

# **Pre-Employment Screening: Reducing Risk Through Better Practices**

A.J. Collins, Investigations Manager  
Klink & Co., Inc. and KlinkCheck® background services

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# Today's Agenda

- Why is pre-employment screening so important?
- How do you conduct an effective and cost-efficient pre-employment background check?
- What are some of the difference makers in background checks?
- What are the boundaries when using criminal records, credit reports, and social media?

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# Why is pre-employment screening so important?

- Average award in a negligent hiring lawsuit is over \$1 million
- U.S. organizations lose at least 7% of revenue to employee fraud – over \$900 billion annually
- Median loss to small businesses due to occupational fraud is \$155,000

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# Common results from limited screening

- **Hiring unqualified employees**
  - **Almost 60% of employers report catching lies on resumes (CareerBuilder)**
  
- **Cost of hiring and training new employee**
  - **Replacing an employee costs around 20% of annual salary (Center for American Progress)**

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# Common results from limited screening

- Hiring known violent criminals or fraudsters exposes your company to:
  - Theft and embezzlement
  - Loss of IP and business reputation
  - Workplace violence

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# Workplace Violence

- Those who have committed violent acts are substantially more likely to be violent again, especially if the violence was committed within the past 10 years
- Protect employees, customers, and visitors through appropriate screening

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# Effective & Cost-Efficient Screening

- Working within budgets: a \$2 billion business
- You get what you pay for: \$9.99 special along with a \$1 million negligent hiring lawsuit!
- Risk tiering: identify employee risk to protect your company

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# Risk Tiering

- A pre- and post-hiring practice, requiring HR and management to identify the risks that specific categories of employees may pose to the company
- Risk tiers can be based on employees' responsibilities, contact with the public or business contacts, and access to company assets and finances



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# Risk Tiering

- Employee risk categories:
  - Executive management
  - Management/directors
  - Sales personnel
  - Entry level
  - Drivers
  - Temporary employees
  - Subcontractors & consultants
  
- Base screens upon the employee risk

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# Screening Essentials: Content

- **Criminal records checks:** About 90% of employers conduct some form of criminal background check (SHRM 2014)
- **Verification of prior employment and/or credentials:** degrees, licenses, certifications, etc.

Additional screening tools can be used based on risks presented.

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# Screening Essentials: Methods for Accuracy

- Start with consent form, social security number, proper full name, maiden name, and address history
- Request federal, state, and/or county records according to risk tier
- Match right records with applicant by using the applicant's personal information and address history

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# Screening Essentials: Methods for Accuracy

- Cross-check personal information with any found records again – and again
- Beware of Internet and social media searches; no one does due diligence on this data
- Be consistent with your searches

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# Difference Makers

## ■ Federal Criminal Record Checks

- Differ from state records checks
- Federal and state criminal justice systems are parallel; however, less than 5% of criminal cases end up in the federal court system

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# Difference Makers

- **Federal Criminal Record Checks**

- Cases in the federal system are hand-picked by the Justice Department for their importance and impact on the community

- *Examples: Large-scale drug dealing, fraud, identity theft, kickbacks, embezzlement, money laundering, environmental crimes*

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# Difference Makers

- **Bankruptcy, liens, and judgments checks**
  - Better than credit reports
- **Litigation records checks**
  - Has your applicant sued every one of his prior employers?
  - Are there allegations of fraud or other misconduct in lawsuits?

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# Difference Makers

- **Corporate affiliations research**

- Review corporate ownership records to find conflicts of interest with vendors
- Your company should not be purchasing from its own employees

- **Drug screening**



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# Boundaries and New Trends

- **Criminal records policies**
- **Credit reports**
- **Social media:** Facebook, Twitter, LinkedIn, MySpace, blogs

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# Boundaries: Criminal Records

- What do you do when an applicant is found to have a criminal conviction? Do you treat misdemeanors and felonies differently?
- If an applicant is found to have a criminal record, do you verify that the record relates to the applicant? How?
- Do you take into consideration the type of conviction, i.e., violent or non-violent, age of the record, or its relation to the job?
- EEOC and states have restrictions on the use of criminal records

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# Boundaries: Criminal Records

## U.S. EEOC

- Pepsi Beverages Co. paid \$3.1 million to the U.S. Equal Employment Opportunity Commission (“EEOC”) to settle federal charges of race discrimination

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# Boundaries: Criminal Records

## U.S. EEOC

### EEOC Guidance

*“When employers contemplate instituting a criminal conduct screen, the EEOC recommends that they take into consideration the nature and gravity of the offense, the time that has passed since the conviction and/or completion of the sentence, and the nature of the job sought in order to be sure that the exclusion is important for the particular position.”*

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# Criminal Records: State Policy

## “Ban the Box”

- **Ohio:** The Ohio Civil Rights Commission’s Pre-Employment Inquiry Guide states that public-sector employers may not question potential employees about prior convictions or arrests on applications, but they are subject to criminal records checks, and may be asked about records later in the application process. Private employers may only ask about specific crimes related to qualifications for a particular job.
- **Pennsylvania:** Restricts employers to considering a prospective employee’s convictions only to the extent they relate to the applicant’s suitability for the position for which he or she applied.

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# Criminal Records: State Policy

- **Indiana:** Recently adopted several statutes limiting the availability and use of criminal records. For example, law prohibits courts from disclosing information pertaining to actions that were dismissed or not prosecuted.
- **New York:** Imposes strict standards and requires employers to consider many factors prior to disqualifying an applicant, including the length of time since the offense and the individual's rehabilitation.

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# Boundaries: Credit Reports

- **Many States (including Ohio)** prohibit employers from making an adverse hiring decision based on a candidate's credit history or financial situation, except in certain limited situations: positions with financial institutions, state-approved credit unions, investment advisors, certain managerial roles, positions with access to highly confidential data.
- “Discrimination by an employer against any person because of the person's credit history is an unlawful discriminatory practice under the Ohio Civil Rights Law.” §§4112.02, 4112.05, 4112.08, and 4112.14
- Are they truly valuable compared to litigation checks?

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# Social Media

- About 45% of employers surveyed by CareerBuilder use social media sites to help screen applicants.
- Nothing currently prohibits the general use of social media as a screening tool.



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# Social Media

- Social media information must be in the public domain, and certain information found on sites (*race, age, sexual orientation, marital status, disability, genetic information sexual orientation and political affiliation*) cannot be used in whole or part to make employment decisions (Federal Trade Commission)
- Social media information must be accurate. How do you assure accuracy?

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# **Protect your company: Test your background check vendor**

- Try two or three firms to evaluate their timing, accuracy, and breadth
- Ask who is doing the work and who your contact person will be

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# **Protect your company: Test your background check vendor**

- You get what you pay for: \$9.99 special?
- Ask what your vendor recommends for your industry, company, and the tiers of employees being considered
- Beware of vendors who don't check accuracy

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# What do you do when you find something?

- Verify record matches target
- Adverse action letter (supplied by some vendors)
- Giving the applicant an opportunity to explain

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# What do you do when you find something?

- Develop your policies and be consistent with disqualifications for each risk tier



Protecting Your Company's Most Valuable Asset... Your Reputation

## Questions?

A. J. Collins  
Investigations Manager

**Klink & Co., Inc.**  
**KlinkCheck**  
3 Gateway Center, Suite 290  
401 Liberty Ave  
Pittsburgh, PA 15222

Tel: 412.201.9123

Visit us at [www.klink-co.com](http://www.klink-co.com) and [www.klinkcheck.com](http://www.klinkcheck.com)