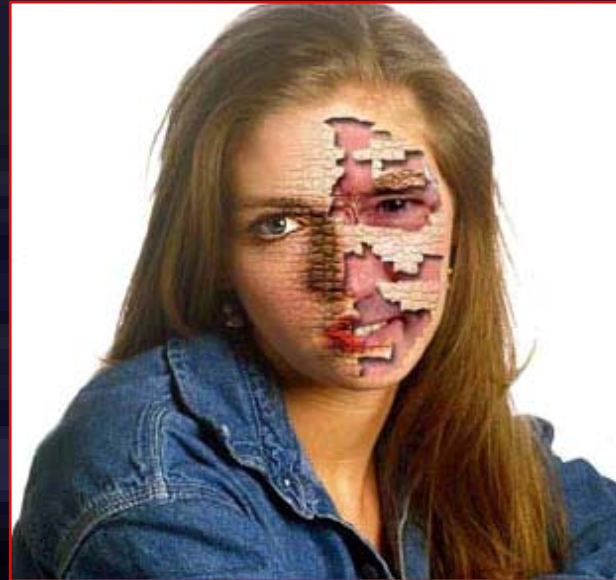
- ❖ **Essential Functions**
- ❖ **Non-Essential Functions**
- ❖ **Qualifications**

# Creating a Pool of Applicants

# Advertisement

- ❖ **Newspaper**
- ❖ **Websites**
- ❖ **Radio**
- ❖ **Employee Referral Bonus \$**

# Who is The Applicant?



- ❖ **HR acts to fill a specific job**
- ❖ **Individual follows procedures**
- ❖ **Individual expresses interest in job**

# Application / Hiring Policy

- ❖ **Quality of questions on Application**
- ❖ **Quantity of questions on Application**
- ❖ **Are Questions on the Application Legal**

# 10 Questions you Cannot Ask on Applications

- **Financial Status**
- **Age**
- **Arrest**
- **Organization Membership**
- **Workers' Compensation**

# 10 Questions you Cannot Ask on Applications

- **Illness or Disability**
- **Citizenship**
- **Marital Status**
- **Prescribed Drugs**
- **Past Treatment:  
Addiction/Alcoholism**

# 10 Tips for Successful Applications

- **Education**
- **Experience**
- **Criminal Convictions**
- **Arbitrations**
- **Legal Right to Work**

# 10 Tips for Successful Applications

- **Work Hours**
- **Reason for Leaving**
- **Background Check**
- **Employment at Will**
- **Release**

# Narrowing the Field

- ❖ **Review the Application**
- ❖ **Interviewing**
- ❖ **Testing**
- ❖ **Background Screening**
- ❖ **Drug Testing**

# EFFECTIVE INTERVIEWING

- ✿ **Pre-Planned Agenda**
- ✿ **Illegal Subjects and Response**
- ✿ **Job-Related Questions**
- ✿ **Consistent Questions/Worksheet**

# EFFECTIVE INTERVIEWING

- **Notes**
- **Listening/Body Language**
- **ADA**
- **WorkPlace Violence**



# Background Screening

- **Why**
- **Advantages**
- **Trends**
- **An Effective Screening Program**
- **The Process**
- **FCRA and EEOC**

# Why Companies Should Screen

- **Avoid violence in the workplace**
  - ✓ **10% of job applicants have a criminal record**

# Why Companies Should Screen

- **Get the right person for the job**
  - ✓ **40% of resumes contain material lies or omissions about education, past employment, or qualifications**

# Why Companies Should Screen

- **Reduce costs associated with bad hiring**
  - ✓ **Lawsuits, theft, fraud, embezzlement**
  - ✓ **Turnover, bad publicity, lost customers**

# Why Companies Should Screen

**The cost of hiring can be viewed many ways:**

- **Settlement cost on just *one* Negligent Hiring lawsuit: \$500,000+  
(employee lawsuits continue to rise each year)**
- **Initial budget just to engage the Lawyers: \$75,000**

# Why Companies Should Screen

- **Premium on company liability insurance (minimum): \$3000**  
**(assumes \$5000 deduct on \$250K for 25+ employees)**

- **Training and re-training of an employee**  
**2 X Salary**

**Conduct a background check per employee**  
**\$50-\$100**

**You do the math!**

# The Advantages of Screening

- **Discourage applicants with something to hide or a reason to falsify credentials**
- **Eliminate uncertainty in the hiring process by basing decisions on hard information**
- **Demonstrate Due Diligence in the hiring process, promoting safety in the workplace**
- **Encourage open communication and honesty on the part of the applicant**
- **Excellent return on a small investment**

# Trends in Background Screening

- **Growing public awareness and acceptance due to terrorism concerns**
- **Expanding role of background screening—tenants, contractors, team coaches, etc.**
- **More comprehensive screenings, requiring more thorough research**
- **Screening processes working with Human Resource Departments**
- **Even greater emphasis on legal compliance**

# Develop an Effective Screening Program

- **Create a written policy to include**
  - ✓ **Type of searches to conduct (by general job classification)**
  - ✓ **Depth of searches**
    - **Number of past employers to verify**
    - **Where to search criminal records**
      - **Statewide**
      - **County by county**
      - **Federal**
      - **Multi-state database**

# Develop an Effective Screening Program

- ✓ **Handling of Adverse Information that will result in:**
  - **No-hire**
  - **Caution before hire**
- ✓ **Post-hire practices for regular updates (criminal, driving records, credit reports)**
- ✓ **Review of FCRA and local state laws**
- **Consult with a screening companies for their input**
- **Educate your management and employees**

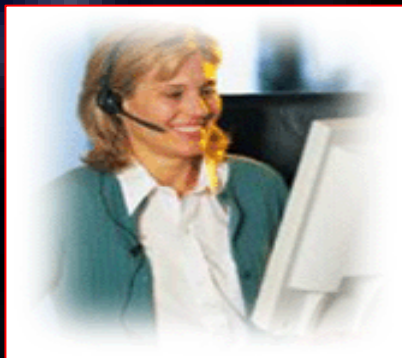
# Basic Employment Screening

- ✓ **SSN Verification and Trace**
- ✓ **Criminal Records Search (County, Municipal, Statewide, National and Federal Records)**
- ✓ **Driving Records**
- ✓ **Credit History**
- ✓ **Drug Test**

A screenshot of a credit history report. The report is titled "Report for Jane Consumer" and is dated "Report Date: 04/26/2009". It includes a table with columns for "Category", "Status", and "Description". The table lists various accounts such as "Account Number", "Inst. Type", "Reporting to Consumer", "Monthly Payment", "Payment", "High Balance", "Credit", "Paid Date", and "Remarks". Below the table, there is a "Risk" section with a "Risk Score" and a "Risk Profile" section with a grid of colored circles representing different risk factors.

# Expanded Employment Screening

- ✓ **Civil Records Search** (Civil or Federal)
- ✓ **Education Verification**
- ✓ **Employment Verification**
- ✓ **Personal Reference Check**



# Expanded Employment Screening

- ✓ International Criminal
- ✓ Sex Offenders Search
- ✓ Professional License
- ✓ OIG, Doctor, Nurse Abuse, etc.
- ✓ Worker's Comp
- ✓ Patriot Act Search



# The Process

1. Subject signs a FCRA release form, authorizing screening
2. Employer provides release form and subject data to screening agency
3. Screening Agency conducts investigation according to federal, state, local laws
4. Results provided to Employer, usually within 72 hours
5. Employer shares results with subject as required by law



# FCRA – Fair Credit Reporting Act

- **The “Golden Rule” for protection of consumer rights**
  - ✓ **Applicant must expressly authorize screen**
  - ✓ **Applicant must be given notice when any negative information is used against them**
  - ✓ **Adverse Action Procedures**
  - ✓ **Screening agency must investigate applicant claims that report is inaccurate or incomplete**
  - ✓ **Report may only be used for a permissible purpose (e.g. Employment or Tenant screen)**
- **Numerous state laws augment the FCRA**

# Screening and the EEOC

- **Employers need to use screened data correctly, in accordance with Equal Opportunity Laws**
- **Information used to determine eligibility for employment must be job related**
- **A criminal record cannot be use to automatically disqualify an applicant, unless there is a business justification**

# Privacy and Identity Theft

- **Screening may uncover cases of identity theft, providing a benefit to the applicant**
- **Screens are restricted to relevant data about the applicant's public life**
- **Strict precautions are taken to protect confidentiality of all reports**

# The Bottom Line

## ▪ Screening

- ✓ Important

- ✓ Legal

- ✓ A Must Do

- ✓ Addresses issues of

  - Safety

  - Security

  - Negligent Hiring and Retention

  - Quality of Workforce

  - Employee turnover

## ▪ Better Hires using Objective Data

# Testing

- **Skills**
- **Personality/Psychological Testing**
- **Legal (Has a Proper Validly Study)**

# Drugs How big a problem?

- **10.8 million regular marijuana users in the workplace**
- **1.5 million regular cocaine users in the workplace**

# Drug Screen? If not Your Company Should Know

**Substance abusers are 3.6 times more likely to injure themselves or another person in a workplace accident and 5 times more likely to be injured in an accident off the job which, in turn, affects attendance or performance on the job...**

# Substance abuse Prevention Policy Statement

**“ABC Company is committed to protecting the *safety, health, and well-being* of its employees and all people who come into contact with its workplace(s) and property, and/or use its products and services.”**

# Substance-abuse- Prevention Policy

**“Recognizing that drug and alcohol abuse pose a direct and significant threat to this goal, ABC Company is committed to assuring a drug-free working environment for all of its employees.”**

# DRUG TESTING

1. **When Should you Test?**
2. **Who Can be Tested?**
3. **Who Pays for the Test?**



# DRUG TESTING

4. What if its Positive?
5. How Should The Test Be Done?
  - In-House
  - Out Source
6. Explanation on Results



# The Fair Credit Reporting Act

- **Written Notice and Authorization**
- **Adverse Action Procedures**
- **Certification to Consumer Reporting Agencies**
- **Proper Forms and Letters**



# Making the Offer

- **At-Will Employment**
- **Medical Exam**
- **Covenant Not to Compete**
- **Proprietary Information**
- **Offer Letter**

# Complying with FACTA

- **Fair and Accurate Credit Transactions Act ( FACTA ).** Effective June 1, this law governs the disposal of consumer information under the Fair Credit Reporting Act.

# Complying with FACTA

- The goal is to protect the data from being used for identity theft.
- It covers consumer credit reports, among other things, so if your organization runs a credit check of job applicants before hiring, you must comply with the provisions of this law in the handling and disposal of the data.

# Complying with FACTA

- **FACTA requires due diligence and monitoring of the entities chosen to dispose of data.**
- **The same law applies to handling of Applications for Employment, Resumes or Internet Employment Applications received by your Company.**

# Questions?



**2006 CSREES  
ADMINISTRATIVE  
OFFICERS'  
CONFERENCE**



*Journey of the Land-Grant System*

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