

AUDIO CONFERENCE ON CONDUCTING EMPLOYEE BACKGROUND CHECKS IN THE EU: IS IT LEGAL? IS IT ADVISABLE?

February 25, 2010

CERTIFICATE OF ATTENDANCE

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Conducting Employee Background Checks in the EU: Is it Legal? Is it Advisable?

Thursday, February 25, 2010 2:00 - 3:30 p.m. GMT 3:00 - 4:30 p.m. CET

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Presenters



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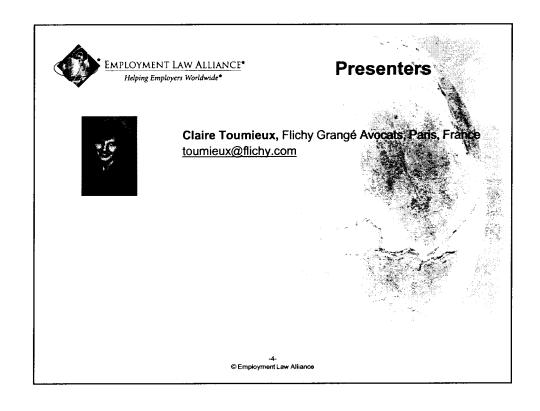
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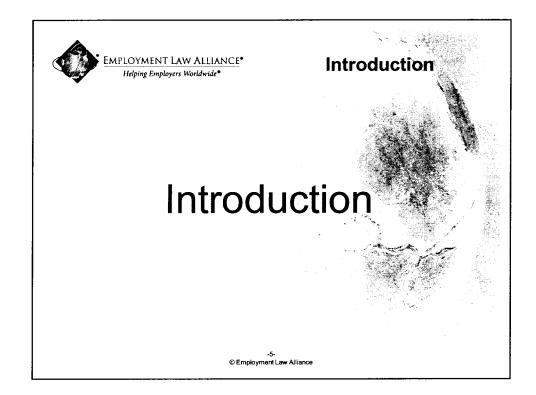


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The U.S. Experience

- Studies show that U.S. firms overwhelmingly perform background checks
- Screening is estimated to be a \$4 billion dollar industry
- UK screening firms are forming an EU branch of the National Association of Profession Background Screeners (NAPBS)

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Why Screening is Used in the U.S.

- · Mobile society
- · Incidents of workplace violence and resume fraud
- · Large negligent hiring verdicts
- · Headlines about child abuse
- Concerns over fraud and embezzlement
- Gut instinct" not a substitute for "trust, but verify"
- Reluctance of past employers to give detailed references
- Events of 9/11

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The Parade of Horribles

- Statistical certainty that a firm that does not do screening will hire someone with unsuitable criminal record or false credential
- · Workplace violence
- Negligent hiring/termination exposure
- · Time wasted in recruiting, hiring, training
- Fraudulent credentials
- Turnover costs 2 to 3 times their salary
- Brand destruction "just one bad apple"

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Basics of Screening in the U.S.

- S Sources of information are public records (e.g., criminal records), private records, and verification of credentials not viewed as an invasion of privacy or unusual
- C Consent in writing under U.S. Fair Credit Reporting Act (FCRA) and state laws
- R Rationale (screening encourages honesty, demonstrates due diligence, and helps in hiring based on facts and not just instinct)
- E Even-handed (similarly situated people treated similarly issue of discrimination against protected groups)
- **E** Effectiveness no single tool can be relied **upon but need** a series of overlapping tools
- N Not an FBI check or Big Brother watching, but a valuable due diligence employment tool

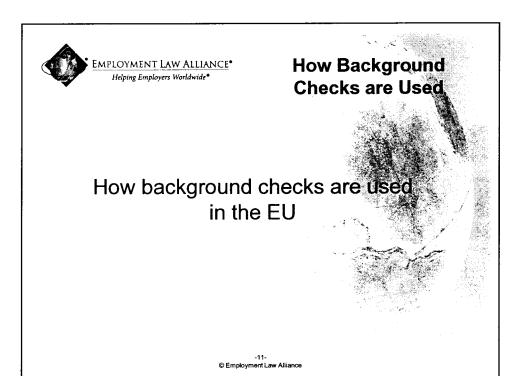
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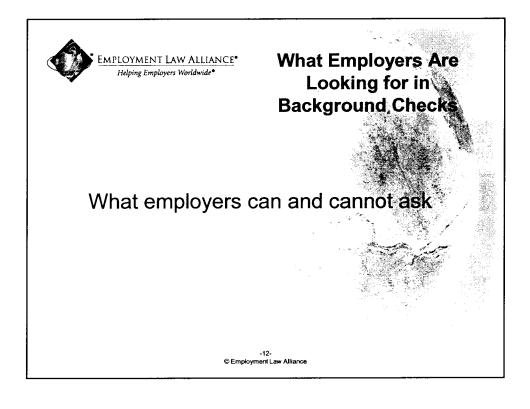


Scope of Screening

- Criminal searches based on where applicant has lived, worked, or studied
- Sexual offender records
- Driving records
- Past employment/education verification
- · Licenses and credentials
- · Various disbarment lists
- Credit reports
- Internet searches (Facebook, search engines, business connection sites, etc)

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Available Tools

What tools are used to conduct background checks:

- · Research on the internet
- · Interviews with potential candidates
- Request for information from former employers or government agencies

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Legal Framework

What is the legal framework for each tool?

- Law and regulations
- Written consent by employee
- Employment contract
- Relevance

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Data Protection Legislation

National and EU data protection legislation on background checks

- EU directive 95/46 EC
- National data protection legislation relevant for hiring or promoting employees

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Works Councils and Union Rights

Works councils' and union's rights on background checks

- Does employer have to inform works councils and unions about background. checks?
- Can works councils and unions object background checks?

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Damages and Remedies in the EU

- Damages and remedies to applicants and current employees
- Damages and remedies to third-party victims

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Bridging the Gap

Bridging the gap:

Screening for EU residents who are applying to work in the U.S.

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EU and USA

- U.S. screening governed by federal Fair Credit Reporting Act (and the laws in 50 states)
- Issue of U.S. employers seeking criminal records from EU when hiring either a U.S. or an EU citizen for work in the U.S.
- Confusion regarding what criminal records can be obtained from EU countries
- Safe Harbor mechanism for U.S. firms to satisfy EU Privacy Directive
- When U.S. firms open an office in EU, local laws apply

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Damages and Remedies in the U.S.

- Damages and remedies to applicants and current employees
- Damages and remedies to third-party victims

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Conclusion and Wrap-Up

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