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

February 25, 2010

CERTIFICATE OF ATTENDANCE

The undersigned certifies that _____ attended the **Conducting Employee Background Checks In The EU: Is It Legal? Is It Advisable?** Audio Conference sponsored by the Employment Law Alliance. The program consisted of 90 instructional minutes. The program contained no credit continuing legal education for legal ethics, elimination of bias in the legal profession or prevention, detection and treatment of substance abuse.



Susan Frederick

To be completed by Attorney after participation in the above-named activity.

By signing below, I certify that I participated in the activity described above and am entitled to claim the following CLE credit hours:

Total Hours



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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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Introduction

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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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How Background Checks are Used

How background checks are used
in the EU

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What Employers Are Looking for in Background Checks

What employers can and cannot ask

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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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