

TSA PRECHECK: REDUCING THE COST OF RISK ASSESSMENT

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ABSTRACT

Organizations have a duty to provide a safe working environment. One aspect is screening employees to prevent violent attacks from within the organization. As a result, many organizations are turning to background checks to make this determination. These background checks use databases of publicly available information. Unfortunately, it is difficult to know the quality of these databases and thus these assessments. The gold-standard of criminal background checks is the FBI database. Regrettably, the general public cannot access the FBI database for employment screening unless it is required by law, and authorized by the Attorney General. Interestingly, organizations can access this database indirectly using the TSA's PreCheck airline traveler security screening program. This article proposes that organizations require new hires to obtain a TSA PreCheck— thus indirectly having their background checked through the FBI database. Moreover, it is recommended that organizations routinely check that employees continue to maintain their TSA PreCheck status.

Keywords: background check, workplace safety, employment, risk assessment

INTRODUCTION

We live in stressful times. Huge corporations can justify a significant HR function, and those professionals have skills needed to protect employees from and against the many forms of workplace violence. But what about smaller organizations where payroll, benefits, and recruiting are already stretched to the limit? Since the chances of a violent event seem low, the costs of managing these risks are hard to justify. Background checks are expensive, take time, and there are many laws that limit their use. However, one must remember the potential liability and reputational damage if background checks are either not performed or miss signs that in hindsight are obvious. With 417 mass shootings in 2019, these risks are not trivial (Young & Brewer, 2020). Moreover, work-from-home arrangements since 2020 have weakened previous protections against workplace violence, such as colleagues being in proximity to coworkers and thus able to notice changes that might signal distress. Accordingly, this essay proposes the use of the TSA PreCheck program as a cost-effective way of detecting individuals who should be screened more carefully.

CASE

Consider Tatiana, who arrived at her office near the Long Beach Marriott on August 19th to a world of anxiety. She had never worried about her safety in this upscale area. Indeed, the regional FBI campus is just around the corner. However, today was very different. Last night, thanks to a brave whistleblower and responsive manager, Rodolfo Montoya, a Chef at a nearby hotel where she liked to eat, was arrested and his plans for a mass shooting in the restaurant were foiled (Bellware, 2020).

During the last 10 days, Tatiana has been struggling with her colleagues about her professional firm's readiness to confront workplace violence. There are so many angles, and every solution is expensive. But where would they be or feel if lives were lost and they had ignored the need? On August 31 Tatiana's team headed out to watch the Chargers take on their regional rival the 49'ers. Tatiana was suddenly faced with a new option as she could either enter the stadium through the long line for a careful security search or breeze through with TSA PreCheck. Tatiana thought TSA PreCheck was just for airports, but was quickly able to see how this innovation saved the Chargers the cost of expensive spectator searches and provided a fast and less invasive entry experience for the fans. In no time at all Tatianna, and her team recognized how this and other creative uses of public services could have everyone, including accounting, feeling less anxious as a new—relatively inexpensive—technique for employee background screening now seemed apparent (Ong, 2017).

Risk Management

In recent years the role of the CFO has come to include strategic responsibilities. Moreover, it is now well recognized that the traditional idea of protecting a firm's assets includes a risk-oriented approach to decision-making. Indeed, monitoring the business such that possible shocks are known and suitable actions are taken, or plans in place so that there is resilience to the shock, are fundamental aspects of the CFO's corporate role. Although risks cannot be eliminated, it is nevertheless expected that organizations will be resilient (Markovic, 2019).

Risk management around workplace violence is especially difficult. Any event where people are wounded, injured, or in danger is serious, and the costs are huge. Fortunately, the likelihood of such events is low, so low in fact that it is probably out of mind as it was with Tatiana. Nevertheless, just think of the real consequences to people, the brand, and the organization's future if Rodolfo had not been stopped. Even so, there is an understandable tendency to dismiss the consequences of highly unlikely catastrophic situations (Dobruck & Osier, 2019).

TSA PreCheck provides an opportunity to screen for some of these corporate risks. In this essay we are considering the opportunity Tatiana gained from her observation at the Chargers game. How can the TSA PreCheck be applied to enhance employee screening and ongoing monitoring? The historic intent of a security check has been to filter out hiring choices that could result in financial losses, workplace violence, and other deleterious consequences associated with a

person's record. The security check is done during the hiring process and is problematically of unclear accuracy and rarely repeated at any interval after someone is hired. Indeed, standard security checks go through private agencies that base their work on accessing various potentially incomplete public criminal data-bases. Moreover, once initially completed, employee background checks are rarely repeated for current employees. However, beyond the initial benefits of achieving vetting through high quality government databases associated with using TSA PreCheck for employee background screening, requiring applicants to obtain and maintain TSA PreCheck approval also provides an opportunity to detect changes in employees' criminal histories. Upon reflection one can see how the timing and scope of a standard security check might fall short of reasonable diligence, if or when, examined in the wake of a tragic violent event. Even though HR departments are careful, they are stuck with incomplete and dated information.

One recent example of the consequences of hiring and failing to monitor an employee's criminal history occurred in early 2019 at the Aurora Illinois facility of the Henry Pratt Company where an employee shot and killed five coworkers during a termination meeting (Sanchez, 2019). The employee had a long history of violent behavior including a 2-year period of incarceration for felony assault. Although the employee passed an initial background check 15 years earlier, the initial check did not uncover his criminal history. Moreover, the employer failed to become aware of the numerous criminal arrests and convictions while he was an employee. Indeed, only after the shootings did the employee's complete criminal history come to light. Unfortunately, this is not an uncommon occurrence as the consequences of poorly conducted initial and inadequate or nonexistent ongoing criminal history background checks often make themselves apparent after incidents of workplace violence.

TSA Screening

TSA PreCheck is a credential that was designed to provide individuals entering the secure area of an airport with expedited entry. By having "pre-checked" their credentials, less screening is required at the point of entry. For example, liquids and electronics do not need to be removed from bags and shoes and jackets can be left on.

In September of 2022, 93% of TSA PreCheck passengers waited less than 5 min. To obtain membership, you must apply online, go to one of over 500 TSA PreCheck centers for an interview and fingerprinting. Once granted TSA PreCheck membership, you enter your KTN (Known Traveler Number) which is indicated on airport ID or a boarding pass, allowing access to the expedited search queue. The clearance is good for 5 years and costs "only" \$85. Renewals are available for \$70 (Transportation Security Administration [TSA], n.d. a).

Eligibility for TSA PreCheck is determined by a name and fingerprint based investigation of national and international databases and other sources of information. At the national level information is vetted through state and local police agencies, the Federal Bureau of Investigation, intelligence agencies, other government databases and sources of information. At the

international level information from international police organizations such as Interpol as well as other sources of information are used. Beyond these sources of information, it may be inferred that any legally available source of information may and likely is used to assess eligibility. Disqualifying offenses are either permanently or interimly disqualifying for PreCheck eligibility. While some offenses are specifically disqualifying as they are listed as disqualifying offenses, other offenses are disqualifying, but are not specifically listed as such. These offenses are appropriately thought of as discretionary disqualifying offenses, which allow TSA discretionary authority in approving eligibility.

This process is effective in checking a person's security threat. A significant quality of which comes from the fact that the background check includes running fingerprints and background information through various government agencies such as the Federal Bureau of Investigation (FBI). For instance, fingerprints are vetted through the FBI's Next Generation Identification (NGI) system and Social Security Numbers are compared against SSA records (TSA, n.d. b).

This detail is significant because standard commercial background checks are not able to access government databases such as the FBI database. Indeed, the ability to access the FBI database is quite valuable in terms of employee background screening. Traditionally, the ability to run an FBI background check on potential employees has been limited to state or local government employee applicants or circumstances where licensing requirements mandate such checks. One of the more common types of organizations allowed to use the FBI database are public schools. As the ability to access FBI databases is limited, a significant advantage of using TSA PreCheck is access to government databases. Although the employer does not control what databases are searched and what is searched for, the use of TSA PreCheck as a pre-employment screen does allow indirect access to many databases traditionally not available to private organizations.

Another useful benefit of PreCheck as a pre-employment background check is the application process, which requires applicants to provide both a detailed criminal history background and explanation. Anecdotal evidence suggests that misrepresentations in these disclosures will likely result in a finding of ineligibility for TSA PreCheck. Ineligibility is likely even in those cases where misrepresentations involve offenses for which PreCheck might otherwise be issued. For instance, while it is obvious serious crimes, such as felony driving under the influence, would be specifically disqualifying as these offenses are felonies punishable by imprisonment of greater than a year. However, it is unclear whether less serious offenses such as misdemeanor driving under the influence are disqualifying as these are offenses subject to discretionary issuance as they are not specifically disqualifying. Although some of these lesser offenses may not preclude issuance, failure to disclose may result in ineligibility and creates a strong incentive for potential employees to accurately disclose their criminal histories. Ultimately, the incentive TSA PreCheck creates to be complete and forthcoming in the TSA PreCheck application is among the greatest benefits of using TSA PreCheck as a pre-employment screening device.

Disqualifying events: TSA PreCheck has 3 categories of offenses that are disqualifying for membership. Part A are permanent disqualifying criminal offenses. These include espionage,

sedition, treason, terrorism, crimes involving a transportation security incident, improper transportation of hazardous material, or unlawful possession of an explosive, murder, and violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act.

Part B contains interim disqualifying criminal offenses. Applicants are disqualified if any of these offenses occurred within the last 7 years, or the last 5 years since prison release for a convicted offense. Part B offenses include firearms violations, extortion, money laundering, bribery, smuggling, immigration violations, distribution or possession w/ intent to distribute or importation of a controlled substance, arson, kidnapping or hostage taking, Rape or aggravated sexual abuse, assault with intent to kill, robbery, fraudulent entry into a seaport, or voluntary manslaughter. Part C disqualifies an applicant if they are wanted or under indictment for a felony listed under Part A or Part B.

Ultimately, approval for TSA PreCheck is at the discretion of the TSA and applicants may be disqualified for a host of other offenses such as domestic criminal violence convictions or other convictions resulting in imprisonment lasting longer than 365 days (Curtis, 2017). Can TSA PreCheck be revoked? TSA PreCheck can be revoked for violations of certain federal security regulations, such as access control violations, providing false statements, bomb threats, or bringing prohibited items to an airport. Duration of revocations vary based on the severity and repeated history of violations (TSA, n.d. c).

Additional Considerations

As the underlying security risks of dangerous employees are so high, many positive considerations support the use of TSA PreCheck for employee background screening. Indeed, few managers would be happy to know their business enabled the next Rodolfo Montoya. Nevertheless, there are many additional considerations before an organization adopts TSA PreCheck for employee background screening. Importantly, organizations should consider the risks of workplace violence in the context of a fabric of systems and procedures that work in unison to reduce these risks. No one system or procedure can assure complete security. Additionally, safety has to be achieved in harmony with other laws that restrict actions that could become unfairly discriminatory. For example, the Qualified Applicants Act in Illinois prohibits background checks before employment offers are given so that those that have served time can still gain employment without that time being a permanent disqualifier (National Safety Council, n.d.).

While we believe TSA PreCheck is a useful proxy for employee background screening, we do recommend several caveats in its use. First, not all potential employees will be able to pass the TSA PreCheck and some of these potential employees may represent suitable hiring risks. For this reason, we recommend employment be contingent upon applying for TSA PreCheck, but not necessarily contingent upon receiving TSA PreCheck clearance. In those instances where PreCheck clearance is denied it will be necessary to understand the reason why the employee is unable to receive clearance. Moreover, in some instances the reasons may be ones that do not

make hiring the employee an undue hiring risk, in others the reasons may be more onerous and not hiring the employee is likely the appropriate course of action.

Employers must also be careful to ensure that the process of acquiring TSA PreCheck is handled by the employee and not the organization's HR department. While the organization should reimburse the employee for the cost of the PreCheck, the actual process of obtaining the PreCheck should be the responsibility of the employee. The organization should only request verification from the employee that they have received a PreCheck or conversely that they have been denied. The key facet of using TSA PreCheck as an employee background screening tool is getting the employee to apply and knowing the results. In those instances where an employee has been denied, the employer should request that the applicant provide a copy of the denial letter. In most cases the denial letter will include an explanation for the denial. In cases of denials, the employer can then use the cause for the denial to determine whether or not to hire the applicant. It is important that potential employees, rather than the organization, make the TSA pre-application because some state and federal laws mandate that employers who use background checks advise employees of the reason for denying employment on the basis of a background check. With the organization simply requiring the potential employee to apply for TSA PreCheck, and to provide the employer with the results, the organization is not conducting a background check but rather collecting information useful in the hiring decision. Nevertheless, employers should seek legal advice to assess the ramifications of using TSA PreCheck as part of their hiring process.

CONCLUSION

In this manuscript we have sought to demonstrate that the challenge of providing a safe workplace is difficult but not insurmountable. Organizations have a responsibility to keep their workplace safe. Part of this process is screening new employees using background checks. Although many organizations purport to offer background checks, these organizations use publicly available information that is difficult to verify. The gold- standard of background checks are those conducted through the FBI database which consider official information from multiple government sources. Although accessible to a variety of governmental entities for new employee screening, the FBI database is not accessible by the vast majority of organizations. Only organizations that are required by law and approved by the Attorney General are allowed to use this database for employment screening.

In conclusion, we propose TSA PreCheck as a way to indirectly access FBI and other databases and improve employee background screening. Although primarily used to pre-screen travelers, the use of FBI and other databases makes PreCheck a valuable tool to evaluate security risks associated with potential job applicants. While failure to be approved for TSA PreCheck may not disqualify a person from employment, it does represent a red-flag warranting further investigation.

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