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WHITE PAPER

# 6 KEY COMPLIANCE QUESTIONS TO ASK HR AND RECRUITING TEAMS



Senior HR leaders today are master tightrope walkers who balance the needs of the business with the competitive talent market and an organization's legal compliance requirements. Our roles within the company are truly unique. We are strategic business planners and risk appraisers focused on the people-side of the business.

Compliance, however, is always top of mind. Navigating through the maze of statutory and regulatory requirements has become increasingly complex and more difficult to manage. In order to maintain compliance and avoid costly litigation across all facets of recruiting and onboarding, there are several questions every HR and recruiting leader should consider.

In today's litigious environment, you cannot afford any gaps in your compliance and supporting policies. Below, we discuss six crucial compliance questions you should address with your talent management team in the area of employment screening and candidate onboarding.



## 1. ARE YOU FAMILIAR WITH YOUR GENERAL DATA PROTECTION REGULATION (GDPR) COMMITMENTS?

As of May 25, 2018, the EU General Data Protection Regulation (GDPR) is in effect, so the time to be proactive has passed. Companies must now focus on compliance with the regulation, particularly in HR and recruiting, which rely heavily on candidate data.

From the application process to background screening, companies recruiting or employing EU residents must adhere to strict regulations with regard to data. Under GDPR, you are required to ask for explicit consent, clarify how you will use individual candidates' data, and make sure that the data remains secure. This involves more than simply adding a clarification and a checkbox to data collection forms. Your vendors – such as your ATS, payroll, and recruiting software vendor – must also be GDPR compliant. Please seek your legal counsel for the latest best practices in your area.

## 2. IS YOUR ADVERSE ACTION PROCESS 100% BULLETPROOF AND AUDITABLE?

There is an often overlooked and easily avoidable risk for employers who use background screening reports. Increasingly, class action suits in federal courts cite failure to follow the prescribed adverse action notification procedures as outlined in the Fair Credit Reporting Act (FCRA) 15 U.S.C. § 1681b(b)(3) Conditions on use for adverse actions.

If the background screening report contains information that is potentially adverse to the candidate (i.e., information that may cause the employer to take an adverse action against the candidate), the FCRA requires that the employer must notify the candidate in accordance with 15 U.S.C. § 1681b(b)(3)(A) ("predecision notification"):

In general. Except as provided in subparagraph (B), in using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates:

- a. a copy of the report; and
- b. a description in writing of the rights of the consumer under this title, as prescribed by the FTC under section 609(c)(3).<sup>1</sup>

There are no fail-safe solutions to avoid litigation, but as an employer, you can take proactive steps to ensure compliance and mitigate risk. Part of the compliance problem may be that

the employees who are tasked with initiating the notices are uncertain as to when notices are required or what must be in those notices. The problem is further exacerbated by having insufficient tools with which to track the timing, delivery and receipt of such notices. Some employers are understandably cautious about outsourcing this function. The FCRA makes it absolutely clear that the employer is ultimately responsible for compliance in this area, but experts recommend this function is often best outsourced to the Consumer Reporting Agency (CRA) performing the background screening.

### **3. HAVE YOU CONFIRMED YOUR ADJUDICATION STANDARDS ACROSS YOUR GLOBAL SCREENING PROGRAM? IF SO, DO YOU HAVE ACCESS TO THE ADJUDICATED STANDARDS BEING USED BY THE VARIOUS REGIONS?**

The landscape within organizations that operate globally is in a constant state of change; therefore, frequent reviews of your screening scope and adjudication standards are necessary to ensure policies are consistent with regulations for the region and position, as well as align with your company values. Understanding how your standards impact candidate screening, employee transfers and internal promotions are critical to ensuring all policies provide clear, consistent and nondiscriminatory instruction to your staff.

### **4. HOW ARE YOU ENSURING YOUR INTERNATIONAL CANDIDATES ARE SCREENED TO THE SAME STANDARDS AS LOCAL APPLICANTS?**

In some countries, the document requirements and the types of information available may be different than in the U.S. and for this reason it is important to ensure that you engage with a service provider familiar with the local environment and the relevant legal requirements and restrictions. There is no reason why you cannot screen to similar standards as you apply to domestic candidates and with the same level of efficiency. In a world where candidates are increasingly mobile across borders and to protect the integrity of your global organization, international background checks are a must-have for all enterprises.

#### **What About the Employees of Your Overseas Subsidiaries?**

Outside the U.S., the type of information available and the type of checks which may be performed on new hires may be different. However, in most countries a background check is a standard and acceptable business practice. That

said, it is important to partner with an enterprise which has a comprehensive understanding of the document requirements, legal considerations, and best practices that exist in each country.

#### **Contractors and Temporary Workers**

It is also important to make sure that contractors and temporary employees do not fall below the radar. A contractor or temporary employee should be screened to the same standard as any new hire. A reputable employment screening partner can help you manage contractor and temporary screening programs for multinational enterprises.



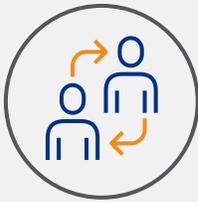
## 5. DOES YOUR YEARLY AUDIT ALLOW YOU TO EASILY IDENTIFY IN CONSISTENT BACKGROUND SCREENING STANDARDS ACROSS REGIONS?

Consistency and established processes and standards are important for HR teams and the business units they support. We live and work in a fast-paced world that is constantly changing and evolving, where a single change in a hiring process at one location can have litigious implications across the company. Ensuring that a hiring and recruiting audit is complete as part of your due diligence for each location

helps to ensure that your HR team maintains compliance and provides consistent processes and workflows throughout the company.

For example, if you are moving people to different locations, can you ensure that you have conducted the appropriate background screens based on those locations? What type of oversight do you have?

### You Should Easily Identify Inconsistencies and Trends:



#### Inconsistency

Total number of applicants that were processed compared to the number of applicants that were subject to a secondary adjudication process?



#### False Negatives

How many applicants that went through that shouldn't have?



#### Pass/Fail

Total number of applicants that were processed compared to the number of applicants that were subject to a secondary adjudication process?

## 6. DO YOU HAVE A PROGRAM TO IDENTIFY INSIDER THREAT CONCERNS?

With the growing insider threat to businesses as well as compliance requirements in regulated industries, employers must add "Know Your Candidate" programs to their existing "Know Your Client" (KYC) program to protect their company, employees and customers.

As identity theft capabilities expand, taking reasonable measures to reduce insider threat can decrease the risk of breach, as well as the risk of liability in the event of a breach. Today, companies are looking at biometric technology in the hiring process as a way to authenticate a candidate's identity and help combat insider threat before someone is hired.

Many companies offer some sort of identity authentication in the hiring process, but biometrics is still relatively new to the private sector. Companies like Cysive have gotten ahead

of the game and offer the Human Resource industry's first identity authentication solution. IDVerify is a state-of-the-art technology that forensically authenticates a candidate's identity by validating the authenticity of their government issued ID and compares it to a candidate's self-photograph taken on their mobile device.

### CONCLUSION

Compliance is the foundation of HR. With the average employment lawsuit costing employers \$160,000, according to a 2017 Hiscox report. Companies and HR teams who support them need to take a balanced yet proactive approach to their compliance efforts. The tightrope we walk is a defined one, however, with the right planning and processes in place, we can help anticipate and prepare for compliance challenges that lie ahead.



## ABOUT CISIVE

At Cisive, we are experts in the specific risks and regulations that apply to the financial services and other highly regulated industries. For many years, we have provided tailored solutions to meet the unique requirements of our enterprise clients.

Cisive's service model provides a single, integrated system throughout the globe using complete applicant information and country-specific forms. Cisive returns information to our clients through a centralized system for analysis, quality control, presentation, and billing.

With over 4 decades of experience and expertise in working with many of the world's largest financial services institutions, Cisive's deep insight into employment screening practices and industry knowhow, is unlike any other background screening provider in the industry.

Your business will not only get a background screening provider, but a lifelong partner – a company that stands by their work; protects their clients and provides the consultation and guidance world class act organizations are looking for.

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