

Employers Should Be Wary of Cheap or Instant Online Criminal Background Checks

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Numerous internet sites have sprung up in recent years promising cheap or instant background checks that deliver criminal information on anyone. These sites utilize a so-called "National Criminal database" and vendors of such databases typically claim to have compiled millions of records from every state so users can know if someone is a criminal at the click of a button. These databases appear to offer employers an instant criminal check at a very low price.

Although a multi-state records database can be a powerful tool when used by a qualified employment screening firm as part of an overall background check, anyone who thinks they are getting a real criminal check can be in for a rude awakening when they discover that such searches are far from the real thing. Applicants with criminal records can easily be missed, and people without reportable records can be incorrectly identified as criminals, both results carrying negative financial and legal implications for employers.

Anyone using these databases, especially for employment purposes, needs to understand the limitations and legal exposure associated with using them. If they don't, employers may find themselves embroiled in litigation. Here are just some of the issues:

- Multi-jurisdictional database are NOT official FBI database searches. FBI records are only available to certain employers or industries where Congress or a state has granted access. Searches offered by web sites are drawn from government data that is commercially available or has been made public.
- So-called national criminal searches are a research tool only and are not a substitute for a hands-on search at the county level under any circumstances (or the functional equivalent of a county level search). The best use for these databases is to indicate additional places for a background firm to search in case a record is found in a jurisdiction that was not searched at the county court level.
- In addition, many states have very limited database information that is available to employers. Examples of states where such databases may have very limited value are California and New York. Texas is another state where database information can be wildly inaccurate.
- Databases in each state are compiled from a number of sources. There are a number of reasons that database information may not be accurate or complete. Because of the nature of databases, the appearance of a person's name on a database is not an indication the person is criminal any more than the absence of a name shows he/she is not a criminal. In other words, these databases can contain results that are a "false positive," or a "false negative." Any lack of a match is not the same as a person being "cleared."

- Another reason a database search can be inaccurate is the technical nature of how searches are performed. Searches are often based upon matching last name, the date of birth and the first three letters of the first name in order to eliminate computer matches that are not applicable. In some states, there is no or limited date of birth information which means a search of that state will have little or no value. Or, a person may have been arrested under a different first name.
- There are also significant legal complications for employers. Any search from an internet site for employment is subject to the federal Fair Credit Reporting Act (FCRA) an often times state laws, which highly regulates employment background checks. There are some instant "criminal sites" that do not bother to make that clear or mention it only in the "fine print."
- In addition, before relying on a database search for employment, FCRA Section 613 must be followed. That section requires that if a criminal matter is found that can adversely affect employment, then a letter should be sent to the applicant by the agency providing the information, which many web sites certainly do not do for employers. This option is not even allowed under California law. The other option is to reconfirm all "hits" at the county court level to insure that the information is accurate, complete and up to date at the time it is reported.

Also, keep in mind that a criminal record should not be used to automatically disqualify an applicant, without taking into account the Equal Employment Opportunity Commission (EEOC) rules as to what is a job-related criminal offense. Otherwise, an employer may find themselves facing allegations of discrimination. In addition, the use of criminal records for employment is also intensely regulated by many states, and without professional guidance, employers may use information that is impermissible, again exposing an employer.

The bottom-line: These do it yourself "criminal" searches are not always as advertised. Unless you are a professional, such a search can easily lead an employer astray or get them into legal hot water. Even for non-employers that want to check out someone, such as someone that wants to screen a potential "date," it is critical to understand that these sites are NOT the real thing when it comes to criminal checks, since in many instances the search can have holes in them the size of Texas.