Employee Background Checks: Top Ten Trends for 2021

It is more important than ever that businesses understand best practices and trends for employee background checks when looking to expand or manage their workforces.

While the beginning of 2020 brought historically low unemployment rates, a healthy economy, and a strong workforce, the onset of the COVID-19 pandemic changed everything. Starting in the spring of 2020 and likely continuing through the duration of 2021, businesses face a weak economy and new challenges with managing and hiring a remote workforce.

Online HR resource site XpertHR surveyed 563 U.S. employers in September 2020 on the expected workplace challenges in 2021 and found that “recruiting and hiring sits at the top of the list, followed by workforce planning and workplace health and safety.”

Here are the ten top trends our analysts and market observers expect to drive employment screening best practices in the coming year. Many of these trends have been evolving over the past few years, while others have only emerged recently because of the COVID-19 pandemic.

1. Remote Employees and Hiring

The onset of COVID-19 changed everything for employers, especially since much of the workforce shifted to telecommuting during 2020, and this trend is likely to continue in 2021 and beyond.

When hiring remote workers, it’s more important than ever for companies to properly screen their employees since monitoring and managing remote workers can present unique challenges, especially in high security situations. Additionally, COVID-19 has created a need for companies to be able to hire employees virtually with little to no face-to-face interaction for interviews, paperwork, etc.

A study conducted by the American Staffing Association (ASA) suggests that the remote working and hiring trend will most likely continue since 70 percent of respondents, “find working remotely more desirable than at an onsite location compared with before the pandemic.”
2. “Ban the Box” Legislation Continues to Expand

Info Cubic’s analysis indicates that “Ban the Box” and Second Chance laws will continue to expand across more states and cities in the United States in 2021 and beyond.

The “Ban the Box” movement is growing quickly. As of early 2021, there is “Ban the Box” legislation in 17 states and territories as well as the District of Columbia, which provide varying restrictions on employers inquiring into a candidate’s criminal history. These laws remove the “checkbox” in a typical employment application that asks candidates about their criminal history, which helps applicants with criminal records move past initial hiring stages, or otherwise restrict employers from inquiring about criminal history at certain times throughout the application and interview process. Many ordinances still allow employers to consider convictions later in the process, particularly if criminal history has implications for the position.

Other employment laws have evolved and increased in complexity over the past several years. In December of 2019, the National Defense Authorization Act (NDAA) was signed into law by President Donald J. Trump, bringing the U.S. Government onto the Ban the Box scene. This act includes the Fair Chance Act, which prohibits the federal government and federal contractors from inquiring about the criminal history of job applicants until they have received a conditional offer of employment.

3. Achieving Pay Equity through Salary History Bans

There is an ongoing focus to achieve pay equity between men and women and among ethnic groups. Proponents of this mission feel that banning salary history inquires during the interviews and the employment screening process helps accomplish this goal.

 Achieving pay equity is a national trend that continues to expand, as more cities and states introduce pay equity legislation to lessen the gender pay gap. While legislation around pay equity decreased slightly in 2020, the goal of achieving salary equity remains front and center.

As of January 2021, many states have already enacted bans on requesting salary history as a criterion for hiring or promotion. There has been recent legislation passed with regard to pay equity and salary history passed in the states of Colorado, Maryland, New Jersey and New York as well as the cities of Cincinnati, Ohio and Toledo, Ohio.
4. Interest in ATS / Background Check Integrations Continue to Increase

Applicant Tracking System (ATS)/ background check integrations are changing the world of employee background checks. While these platforms have been around for years, more companies of all sizes are recognizing how using an ATS can improve the candidate experience and lead to better hires and better employee relationships.

Integrating your ATS platform is a great way to save money, streamline processes, increase transparency, and eliminate dual data entry. They can also lead to faster hiring processes, fewer phone calls and emails between decision-makers and candidates, and improved candidate experiences on mobile and desktop devices. When choosing employee background check services, look for a company that offers custom integrations with your existing solutions.

5. New Marijuana Laws

The November 2020 Election brought many new marijuana laws with recreational marijuana being the big winner.

In November 2020, recreational marijuana was legalized in four more states, including Arizona, Montana, New Jersey, and South Dakota. It was already permitted in AK, CA, CO, IL, MA, ME, MI, NV, OR, VT, and WA. As more states legalize marijuana, legal issues surrounding this will arise and legislation will continue to expand.

It is essential for companies conducting drug testing to thoroughly understand local and national laws. Creating a company policy that offers conditional employment pending a drug test is one way to ensure you hire responsible employees. Additionally, you should educate current employees about possible repercussions for recreational marijuana use. Drug free workplace policies, trainings, and informational posters can help deter marijuana use.
6. Screening Current Employees

While most employers screen job applicants before hiring them, many of them are getting onboard with screening them AFTER they become employees, too. While a good pre-employment screening process helps decrease the possibility of hiring unqualified, dishonest, or dangerous applicants, implementing a screening process for current employees further guards against risk to the company and the workplace. Ongoing criminal search screening and drug testing are two items companies may want to periodically review.

Many companies screen employees one time, as new hires, using pre-employment background checks; however, some organizations are now adopting ongoing criminal monitoring. With estimates that 12% of the workforce may experience an arrest over the next 5 years, this ongoing criminal monitoring approach offers employers more security and peace of mind. However, it may also make employees feel uneasy or that they can’t be trusted. HR employees must create a clear, well-crafted policy around continuous employee background checks then communicate the policy with honesty and transparency.

Other considerations include complying with EEOC regulations to ensure the screening program is not discriminatory, dealing with employee morale and culture issues, and obtaining consent from employees to be continuously screened. Continuous screening requires explicit employee consent. In some states, consent is needed for each screen, while others allow for an evergreen consent policy. It’s not clear if an employee can be terminated for a refusal to consent to continuous screening without some explicit employer policy, making the issue more complicated. For this reason, legal counsel should always be consulted before implementing any new screening program. Despite these issues, we expect that ongoing criminal monitoring will continue to expand.

7. Recruiting is a Top Concern

Due to the slow job market and low employee turnover during the COVID-19 pandemic, employers should expect to see a huge uptick in the number of job candidates in 2021.

Employers will need to search through many job applications, which means they need to have efficient hiring processes in place in order to find and secure the top candidates for their open positions. We recommend seeking out partners that offer applicant-friendly, efficient, mobile-friendly platforms to ease the hiring crunch.
8. Millennials Continue to Impact Background Check Evolution

 Millennials have taken over the workplace, and they’re having an impact on traditional workplace procedures—including background checks. Transparency is prized by millennials, so providing it during the employee background check process is important.

When working with potential employees, explain what will be performed in the screening process before it happens, and allow for questions and explanations if a negative piece of information arises when the background check is conducted. Additionally, millennials may not rely on credit cards as much as older generations. Looking at a credit report, as part of the job responsibility, may pose a challenge when screening millennials.

9. Social Media Screening Will Continue to Increase

Including social media as part of employee background checks is a hotly contested issue. A screen of an applicant’s social media accounts can be a useful screening tool. However, it can also create a host of potential liability issues if not processed according to the Fair Credit Reporting Act (FCRA) and Equal Employment Opportunity (EEOC) guidelines.

Social media screens can provide a wealth of information about an individual’s social habits. These screens can also provide misinformation that steers HR employees down the wrong path. In addition, some states have already passed legislation that prohibits employers from requiring potential or current employees to share their social media information. However, if the job applicant works in public relations, marketing, or social media, for example, an evaluation of his/her online presence and knowledge can be invaluable.

A candidate’s profile on LinkedIn provides professional recommendations and connections, as well work experience verification. While you should be very cautious when researching potential candidates on social media, researching their LinkedIn profiles is generally a safe bet, while exploring Facebook is probably not a great idea. To avoid making any mistakes with social media background checks, partner with a knowledgeable background check company.
10. “Gig” Workers on the Rise

During the pandemic, more workers have turned to “gig” or freelance work. As the number of gig workers increase, so does the potential liability to companies who employ them. In the past, employers haven’t bothered with the hassle of screening a gig employee, but that is changing. In 2021, we’ll see HR focus on gig economy screening as closely as they do regular employees. The “gig economy” has exploded over the past few years—most notably with transportation services such as Uber and Lyft. According to a report from Intuit, 7.6 million people will be part of the on demand gig this year, and that slice of the labor market will grow by 18.5 percent per year over the next five years. Bad publicity regarding the safety of consumers, however, has caused these companies to begin taking background checks more seriously.

According to Uber’s 2017-2018 U.S. Safety Report, 5,981 incidents of sexual assault were reported during Uber rides. Because many of the workers in the gig economy aren’t employed full-time, the companies they work for don’t always perform due diligence in terms of pre-employment or continuous criminal monitoring background checks.

Uber and its main competitor, Lyft, have taken steps to strengthen their background check processes. In September 2018, Uber implemented continuous criminal monitoring background screening on its U.S. drivers, meant to enhance the safety of consumers using their platform. In April 2019, Lyft announced that they also would begin continuous criminal monitoring on their drivers.

Some states have already strengthened background checks of gig economy workers. In August 2016, Massachusetts passed legislation to regulate drivers of “Transportation Network Companies” (TNCs) such as Lyft and Uber by requiring them to undergo a full state Criminal Offender Record Information (CORI) background check. However, many other states and companies are lagging behind in addressing these issues.

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