

# Table of Contents

<b>Acknowledgements.....</b>	<b>xiii</b>
<b>Introduction .....</b>	<b>1</b>
<b>1. Establishing a Safe Hiring Program .....</b>	<b>9</b>
Why Safe Hiring is Such a Challenge; The Anatomy of a Safe Hiring Program (SHP); A Safe Hiring Program Must Be an Integral Part of a Business; About the Pre-Employment Screening Process; Four Benefits of a Safe Hiring Program; Introduction to Due Diligence and Negligent Hiring; What the Safe Hiring Program Does NOT Do; The Return on Investment (ROI) of a Screening Program; Responses to 10 Commonly Expressed Concerns of Employers; Getting Started on a Safe Hiring Program; The Elements of the S.A.F.E. System; The Importance of Documentation; Stages of Hiring; Putting It All Together–Taking the Safe Hiring Audit; Conclusion–How Do Your Safe Hiring Practices Measure Up?	
<b>2. Discrimination and Privacy .....</b>	<b>31</b>
Discrimination and Privacy – An Overview; About Discrimination Laws and Employers; Important Federal Discrimination Laws Affecting a Safe Hiring Program; EEOC Guidelines about Discrimination and Disclosure of Criminal Records; EEOC and the E-RACE Initiative; Americans with Disability Act (ADA); Discrimination Laws at the State and Local Levels; Video Interviewing and Discrimination Risk; About the Right to Privacy; Privacy Issues Employers Face; Privacy Considerations When Screening In-house or Outsourcing; Privacy and the Trend of Offshoring Data by Background Check Firms; Protecting Privacy and the Use of Home Operators; International Data and Privacy Protection	
<b>3. The Application and Interview Process .....</b>	<b>51</b>
Part 1 – The Application; Application Process Starts BEFORE Application Is Filled Out; Using the Application Form as a Hiring Tool; Ten Critical Items Every Application Needs; Critical Areas and Questions Applications Must Avoid; Applications and Compliance with Title VII of the Civil Rights Act and ADA; How to Avoid Previous Names and Marital Status Discrimination; How to Avoid Age Discrimination; Discrimination against Unemployed Job Applicants; Review the Application as a Whole; Ten Sure Signs of a Lawsuit Waiting to Happen; Review the Form with the Applicant; Where to Find a Good Application Form; Part 2 – The Interview Process; The Importance of Interviews; Going from Application Process to Interview – Progressive Screening; Advantages of a Structured Interview; Interviews - Spotting Liars is Not that Easy; Six Questions That Should Be Asked In Every Interview; Questions Not to Ask and Why: Pre-Employment Inquiry Guidelines Chart; What if an Applicant Offers Impermissible Information?; Looking for Red Flag Behavior; Summing It Up – An Interesting Story; The Integrity Interview – A Special In-Depth Due Diligence Interview	

**4. The Reference Checking Process ..... 83**

Introduction; Verification Checks are Critical; Value of Past Employment Verifications Even if You Cannot Get the ‘Good Stuff’; Another Reason to Verify Past Employment – Resumes or Past Claims Are Not Always Accurate; Spotting Six of the Biggest Job Applicant Lies; How Far Back Should Reference Checks Go?; Use Questions that are 100% Legal; Procedures to Implement Quality Reference Checking; Who Should Make the Past Employment Calls?; Other Effective Reference Techniques; Using Automated Reference Checks; The Reason Why Employers Won’t Give References; Suggestions on How to Deal with Requests for References

**5. The Fair Credit Reporting Act (FCRA)..... 107**

A Basic Understanding of the FCRA; Important Term Definitions Found in the FCRA; The Four Groups Affected by the FCRA; The FCRA in Four Easy Steps; FAQs about Adverse Action Letters; Other Important FCRA Provisions; About the 2003 FCRA Amendment: Fair and Accurate Credit Transactions (FACT) Act or FACTA; Employment Screening Lawsuits Increase as Attorneys and Consumers Become Familiar with FCRA; More About U. S. Supreme Court Case on Willfulness Under the FCRA Based on Conduct that is Objectively Unreasonable; The Explosion of FCRA Lawsuits for Technical Violations of the FCRA; U.S Supreme Court Rules there are Limits to How Technical the Violations Can Be and that Some Harm is Needed; Does FCRA Apply to Employers Performing Background Checks In-House?; U.S. Government Steps Up Oversight of Background Checks as Well; FTC Warns Background Check Mobile Apps May Violate FCRA; Where to Find More Information on the FCRA

**6. State Laws Affecting Employment Screening ..... 153**

Introduction; State Laws Controlling Employers vs. State Laws Controlling CRAs on Performing and Using Background Checks; State Screening Rules that Impact a CRA; States That Restrict the Reporting of Records Based on Time Periods; Legal Limitations on Questions Employers Can Ask Applicants about Criminal Records; State Screening Laws that Primarily Impact an Employer; A Focus on Three Sample States; 50 State Background Screening Law on Employers Comparison Guide; Background Checks in All Fifty States – Which State Law Applies?

**7. Implementing the Pre-Employment Screening Process ..... 181**

Introduction; The Point When Pre-Employment Screening Process Occurs; The Basics of Screening; Background Screening: In-House or Outsource?; The Core Tools Used in a Pre-Employment Screen; The Background Screen – The Employer’s Step-by-Step Process; How Pre-Employment Screening Companies Perform Their Tasks; Does a Background Screening Firm Need a SOC 2® Type 2 Report?; Introduction to the Background Screening Industry; How to Choose a Pre-Employment Background Screening Firm; 45 Questions Employers Should Ask Their Current Background Screening Partner; Language that Should Go in a Background Screening Contract; Introduction to the National Association of Professional Background Screeners (NAPBS); Why Choose an NAPBS Accredited Background Screening Firm?

**8. A Criminal Record Primer..... 215**

Introduction to Criminal Records, Employment, and Collateral Consequences; Repeat Offenders, Recidivism, and Rehabilitation; When Mandatory Criminal Record Checks are Required; Crime and Punishment – The Abridged Version; State Courts ; Federal Bureau of Prisons; Bureau of Justice Statistics; Classifying Crimes by Seriousness; Classifying Crimes by Types; Criminal Sanctions and Collateral Consequence; Status of Individuals in the Criminal Justice System; The Anatomy of a Criminal Case and Criminal Justice Records; Glossary of Criminal Terms

**9. Where and How Employers Legally Obtain Accurate and Relevant Criminal Records..... 243**

Introduction; Six Core Concepts of Obtaining Criminal Records; Key Sources of Criminal Data and How to Access; 1. County Courthouse Searches; How to Do a County Courthouse Search; Looking for Criminal Offenses in Counties with Multiple Courts; Using Individual County and Statewide Court Online Database Sites; Using the State Criminal Record Repository; Searching Other Criminal Record-Related Databases; Searching Federal Court Records; Using Private Sector Commercial Databases; Web Data Extraction and Robotic Searches; Bottom Line

**10. The Legal and Non-Discriminatory Use of Criminal Records in Safe Hiring ..... 279**

Introduction; The EEOC 2012 Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions; What Does All of this Mean?; Criticism of EEOC Guidance; Recent EEOC Failed Enforcements; A Summary on the Effects of the EEOC Guidance on Employers; Suggested EEOC Compliance Tools; Three Potential EEOC Compliance Approaches for Employers; Three Mistakes to Avoid in Creating Policies to Deal with the EEOC Guidance on Criminal Records; EEOC and Use of Arrest Only Records; Some Practical and Frequently Asked Questions Concerning the EEOC Criminal Guidance; The Ban-the-Box Movement; Practical Reasons to Ban-the-Box; Can Ban-the-Box Policies Have Unintended Consequences?; Summary: Criminal Records and Safe Hiring Checklist; With All of These Rules, Are Criminal Records Still Worth Accessing?; The Million Dollar Question – How to Judge the Seriousness of a Criminal Conviction

**11. Credit Reports and Social Security Number Traces ..... 321**

Introduction; Facts about the Employment Credit Report; Why Employers Use Credit Reports in Employment Decisions; What are the Legal Limits in Obtaining a Credit Report?; The FTC and Use of Credit Reports by Employers; The EEOC, Employment Credit Checks, and Discrimination; What Other Credit Reporting Rights do Job Applicants Have?; State Limitations on Credit Report Use by Employers; Cities with Credit Reporting Laws; CFPB Monthly Complaint Report Spotlights Errors on Credit Reports; Conclusion – Employers Need Clear ‘Business Justification’ for Credit Report Checks; The Social Security Trace; What a Social Security Trace is Not; Using Social Security Trace To Cross Check Applicants

**12. Education and Credentials Verifications ..... 345**

The Need for Verification of Education Credentials; The Verification Process; How to Verify if a School is Accredited; The Use of Fake Diplomas is a Real Problem; About Distance Learning (Online) Schools; Verifying High School Equivalency Diplomas; Occupational Licensing and Vocational Verifications; Conclusion – Educational Credentials Checking; Additional Education Verification Resources

**13. Other Background Screening Tools for Employers ..... 363**

Introduction; Driving Records; Workers’ Compensation Records; Using Civil Court Case Files; Judgments, Liens, and Bankruptcies; Sex Offender Databases; Military Records; Security Clearances; Merchant Databases ; National Wants and Warrants; Specialty Databases – Government; Specialty Databases – Private; Terrorist Database Searches and The Patriot Act; Terrorist Databases – The Good and the Bad; Use All the Tools; Past Employment Verification – The Key to Protecting Vital Industries from Terrorists; Conclusion

**14. Social Media Background Checks..... 393**

The Social Media Explosion; The Basics of Social Media Searches; Landmines and Traps with Social Media Background Checks; The FCRA and Use of Social Media Sites; Solutions if Using Social Media Background Checks; Domestic Terrorist Attacks Put Social Media Background Checks in National Spotlight; Bottom Line with Social Media Background Checks: Proceed with Caution

**15. Drug Testing in the U.S..... 413**

Introduction ; Studies Show Drugs in Workplace Cost Employers Billions; SHRM Study Finds More than Half of Employers Favor Drug Testing; The ABC’s of Drug Testing; Setting Drug Testing Policies and Procedures; What is Tested? – DOT Drug Tests and Non-DOT Drug Tests; How Does the Drug Test Work?; Pros and Cons of Testing Methods; Drug Testing Costs; Legal Issues and Drug and Alcohol Testing; Is Drug Testing Covered by the Fair Credit Reporting Act?; Recommended Drug Testing Information Resources; Take the Drug Testing Quiz

**16. Key Procedures After-the-Hire..... 441**

Introduction to After-the-Hire Issues; Form I-9 Employment Eligibility Verification Compliance; E-Verify Electronic Employment Eligibility Verification; Employment At Will and Probationary Periods; Confidentiality Agreements and Ethics Policy; Maintaining Employment Screening Records; Employees May Have the Right to Inspect Their Personnel Files; Screening Current Employees; Continuous Screening or Re-Screening; If Screening Results Lead to Possible Termination Issues; Employee Misconduct Issues; Ongoing Training; Performance Reviews and Ongoing Monitoring; Responding to Employee Complaints; Termination Procedures; Exit Interviews; Maintaining Documents after Separation; Insider and Post-Hire Threats

**17. International Background Checks ..... 473**

Introduction; Background Checks Can No Longer Be Limited to Just the U.S.; International Screening vs. International Investigation; Why Employers Cannot Assume the U.S. Government Screens Workers from Abroad; Basic Components and Challenges of International Background Screening; International Education Verifications; International Employment Verifications; Other Resources and Tips for International Screening Due Diligence; Legal Implications for Employers Doing International Background Checks; Privacy and Data Protection in International Background Screening; European Union (EU) Privacy Laws; About Canada’s Strict Privacy Laws – PIPEDA; About Mexico’s Privacy Legislation; Focus on India and Japan; Recommendations for International Background Screening Programs; Acknowledgments for this Chapter; Additional Resource Links

**18. Screening Essential Non-Employees ..... 509**

#1. Issues for Businesses that Use Temporary Workers and Staffing Vendors; #2. Issues from the Point of View of Staffing Vendors; #3. Screening and Special Issues Concerning Independent Contractors; #4. Vendors and Workers that Come on Premises or to Homes to Provide Goods or Services; #5. Screening Home-Based Workers or Other Workers in Close Contact with Vulnerable Populations; #6. Volunteers that Need to be Screened and Issues Revolving around Fingerprints vs. Name Checks; #7. How to Check Non-employees? Fingerprints or Private Background Screening Firms?; #8. The Gig Economy where Technology Firms Provide a Platform for On Demand Workers and Screening is Critical

**19. Workplace Violence ..... 543**

Introduction; What is Workplace Violence?; Workplace Homicide Statistics; More Workplace Violence Statistics; DHS Offers Active Shooter Program to Help Stop Workplace Violence; ISC Guide to Planning and Response to an Active Shooter; Examples of Workplace Violence; What Workers are the Most Susceptible to Workplace Violence?; What Can Employers Do to Protect Employees from Workplace Violence?; The Economic Cost of Workplace Violence; What Causes Workplace Violence?; Defining the Circumstance; Three Severity Levels of Workplace Violence Behavior; Preventing Workplace Violence; Other Important Resources for Workplace Violence

**20. Additional Issues and Trends for Employers ..... 565**

Introduction; Employers Come in All Sizes; Frequently Asked Questions about Small Business; Special Challenges Faced by Small Businesses; Large Employer Issues; Special Problems with Entry Level, Hourly, Seasonal, Piecemeal or Temporary Contract Workforces; Special Issues with Millennials; Using Instant Online Databases for Quick Hiring Decisions; Special Issues When Hiring in a Labor Shortage; Special Issues with Safe Hiring and Job Boards; Special Issues with Safe Hiring and Recruiters; Electronic Signatures and Applicant Consents; Some Notable Background Check Trends; Top Ten Background Check Trends; Candidates Presenting Their Own Verified Credentials; Looking Toward the Future – Background Screening and the Creation of a Human Capital Database

**21. Dealing With Fraud, Embezzlement, and Integrity ..... 593**

Screening for Honesty and Morality; The Staggering Cost of Fraud; More Occupational Fraud Statistics; Ten Tools to Encourage Future Honesty; How to Avoid Hiring an Embezzler; Corporate Fraud and Sarbanes-Oxley; Psychological Testing for Honesty and Integrity

**22. Identity and Data and Privacy Protection ..... 613**

Introduction; Identity in America; Identification Criteria Used by Employers; Employer Tools to Avoid Fraudulent Identification in the Workplace; Identity Verification from the Social Security Administration; Privacy and the Social Security Number; Identity Verification Before or After the Hire; Employee Privacy Rights; Privacy and Data Protection in Background Check Screening Reports; FTC Report on Protecting Consumer Privacy Recommends Businesses Adopt Best Privacy Practices; Data Breaches Can Cost Businesses Millions; Government Background Check Data Breach Affects 21.5 Million People; Government Establishes NBIB to Modernize Background Checks

**23. Job Seeker Questions and Concerns about Background Checks ..... 637**

Introduction; A Job Seeker’s Guide to Background Checks; Data Brokers, Correcting and Updating Criminal Databases & What Consumers Should Do after a Court Expungement; Job Applicants and Credit Reports; Ten Critical Steps for Ex-Offenders to Get Back Into the Workforce; What Job Seekers Can Do about Identity Theft; What is Identity Theft?; Consumer Advice From the FTC; How to Protect Yourself and What to Do If You Are a Victim

**Addendum ..... 673**

144 Pages of Additional Material, Organized by Chapter Topic in an Easy to Find Format.

**Index ..... 817**

**Meet the Author ..... 825**