

# A Guide for Employers to Implement a Continuous Screening Program



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## INTRODUCTION

W. Barry Nixon created the term “infinity screening” in 2006 when the database technology for being able to conduct ongoing or reoccurring screening emerged. He saw the “handwriting on the wall,” that the die had been cast for significant change to occur in the background screening process, with organizations being able to better manage their risk throughout the employment tenure of employees.

Nixon’s book, *Background Screening Investigations: Managing Risk in Hiring Process from the Perspective of HR and Security*, co-authored with Kim Kerr, was the first book to identify infinity screening as an emerging practice in the background screening field and to dedicate a chapter to the subject.

Infinity screening has now morphed into the popular term “Continuous Screening.”

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### Is Continuous Screening the Future Norm in Background Screening?

Continuous screening initiatives are taking hold because employers are beginning to learn and understand that pre-hire detection of problem behavior is not enough to forestall or foretell future bad behavior that creates risk for an organization. Also, employers recognize that the single most important ingredient necessary to make a good hiring decision is to have high quality information. Continuous Screening provides hiring managers with valuable information that positions them to be able to make the best possible decisions about employment actions that could mitigate risk to the entire enterprise.

As important as information gained from a continuous screening program is to mitigating risk, it is essential to understand that truly preventing insider threats and other harms requires a number of overlapping approaches. Les Rosen, CEO of ESR Check, a leading background screening firm, says it very well in his book, *The Safe Hiring Manual*.

“The identification and prevention of insider threats requires an inter-disciplinary approach that can include

mental health assessments, psychological testing, physical security, internal controls, continuous evaluation of personnel, supervisor and co-worker training to recognize danger signals, identification of risk factors, sharing and analyzing information between responsible parties, and a culture of safety, reporting, and integrity. Most critically, an organization needs to have a commitment to prevent these threats, and a leadership team and professionals who are able to formulate and implement an overall strategy.”

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At the core of risk and threats to businesses are the people they employ. Some of these risks and threats include:

- Workplace violence
- Property theft
- Embezzlement
- Identify & Intellectual theft
- Fraud
- Industrial espionage
- Data breaches
- Reputation damage
- Cost of litigation

### DEFINITIONS

Continuous screening (a.k.a. Infinity screening, post-hire screening, post-employment screening) is the

process of conducting background checks, including monitoring records on current employees, on a periodic or ongoing basis to stay informed about life changes and events that could create increased risk for your organization.

Rescreening (a.k.a. rechecking, reoccurring screening) is the process of conducting background checks on current employees at specified intervals. For example, checking driving records every six months or verifying certifications and credentials annually.

Continuous monitoring is the process of conducting ongoing checking of records to have an almost real-time notification of arrest, updates to criminal records and driving records.

These terms—infinity screening, continuous screening, continuous monitoring, reoccurring screening, rescreening, rechecking, post-hire screening/post-employment screening—are often used interchangeably; however, this is not correct. In reality, continuous screening, rescreening, and continuous monitoring have different meanings.

A Continuous Screening Program includes rescreening and continuous monitoring, both of which are tools used as part of implementing an overall program.

### **Rescreening is Not New**

Rescreening, or rechecking, has been around for a very long time in many industries. For example, medical and health care organizations have strict requirements to verify that doctors, nurses, and technicians maintain the appropriate credentials, licenses, and certifications. Likewise, commercial transportation organizations are required by law to periodically check motor vehicle records, conduct a health assessment, or even a drug screen, to identify problematic behaviors.

In recent times this process has spread to many non-regulated industries as well. For example, many organizations run post-hire credit checks on financial staff, or those with high dollar signature authority for expenditures, to monitor if the employee has fallen into financially challenging situations. Financial difficulties are one of the warning signs that an employee may be susceptible to financial wrongdoing due to their personal financial situation.

Also, many organizations that have employees drive a vehicle as part of their job conduct periodic motor vehicle record checks to ensure the employee's driving record remains clean.

Other areas where rechecking may be prudent include verification of educational credentials, certifications, and degrees that employees obtain after they were

hired. This is particularly important with the proliferation of fake degrees openly available in the marketplace.

*“Continuous monitoring makes extensive use of databases, it is important to remember that when a negative hit is identified in an alert, the information should be verified in a search of courthouse records to ensure maximum accuracy.”*

### **Continuous Monitoring**

Along with understanding the reality of the risk and threats associated with hiring people, the technology that enables real-time continuous monitoring has continued to progress as well. With the advances in database technologies and the advent of cloud computing, the capabilities have leaped forward.

Rather than scanning one time, or on a regular schedule of intervals (such as every few years), organizations now have the power to continuously evaluate potential risk post-hire as life events and identity data evolve. Using personnel risk assessment technology in a continuous screening model, sophisticated analytics can be unleashed to assess risk factors in real-time and proactively alert managers to potential issues before they escalate. A shift to continuous post-hire



monitoring for the latest actionable information is now possible. A word to the wise: keep your eyes on evolving state laws that may emerge as a result of the introduction of continuous monitoring.

In addition, since continuous monitoring makes extensive use of databases, it is important to remember that when a negative hit is identified in an alert, the information should be verified in a search of courthouse records to ensure maximum accuracy.

### **Case Example #1**

The Acme XYZ company (Note: the name of the actual firm in the case has been changed) used a software program to continuously check public records for everything from DUIs to bankruptcies, and alert officials when something happens to an employee that creates a potential risk. A company official shared, “If you go out and get a ticket for jaywalking, we don’t care, [however,] if you’re working in financial markets we may want to know about civil actions that could indicate someone is in financial trouble and more likely to do something wrong.”

Before this same company began using the continuous monitoring software, they performed an initial background check when a person was hired and followed up with checks every three years afterward. By monitoring public records across the country, they are now alerted when a worker is arrested for an offense that would trigger concern for the employer, saving time and money by not having to conduct screens on workers who have no change in their status. “We re-screen only those who indicate to us through alerts that we need to look deeper,” he said. “The alerts find needles in haystacks for us.”

Alerts ordered by Acme XYZ helped identify three workers who had died, uncovered a first-degree murder conviction for one worker, and exonerated another worker whose brother had stolen his identity and was arrested.

Before the firm began checking public records, they wouldn’t have screened any of those people until they came back up on their periodic check. This case further illustrates the impact of using a continuous screening model on the ability to make proactive, informed decisions.

The Acme XYZ company identified the following risks

they were concerned about, wanting to find ways to mitigate these issues:

1. Acme is bound to background screening standards that are based on the Department of Homeland Security (DHS) and Transportation Administration (TSA) lists of Disqualifying Criminal Offenses; in addition to the Fair Credit Reporting Act and the guidelines set by the Equal Employment Opportunity Commission (EEOC).
2. Acme is required to conduct pre-screening and rescreening upon every three-year anniversary of more than 30,000 employees.
3. Acme is concerned that their current background screening requirements, as well as the process, do not provide consistent, timely, and accurate risk assessments per employee. Significant changes may occur during a three-year period which may impact the risk profile and ultimately impact employment eligibility. More frequent traditional background checks are cost prohibitive.
4. Acme has a policy requiring employees to self-report violations of their policies or significant life

events; however, based on analysis of policy results the reporting policy is deemed ineffective.

The company implemented a trial of a “continuous monitoring service” that conducted continuous screening of their workforce and the outcomes produced are listed below:

“During the initial three-month period that the company used the continuous monitoring service, more than 800 items of interest and events were identified, of which there were 24 actionable alerts that had the potential to disqualify the

noted persons from continued employment in a sensitive position.”

The following is a list of the actionable alerts received during the initial three months which were deemed disqualifying upon actual investigation:

- **Bookings/ Arrest**

(It is essential for employers to understand that each alert should be followed up on with a search

*“During the initial three-month period that the company used the continuous monitoring service, more than 800 items of interest and events were identified, of which there were 24 actionable alerts that had the potential to disqualify the noted persons from continued employment in a sensitive position.”*

of the original reporting jurisdiction to confirm that they have the current and complete information to be able to make an informed and FCRA-compliant decision on next steps; it should also be noted that employers can take action 'pre-conviction' by determining the facts behind a charge. This can be done by learning from the employee, police, or the District Attorney.)

- (1) Criminal possession, with intent to sell 10 lbs. marijuana
- (3) Unnamed offenses
- (1) Drug related, intent to sell

#### **Criminal-State**

- (1) Criminal possession of stolen property
- (1) Criminal possession of controlled substance
- (1) Criminal possession of a weapon
- (1) Robbery 2nd degree
- (1) Assault 1st degree
- (1) Injury/risk of injury to minor – sexual nature
- (1) Felony possession of controlled substance
- (2) Receiving stolen property(1) Endangered welfare of a child; photo sexual act
- (1) Unnamed offense

- **Recorded Death**

- (3) Death

- **Sanctions**

- (4) Prohibition from working on state government contracts

- **Sex Offender**

- (1) Multiple sexual offenses

The level of risk associated with the “actionable alerts” clearly depends on the nature of the work and sensitivity of job that is being performed; however, having the information positions the employer to be able make an informed decision as opposed to getting blindsided by negative information.

#### **Case Example #2**

The following case study examines an actual crisis faced by a healthcare employer.

ABC Health System is one of the largest healthcare employers in its state. In the spring of 2015, law enforcement agents descended upon one of its hospitals and arrested an employee.<sup>1</sup> It was a chaotic scene with employees, patients, hospital officials, and visitors looking on with great concern. Much to their shock, the hospital’s leaders were informed that this employee had been charged with a similar crime the previous year and was currently on probation. The hospital had

no knowledge of the employee’s criminal history; after all, he had passed the initial background check when he was hired three years earlier.

The employee’s arrest and details of the recent crime for which he was serving probation were covered extensively in the evening news. The reporter and the community at large wondered, “How could this hospital not know that its own employee was convicted of a crime while working for them?”

The health system felt completely vulnerable. But they now faced a much more important question: How could they prevent a similar incident from occurring in the future?



*“The level of risk associated with the “actionable alerts” clearly depends on the nature of the work and sensitivity of job that is being performed”*

The first annual criminal history rechecks conducted on the health system’s employees in 2016 yielded a considerable number of criminal records. Some of the convictions were over 20 years old, while others had occurred within the previous month.


The rechecks for ABC Health System uncovered the following types of crimes, including but not limited to:

- Felony Possession of Child Pornography
- Felony Drug Possession
- Felony Theft
- Felony Organized Crime
- Misdemeanor Assault Resulting in Serious Bodily Injury
- Misdemeanor Terroristic Threat

These examples illustrate the true value of using a continuous monitoring model and shows how real-time alerts can provide actionable information. Armed with this level of specific information, management is positioned to make decisions on how to best reduce or mitigate the risk when derogatory information is discovered about an employee.

It should be noted that it is important that firms using continuous screening must understand that identifying derogatory information about an employee does not mean automatic termination; instead, it should simply be grounds for an investigation to ensue. This is where an individual assessment is very important and all the relevant information needs to be examined, starting with is there a nexus between the negative information and the nature of the work being performed.

For example, if an alert identifies that an employee has been convicted of embezzlement and their job is a bank teller, there is a clear nexus between the two facts. In that case, finding the employee another



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position or termination might be in order. Whereas, an employee who works on a manufacturing production line who has been convicted for possession of child pornography would be a steeper hill to climb in showing a nexus between the two—despite how much disdain you might have for the wrongdoing. The point that I cannot over-emphasize is that each case must be handled based on the unique circumstance and variables that are relevant to the situation; and above all, avoid blanket arbitrary policies. In addition, before

making a decision, be sure to consult with a well-qualified employment attorney.

Earlier, we mentioned that a Continuous Screening Program and continuous monitoring are not synonymous. Continuous monitoring is an essential tool that enables a Continuous Screening Program; however, the over process involves several tools, policies, and processes to successfully implement.

For this reason, it is strongly recommended to get the appropriate resources in your organization involved before you take any actions to implement any post-employment screening process. This typically will involve Human Resources, Legal, Security functions as well as Operations management personnel. Understanding the nuances that may be involved and managing possible adverse action situations will be critical to the success of the program. It also important to realize that there is a significant difference when dealing with employee situations from your pre-employment screening process, which deals with external applicants.

## **Important Considerations in Implementing a Continuous Screening Program**

### **Mandatory Reporting of Arrest Policy**

We strongly recommend organizations consider implementing a mandatory ‘disclosure and reporting’ of arrest policy that requires employees to report arrests and convictions to the organization. The policy should specify the timeframe by which an employee that is arrested must report the arrest to the organization. The policy should also state that failure to report an arrest within the specified time period will subject an employee to disciplinary action up to and including termination. In addition, you should state that reporting an arrest or conviction will not automatically result in termination, but instead will trigger an investigation assessment of the situation and relevant facts.

The importance of having this type of policy in place is that it positions the organization to be able to take adverse action against an employee who violates their policy, instead of having to involve your post-employment screening process.

### **A Comprehensive Background Screening Policy**

It is very important to set the overall framework for your pre-employment and post-employment screening process with a comprehensive policy that provides clear guidance to supervisory staff and employees.

The policy should at minimum address the following items:

### **Notification and Introduction of Policy(s)**

Proper notice consistent with your procedure for introducing new policies in your organization should be adhered to, with the intent to inform employees of your intention to implement a Continuous Screening Program. Transparent communication and notice that a continuous background screening process will be implemented are important to set the stage for the program's implementation. You should educate and inform employees about why the program is being implemented and how it will be rolled out. The better the communication and education job you do on the front end, the more you will reduce misunderstandings, demystify the program, and help with a smoother implementation.

In addition, this is a good time to review documents, forms, and procedures to make sure they are current with appropriate laws and legal decisions.

### **Identify Sensitive Jobs**

One of the important areas that the policy should address is to classify jobs on the basis of their 'sensitivity' or the risk factor that is associated with a specific job. In this context, risk refers to the risk of an incumbent to cause harm to your organization. Examples of possible harm may include fraud, embezzlement, theft of confidential information or property, reputational damage, etc. For example, a Chief Financial Officer who has signature authority for up to \$100,000 has a greater risk factor than a receptionist who cannot approve any expenditures. The greater the risk, the higher the sensitivity of the job, and therefore, the greater the precautions the employer should take (such as regularly checking the CFO's credit and criminal record). Unfortunately, "very few employers tailor the back-

ground information they collect to the requirements of the job," says Lewis Maltby, president of the nonprofit National Workright Institute.

***"An 'employee monitoring' policy is important because much of the information that will be reported from continuous monitoring will deal with external alleged criminal activities which did not occur on your premises or while the employee was working."***

Job descriptions should identify the sensitivity level of each job category and indicate the level of background scrutiny that is appropriate to match the level of risk. Jobs that are selected for continuous monitoring should be identified.

### **Contingency Workforce: Outsourced staff, temporary employees, and sub-contractors**

Aside from permanent employees, companies need to be especially aware of their contingency workforce and all personnel who come onto their company's premises or have access to sensitive information. As part of service contracts, companies should insist on ongoing screening as part of service level agreements. These individuals pose as much risk as any permanent staff member, and very often are even more of a potential threat with unrestricted access to all areas and after-hours servicing. For example, consider the unsupervised access that night cleaning crews have to your facilities.

### **Discrimination**

EEOC guidelines discourage employers from automatically disqualifying an individual with a past criminal record from consideration without a legitimate business reason for doing so. The Guidance also severely restricts the use of arrest records.

The policy should incorporate the EEOC's Use of Criminal and Arrest Records Enforcement Guidance published in April 2012. The Commission advises employers to consider the age of the offense, the nature and gravity of the offense, and importantly, how the offense relates to the employee's position and responsibilities (these are known as the "Green factors").



Whether an offense is discovered at time of hire or during a recheck or monitoring, the “Green factors” should be considered.

Additionally, the EEOC guidance states that if the employer is considering taking action based on the offense, an individualized assessment should be

***“Employers should work with their attorney to craft an appropriate and legal ‘disclosure and consent’ form”***

conducted which allows the employee the opportunity to provide any relevant information to be considered before a final decision is made.

Based on the level of risk identified for a job, all job descriptions should identify the type of background checks that should be implemented when hiring for the position. This will ensure that hiring decisions appropriately map to the pre-identified risk for the job, which can be applied objectively to hiring decisions. Job descriptions should be written to have a caveat that allows for an individual assessment to be requested and considered.

**Employee Privacy and Monitoring**

It is likely that you already have policies that address the issues of employee ‘expectancy of privacy’ and employee monitoring; however, if you do not have these types of policies, it is essential to address these issues prior to implementing a Continuous Screening Program.

An ‘expectancy of privacy’ policy is important because information reported from continuous monitoring may lead you to conduct an internal investigation. For example, you receive an alert from continuous monitoring that an employee has been arrested on child pornography charges and you decide to investigate the employee’s use of the electronic devices provided to him by the organization to see if there was any improper usage. You discover that the employee has been viewing child pornography on the smart phone you provided to him and, when confronted with this information, the employee says you have violated his right to privacy by searching through his phone.

An ‘employee monitoring’ policy is important because much of the information that will be reported from

continuous monitoring will deal with external alleged criminal activities which did not occur on your premises or while the employee was working. You need to have a policy that articulates the organization’s right to act on non-work and/or external activities that may have a negative impact on the company. For example, you have an employee who delivers food to people’s homes and you receive an alert that the employee has been convicted of sexual assault and battery charges; however, due to a plea bargain he is given probation instead of jail time. You decide to terminate the employee and he claims his activities were outside of work and had no connection to the organization. You want to be on sound footing that even though the activities were not work related, a reasonable individual would find that they have a direct nexus to the type of work the employee performs and his behavior creates an unacceptable risk for the company.

**Employee Consent**

Employers must ensure that all background checks are done with written consent.

We recommend a separate and distinct ‘disclosure and consent’ form be signed by each employee during employee orientation. This is important because at this point the person has changed status from being an applicant to becoming an employee, which confers different rights and responsibilities on both the employee and the employer.

Employers should work with their attorney to craft an appropriate and legal ‘disclosure and consent’ form. We recommend the form include language that gives the employer permission to run background checks at any time throughout the employees’ employment where permitted by law. Some employers choose to add in an additional layer of precaution and also have employees sign a ‘disclosure and consent’ form at the time of a promotion, job transfer, or significant change in job duties that moves the employee into a more sensitive and higher risk level. This should be done in accordance with state law.





In addition, keep in mind that if you switch your background screening provider, make sure you are obtaining an updated consent form, since it may have specified the authorization to your previous provider.

Also, discuss with your attorney whether a new 'disclosure and consent' form should be obtained since the old document may not have been updated to reflect new laws or legal decisions.

Ensuring that employees are given proper notice and written consent are a very important part of positioning your firm to be able to act at a later date, should something go awry.

### **Pre-adverse and Adverse Action**

In accordance with the Fair Credit Report Act (FCRA), employees must be given proper notice, the right to challenge incorrect information, and a reasonable time period to provide correct information. This is commonly referred to as the pre-adverse and adverse action process.

Since Continuous Screening deals with current employees, employers can personally give an employee the pre-adverse letter or adverse action report while at work, to have them read it and advise them if there are any issues or inaccuracies the person disagrees with.

You should know that adverse action includes lack of promotion, raise, being suspended, etc. It also can include leaving the person in place and giving someone else the job if they would have gotten a different title, pay, schedule, etc. or anything they consider adverse. Check with your attorney to sure you are clear about adverse actions.

### **Security and Privacy of Background Report**

Access to information should be tightly controlled for viewing on a 'need to know basis.' Continuous monitoring may reveal sensitive information about an employee and even if it does not rise to the level of requiring adverse action, knowledge of the information could 'taint' views of current or future hiring managers. It's best to shield current and hiring managers from details in monitoring reports and to only advise them that an employee is clear to hire or that additional information is needed.

*“. . . a component of your program should be to identify a way to shield hiring managers from seeing sensitive information due to the confidential and sensitive nature of the information that may be revealed”*

### **What to Do When Derogatory Information is Reported**

At this point, the benefits of conducting ongoing monitoring of employees is likely abundantly clear; even so, it is critical that considerable forethought and planning go into the implementation of your Continuous Screening program. One of the most challenging issues related to Continuous Screening is

determining when to act on the information that is discovered and what is an appropriate action to take.

As stated above, a component of your program should be to identify a way to shield hiring managers from seeing sensitive information due to the confidential and sensitive nature of the information that may be revealed, and the requirement for consistent decision-making,

One option is to put in place a Background Screening Review Committee. Typically, the committee will be composed of a Human Resource Manager, Security Manager, and Legal Counsel. They will have the responsibility to oversee decision-making regarding 'adverse actions' based on learning about derogatory information about an employee. The intent of this committee is to provide an objective body to review the totality of the circumstances surrounding a situation and to apply a consistent framework to how decisions are made. The committee should have an odd number of members so there is a clear majority when they vote on a decision.

You must also decide on the process to be used to determine how results of a derogatory alert will be treated and make sure that the decision-making is well documented.



You must anticipate different scenarios and outcomes and pre-determine criteria that will guide you in deciding what the organization is prepared to do if it receives derogatory information.

One necessary requirement to consider is the 'Criminal and Arrest Enforcement Guidance' issued by the EEOC which advises employers to consider the age of the offense, the nature and gravity of the offense, and importantly, how the offense relates to the employee's position and responsibilities. The EEOC also advises that if the employer is considering taking action based on the offense, an individualized assessment should be conducted which allows the employee the opportunity to provide any relevant information to be considered before a final decision is made.

Other criteria to consider are any applicable state laws that may govern the background screening process, as well as the following:

- Identification of any policies that have been violated
- Tenure of the employee
- Any applicable collective bargaining or individual employment agreements
- Threshold considerations (what amount of theft or embezzlement occurred, e.g., is \$3 missing from the petty cash funds, or was \$50,000 embezzled?)
- Preponderance of evidence supporting that the person was involved in committing an alleged offense (this is particularly true in cases where an employee has been arrested, but not convicted of a crime; make sure you comply with state law)

As a pre-implementation exercise, we suggest that you identify several possible scenarios of derogatory information that could appear about an employee and then confer with your attorney regarding appropriate actions that should be considered for each scenario. Please note that the intent of this exercise is not to pre-determine the decisions that should be made, but to initiate the dialogue about the appropriate actions before a situation occurs, so you can have the discussion regarding pros and cons of a given action when nothing is at stake. This also serves as training and preparation before one of your scenarios actually happens.

It's doubtful that you will be able to anticipate every possible scenario; however, considering these plans in advance will help you to be prepared for many of the situations that may arise.

A practical reality of implementing a Continuous Screening Program is that the highest number of

derogatory hits are likely to be reported at the early stages of implementation. Management should be prepared for this initial groundswell so appropriate attention will be paid to carefully evaluating, adjudicating, and documenting these situations. Management should consider implementing a policy requiring employees to self-report negative information. If a conviction, bankruptcy, etc. is reported by an employee, a decision may be made whether to discharge the employee prior to running a background report.

While effective and detailed documentation is always important in personnel actions, it is absolutely critical in the early stages of implementing the program to be able to provide precedent guidance for the future. It's also important to document the nuances and circumstances of the situation that contributed to the decision-making process.

### **Summary Remarks**

Continuous screening takes your overall background screening program to another level and turns it into a real-time, information-gathering, threat-management and risk-mitigation tool.

The good news is that new screening tools are coming available that will help businesses to be informed about their employees as it relates to professional licenses, certifications, driving records, criminal convictions, immigration status, etc. Having this information will help you to make better decisions that will help to mitigate the risk associated with many employment decisions including promotions, transfers, etc. and whether employees continue to qualify for the position they hold. It will also be an important weapon in businesses' arsenals to help prevent potential negligent retention lawsuits.

The challenge is for businesses to be aware that implementing a Continuous Screening Program (a Continuous Post-Hire Employee Screening process) must be given a considerable amount of forethought to address the trail of legal requirements, human resource, labor, and employee relations issues. In addition, organizations must carefully consider a myriad of other issues to ensure not only consistent employee practices, but also that decisions are made that are congruent with the firm's culture and human resource philosophy. To ignore this reality will only lead to future employee and/or labor relations issues that could have been avoided with forethought and planning.

Continuous Screening helps to manage risk because having current information on employees' records

positions you to make proactive decisions—versus being caught off guard in a reactionary mode. In other words, post-employment screening allows employers to keep ahead, quantify their risk, know where and

***“Post-employment screening allows employers to keep ahead, quantify their risk, know where and whom their risk lies, and most importantly, it helps with the management of risk.”***

in whom their risk lies, and most importantly, it helps with the management of risk. For example, if you have a driver who delivers products to your clients and through a continuous screening process you find out he has been convicted of driving while intoxicated, you can make a decision regarding continuing to allow that

person to deliver your product. Without this information being brought to your attention, you could have faced a situation where the driver has an accident while making a delivery and seriously injures someone. You then find out he is driving on a suspended license and has been convicted of a DUI. This is not a pretty picture or a situation that will make you or your attorney happy, since it is likely to lead to the company getting sued for negligent retention and writing a big check.

Continuous Screening is an idea whose time has come. Businesses should embrace this opportunity to further manage their risk by being able to identify potential problems in a proactive manner. In addition, having current information on employee records positions a business to be able to make decisions not only to reduce risk, but also to ultimately create a safer workplace. While it is a well-known premise that “knowledge is power,” in this case we know that having the right information at the right time can empower businesses to better manage all of their assets to improve overall business performance.

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#### **About the Author**

W. Barry Nixon is the COO of PreemploymentDirectory.com, the leading background screening information portal and online worldwide directory of professional background screening firms and suppliers to the background screening industry. He co-authored the landmark book, Background Screening & Investigations: Managing Hiring Risk from the HR and Security Perspectives. He also is the publisher of award-winning newsletters,

The Background Buzz and The Global Background Screener, and the author of the “Backgrounder” column in PI Magazine.

In addition, Barry is a past recipient of the elite ‘Most Influential People in Security’ awarded by Security Magazine, and past Co-Chair of the International Committee for the Professional Background Screening Association (PBSA). He also served as a Global Ambassador for PBSA for many years.

He is sought after by investors and others interested in knowing about the background screening industry, and is a recognized expert on continuous screening.

Have questions about or Need help implementing your Continuous Screening Program? We can help!

Our Infinity Screening Consulting Service was created to help employers to better manage their risk by implementing a continuous screening program that will identify derogatory employee information during their tenure with the firm. Implementing a post-hire screening program is not as simple as just implementing a continuous monitoring software program. To be successful it requires careful planning by employers to address a myriad of significant potential employee relations, policy, legal and cultural issues.

We can guide you through the process.

Contact Barry at 1-949-770-5264 or online at [Barry@InfinityScreening.com](mailto:Barry@InfinityScreening.com).

## ADDENDUM

### Frequent Comments and Questions from Employers

#### 1. **Why should I conduct post-hire screening if I am not required to do this by law?**

Whether or not an organization is required by law to conduct continuous screening and monitoring begs the question, it is important for you to identify and mitigate risk to position your management to make informed decisions about risk the organization may face? We believe this is important for all organizations, regardless of the legal requirements.

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#### 2. **If we conduct continuous screening and monitoring, we may discover information we don't want to know about. It may be better to not know.**

It is true that if you implement a continuous screening and monitoring program you will likely discover information you did not know, which we believe may position you to proactively use that information to make informed decision to better manage your risk. To ignore the risk will make you more susceptible to threats that your organization may already face. Furthermore, it is important to understand that not 'knowing about' your risks will not prevent them from happening.

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#### 3. **We don't want to overstep our boundaries by prying into employees' personal lives.**

Implementing a continuous screening and monitoring does require cultural sensitivities. It has been our experience that educating employees about threats and risk the organization faces, and encouraging them to help reduce the risk, is generally viewed by employees as keeping them safer at work and unexposed to the risk the organization faces. Employees have a self-interest in the organization, reducing its risk profile.

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#### 4. **If an employee has been working here for a long time and has a clean record, why should we care about what happened in the past?**

This is a very valid point, and your implementation of a continuous screening and monitoring program should definitely take employee tenure and past record into consideration should derogatory information become available about an employee's behavior. Alerts provide real-time information that happened today, or even hours ago. It is not about what happen in the past, but about what is happening now.

At this point, you should consider the totality of the circumstances involved in the situation and—based on your organization's policies, culture, risk tolerance, and consideration of the 'Green Factors'—make a decision that is in the organization's best interest.

It is important to avoid automatic levers that trigger a fixed decision and to invest sufficient time in understanding the full situation before determining the appropriate action to take.

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#### 5. **Our business model accepts that we will have high turnover, so why should we spend money on post-hire screening?**

We respect your business model; however, it is important to realize that continuous screening and monitoring is a risk management tool focused on mitigating threats to the organization, and whether employees are short or long term does not change the nature of the risk or diminish it. Remember that the nature of some threats to your organization are fraud, product and identity theft, embezzlement, workplace violence, etc. which can be perpetrated by a short-term, contingency, or long-term employee.

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#### 6. **Isn't post-hire screening a clean-up for not having done an effective job at pre-employment screening?**

In some cases this may be true; however, in general, implementing a post-employment screening program is not about 'catching what may have been missed' during the pre-employment screening process. Post-hire employment screening is focused on identifying an employee's problematic behavior that occurs during their employment with your organization. Employees' circumstances may change as time passes, and continuous screening and monitoring is focused on identifying problem behaviors that are of concern to the organization which may increase their risk. Another way of saying it is that pre-employment screening looks at an applicant's past behavior prior to joining the organization and post-employment screening looks at their behavior while they are an employee with the organization.

**7. We already conduct rechecks. Does Continuous Monitoring replace this?**

Rescreening or rechecking is when an organization periodically schedules background checks on current employees. This may involve motor vehicle records, educational credentials, licenses, certifications and degrees, credit checks, or other types of background checks. Since these occur at scheduled intervals (quarterly, annually, etc.) they are snapshots of the record being verified at that time.

Continuous monitoring applies to records related to alleged and actual criminal activity. It can also be scheduled for specific intervals or can be obtained on a real-time basis.

We believe that based on the nature of the work being performed and the industry, both rechecking and continuous monitoring are important tools to maintain an up-to-date view of employee records and behavior.

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**8. We can't afford to conduct post-hire screening on all our employees. The expense will be prohibitive.**

It is true that continuous screening and monitoring is not free; however, an effective implementation will focus on identifying the positions that have the most risk associated with them (sensitive jobs) and monitoring employees in these positions. Also, continuous monitoring technology has the capability to alert you to derogatory behavior so that you can then focus on the individual in question.

The other part of this answer is that you must weigh the potential cost of the threat actually occurring versus the cost of potentially mitigating the threat, and then make an informed decision based on your organization's tolerance for risk.

An analogy that drives this point home is 'Quality Improvement.' It is often stated that a well-orchestrated quality program is free, a.k.a. the saying 'Quality is Free.' The truth is that it costs money, time, and resources to implement a quality program; however, the benefit that accrues from the program widely exceeds the implementation cost—thus, the notion that the program is free.

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**9. We are likely to open 'Pandora's Box' if we start doing post-hire screenings. How are we going to decide what issues we need to deal with?**

Depending on the number of employees your organization has at the onset of implementing a continuous screening and monitoring program, you will likely see a larger percentage of negative hits alerting you to derogatory issues on employees. Once the program has become mainstream, it will likely settle into a steady state much lower than the numbers that show up in the beginning.

Keep in mind that the purpose of a continuous screening and monitoring program is to help you identify risk so that you can make informed decisions about employees to mitigate potential risk. Decisions regarding how to deal with the identified behavior should be based on your having developed a written background screening policy that addresses the criteria to be used and how to make decisions regarding various behavior.

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**10. We are trying to build a positive employee culture that is built on trusting our employees and this type of program will not fit in with this focus.**

While determining cultural fit is an important aspect of implementing any policy or program, this does not negate that your organization faces many risks that can be generated by employees. The challenge is to find a way to implement programmatic efforts in a manner that is consistent with your organization's culture. Also, implement employee education about the nature of the risk that the organization faces and how a continuous screening and monitoring program will contribute to not just mitigating risk for the organization, but also avoiding potential negative consequences for employees.

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**11. What is the difference between pre-employment and post-hire background checks? If I already have the information, why do I need to check again?**

Post-hire employment screening is focused on identifying an employee's problematic behavior that occurs during their employment with your organization. There are two types of post-hire background checks: re-checks (which focus on checking an employee's background at specific intervals) and continuous monitoring (which provides ongoing monitoring of available records and real-time alerts to employers when an issue is identified).

Employees' circumstances will change as time passes, and continuous screening and monitoring is focused on identifying problem behaviors that are of concern to the organization and may increase the organization's risk. Another way of saying it is that pre-employment screening looks at an applicant's past behavior prior to joining the organization and post-employment screening looks at their behavior while they are an employee with the organization.

The information obtained during the pre-employment screening stage is a snapshot in time and that picture may change as time passes by. Post-employment screening gives you real-time and current information on an employee's behavior so you can make decisions based on today's realities.

Simply put, just because an employee has a clear record when they are hired does not mean in the future the person may not behave in a manner that is not acceptable to your organization and increase your risk.

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**12. Employees will get upset if we are checking into their background on an ongoing basis. How do we handle this situation?**

Educating employees about the nature of the risk that the organization faces as well as the potential impact on employees will help employees to understand why a continuous screening and monitoring program is an effective way to mitigate risk.

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**13. It is hard enough to find employees now, and all this is going to do is make it harder.**

It is true that employers today are struggling in many cases to find the talent that they need; however, despite this reality many of the threats which organizations face continue to be very real and some are accelerating. What good is it if the organization hires an employee and then the person embezzles a significant amount of money, causes a multi-million-dollar data breach, or kills another employee?

Employers must remain steadfast in continuing to conduct due diligence before and after hiring, despite the tight labor market, or they will expose themselves to unnecessary risk.

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**14. We never did it before, so why do we need to start now?**

Things have changed and employers are faced with unprecedented threats that involve employees. This includes fraud, identity, intellectual and property theft, data breaches, and workplace violence, to name a few. As a result, employers must use new tools and techniques to combat these growing threats that may have not been necessary in the past.

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**15. Are there Union issues that are associated with implementing this type of process?**

If your organization has a Union it would be wise to engage with them on the front end about why the organization needs to implement a continuous screening and monitoring program and explain that many of the risks that the organization faces also have the potential to negatively impact employees. Generally speaking, when situations arise that involve potential adverse action, Unions want to ensure that the utmost of fairness has been extended to their members. Accordingly, you should involve the Union in the development of the criteria that will be applied in determining appropriate action to take against an employee when derogatory information is discovered.

You must demonstrate that implementing a continuous screening and monitoring program is a win for everyone.

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**16. What kind of information do I need to know about, and why do I need to know?**

We believe that it is in management's best interest to be informed about employee behaviors that occur outside of the organization that significantly raise the risk profile of the organization. In addition, we believe it is in management's best interest to know about situations where an employee has breached their trustworthiness, or committed a crime that may materially impact the employer's reputation or financial status, disrupt normal business operations, or seriously violate company policies.

Having access to information about any of the above mentioned situations will position management to be able to proactively determine the right course of action and make an informed decision.

Also, keep in mind that many employment-related laws deal with 'what employers know or should have known,' which means you have to consider how you will address this factor.

**17. What happens if I don't conduct post-hire checks?**

Unless you are in an industry that is required by law to conduct ongoing screening, the consequence of not doing continuous screening and monitoring is that you will potentially expose your organization to unnecessary risk.

Every organization has its own risk tolerance and this is self-determined.

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**18. If we implement post-hire checks, I will have to change my policies. We don't have a large HR staff to be able to handle this.**

There are consulting and legal resources available that can help you develop the policies you need and guide your implementation of the program. For more information on consulting assistance, contact W. Barry Nixon, COO, PreemploymentDirectory.com at 1-949-770-5264 or online at [wbnixon@preemploymentdirectory.com](mailto:wbnixon@preemploymentdirectory.com).

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