



# The 5 Building Blocks of Employment Screening During COVID-19

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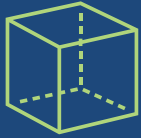


**Ensure a Safe and Compliant Return-to-Work**










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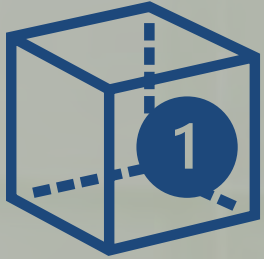
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## The 5 Building Blocks of Employment Screening During COVID-19

This guide outlines solutions to challenges that employers may encounter while employment screening during the pandemic, providing information on tools, resources, and steps they may take to remain in compliance.

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# Bringing Employees Back to Work Safely

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# Bringing Employees Back to Work Safely



The COVID-19 pandemic has impacted organizations across the globe, causing many to close their doors and others to layoff or furlough employees. Millions have struggled with job loss or reduced income since early 2020.

## WHO GOES BACK TO WORK AND HOW?

- Employers must determine an ethical way to decide who they can bring back to work. They must rehire who they need to adequately staff their business without discriminating against those in a protected class.
- Employers need to implement new policies to bring back the most qualified employees, including work-from-home policies and flexible schedules to accommodate childcare.
- Employers will also have to enforce social distancing practices, specific cleaning policies and testing procedures to keep employees safe in the physical workplace.



# Safeguarding the Work Environment

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## Safeguarding the Work Environment

Organizations have taken drastic steps to keep their employees and customers safe. The changing social and medical requirements of COVID-19 have challenged human resource leaders at the national, state and municipality level. It is no small effort to tackle contact tracing, reporting, and testing requirements.

Despite the many testing sites across the country; access, availability and cost deter many from discovering they have COVID-19 until it is too late. Responsible employers want to do all they can to maintain a safe environment, and human resources can help get employees tested. Easier solutions might help the process.

In California, new Cal/OSHA guidelines require employers to provide free testing options to an employee who was exposed in the workplace or if there is an outbreak of cases at the work location.



[Learn more about COVID-19 Testing](#)



## Safeguarding the Work Environment



### **Employee engagement and satisfaction depends on how the organization treats employees impacted by COVID-19.**

- Do employers want employees who have potentially been exposed to the virus to have to visit multiple testing sites?
- Is testing covered by insurance plans?
- Will employees be required to pay for testing if they may have been exposed at work?
- Can employers improve morale by making the process easier and safer by limiting contact?

The home testing kits available through Frasco® Profiles can be mailed to the employee's home and self-administered. The employee places their saliva sample into the test kit provided, seals the sample, and sends it back to the laboratory. A prepaid envelope is included with the test kit.

Employers can determine whether it is safe for the employee to return to work by accessing test results through their Frasco® Profiles online account. They no longer have to wait for a response from the employee.

On-site tests are also available for work locations when a quick response is required for an outbreak.



# Recruiting and Hiring in the New Paradigm

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## Recruiting and Hiring in the New Paradigm

Employers must adjust to the amount of people seeking employment and how best to recruit the most qualified candidates. Employment screening faces new challenges as scores of courts, public-record facilities and drug testing labs have closed or limited access during the pandemic. Limited staffing has also slowed the screening process.





# Recruiting and Hiring in the New Paradigm



## BACKGROUND SCREENING

While background screening has continued, many courts have a large backlog, which is causing longer than usual response times. Court closures have delayed background checks as many in-person requests have stopped or been delayed due to limited court hours and limited staff. Reputable screening companies with direct online access to court records (where available) can process requests in most jurisdictions without delay.

Employers need to decide if they can wait for a complete background screening or if they need to implement conditional hiring practices. But hiring new employees without completing the full screening process can cause problems in the future and increase risk exposure for the organization. Companies that choose this route must ensure they have sufficient policies in place, explaining when conditional hiring is allowed, and what screening will take place once resources become available. A conditional job offer needs to lay out what specific screening will take place when courts and other resources increase their workload and turn times.

Conditional hiring also requires offer letters to explain to new employees that their employment is contingent on passing a screening in the future.

When experiencing background delays, employers may be tempted to ask potential employees about their criminal history. Unless you are extremely savvy about local and state Ban the Box and Fair Chance laws, it is best to avoid this practice unless you consult with an attorney, as the penalties for violating one of these laws or ordinances can be extremely steep.

These policies should also apply to all contingent or temporary employees, including freelancers and independent contractors. These types of employees can pose the same liability as traditional employees.

[Learn more about Background Screening](#)



# Recruiting and Hiring in the New Paradigm



## PREVIOUS EMPLOYMENT / EDUCATION SCREENING

Most previous employment reports can be completed if the companies remain open. Delays could occur if those companies have limited their own human resources and payroll staff.

Education screening should continue as normal if the degrees are included in the National Student Clearinghouse or other third-party database.

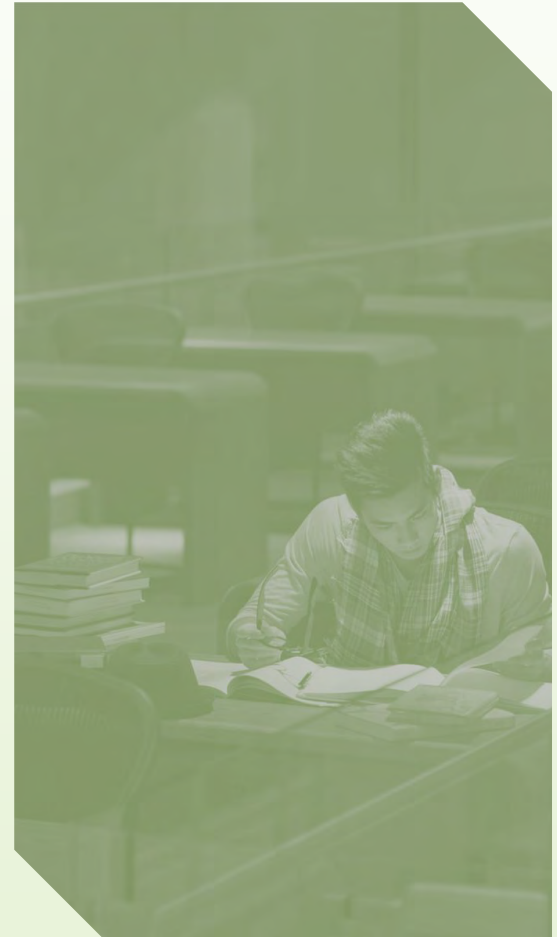


## AVOIDING LITIGATION

Faced with the numerous challenges and potential delays to background screening during the pandemic, many employers may be tempted to skip or limit screening. But the risk is too high to forego these vital hiring steps.

As COVID-19 case counts rise and economic concerns continue, some employees may be tempted to embezzle from their employers or falsify information to get hired.

Maintaining background screening during this time is essential considering most of the industries still hiring routinely interact with vulnerable people or can have an impact on the greater populace. Employers in healthcare, food service, and transportation industries must ensure new employees do not pose a risk to the greater public when so many depend on these services.





# Recruiting and Hiring in the New Paradigm



## REGULATIONS

Despite challenges and delays because of the pandemic, it is important to remember the Fair Credit Report Act (FCRA) and other state specific regulations for background screening still apply. Employers need to continue to provide standalone disclosures, obtain written consent from applicants and follow the required Pre-Adverse and Adverse notification processes.

If the necessary information cannot be obtained due to court or other delays, conditional offers must specify what will be verified in the future and possibly ask the employee to self-disclose previous convictions. When submitting an inquiry into an applicant or employee's criminal history, it is critical to work with an attorney to ensure the investigation is in full compliance with Ban-the-Box and Fair Chance laws and ordinances. The EEOC recommends performing a job-related assessment if any conviction information appears on the completed background report. This will help make an informed decision based on the circumstances as well as avoid discrimination claims.

If the employee is currently working under the conditional offer of employment and something negative is returned on the background report, and the employer decides not to retain the employee after the assessment is complete, they cannot immediately terminate the employee. The Pre-Adverse and Adverse notification process still applies.

An employer must provide the Pre-Adverse notification, a copy of the background report and the FCRA Summary of Rights (and any additional state required notices) and wait the "reasonable amount of time", as required by the FCRA (no sooner than five days), before terminating the employee.

If the employee has a conviction posing an immediate risk to the organization, an employer might consider placing them on a five-day paid administrative leave between the Pre-Adverse and Adverse notification.

If the employee does not dispute the information after the "reasonable amount of time," the final Adverse Action notification can be provided, and the employee can be terminated.

It is anticipated there will be an increase in COVID-19 related employment cases in 2021. It is recommended that employers consult with legal counsel during the termination process to avoid employment related claims during the pandemic.



# Recruiting and Hiring in the New Paradigm



## DRUG SCREENING



As millions were forced to stay indoors and limit contact with others, some became more susceptible to drug abuse. The financial and political stress of 2020 also caused many people to self-medicate.

Many employers essentially treat furloughed employees as new employees if they have been out of work for two months or more. Drug testing employees before they come back to work can mitigate the increased risk of recent drug trends and supports a safe return-to-work policy.

Some employees may request to defer drug testing because they do not believe testing facilities are safe to visit. These employees may be prohibited from performing certain job functions until they can pass a drug test. Depending on the state, other restrictions may also apply.

Employers regulated by the Department of Transportation have new guidelines to follow, which were released during the pandemic. These guidelines outline what employees can do when testing is not available and how to document these occurrences so the employer can remain compliant. These guidelines also encourage using mobile collection sites if they are more readily available.

Employees that opt for deferring their test may also be required to comply with random drug tests later, as mandated by the employer.



[Learn more about Drug Screening](#)





# Recruiting and Hiring in the New Paradigm



## SOCIAL MEDIA SCREENING

The effects of the pandemic results in various health and economic concerns. Countless people have voiced their frustration across many social media platforms.

Public outcry has focused on health experts, local officials, and the government since early 2020. Employers who use social media experts to research applicants can find those posts related to violent, illegal, and discriminatory remarks and behavior.

Furloughed employees may have used social media to denigrate employers who have laid them off or have taken other actions during the pandemic that may pose a risk to an employer's brand.

Social media screening improves employee retention by preventing terminations related to problematic postings discovered after hiring. Employees also value working for organizations with strong policies against racism and harassment. Hiring a reputable consumer reporting agency to provide the screening ensures the information reported can be used legally for hiring decisions and is not susceptible to personal bias.





# Recruiting and Hiring in the New Paradigm



## FORM I-9 / E-VERIFY REQUIREMENTS

All new employees are required to provide a completed I-9 Form and applicable documentation upon hire, which is viewed and verified before the hiring process is complete. When hiring remote employees, who cannot come into the office, the government has issued temporary policies to meet the legal requirement.

While there is no change to the law concerning employees working at a physical location, the Department of Homeland Security has issued new flexible policies for remote workers. Employers can now perform inspections via video link within three business days of hire. There are guidelines from the department on how to notate these inspections. A physical inspection is required when COVID-19 precautions are no longer necessary.

Employers can also use a designated individual to complete I-9 documentation on behalf of the company, including local management or a notary. The employer is still liable for any violations even if they use a representative.



[Learn more about Form I-9 / E-Verify](#)



# Using the Risk Mitigation Checklist

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## Using the Risk Mitigation Checklist

Whether an employer is ramping up hiring or planning on how to safely re-open physical locations, the following checklist can help mitigate employment screening risks.



### FOR FURLOUGHED EMPLOYEE RETURNING TO WORK:

- Does our re-hire policy require a new background check and/or drug test to be conducted?



### FOR BRINGING EXISTING EMPLOYEES BACK TO THE OFFICE:

- Is a clear COVID-19 test required before returning to the office?
- Will we require proof of vaccination before returning to the office?





# Using the Risk Mitigation Checklist



## FOR NEW HIRES:



- Has a pre-employment background check been conducted?
  - If so, are all components of the report complete?
  - Are we awaiting final confirmation from the court?
  - Do we need to make an offer contingent on the results of the background check?
- If previous employment and/or education verifications are not complete due to reduced staff, office closures, etc., is there additional information we can accept in the meantime? (W-2/1099, Copy of Degree)
- Has a drug test been conducted? (If required based on company policy, regulation requirements, or safety-sensitive role)
- Is the Offer of Employment based on condition of a clear background/drug test in line with company policy?
- Do we have procedures in place for Adverse Action if negative information is returned on the background/drug test after the individual has started working?
- Has an I-9 form been completed?
  - Have the required documents been verified in person?
- Has an E-Verify check been conducted to confirm eligibility to work in the US?
- Will the new hire be reporting to an office or working-from-home?
  - Is a clear COVID-19 test required before the first day reporting to the office?
  - Will we require proof of vaccination before reporting to the office?





# Getting Back to Work





## Getting Back to Work

The COVID-19 pandemic has posed several challenges surrounding employers and business operations. The changing environment and fluidity of employment screening regulations can be overwhelming, but it is important to always be informed and remain in compliance.

This guide serves as a tool to help you navigate the complexities of employment screening in an unprecedented time. Frasco® Profiles strives to keep its clients and partners in-the-know. We are here to help organizations of all sizes offering a full spectrum of screening services, helping you Decide Without Doubt.™



[Schedule a Free Consultation](#)



Decide Without Doubt.™

## ABOUT US

Founded in 1995, Frasco® Profiles is a US-based full-service Consumer Reporting Agency providing enterprise-level employment background checks, drug testing, COVID-19 testing, fitness-for-duty physical exams, and Form I-9/E-Verify services to employers worldwide. We offer dedicated account support, unparalleled flexibility, a focus on legal compliance. Employing SOC 2 Type II certified data security measures, Frasco® Profiles ensures the ultimate protection for all sensitive consumer information.

## CONTACT US

If you have any comments or feedback on the contents of this guide, we'd love to hear from you.

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