Background Screening Policy Recommendations

Software Engineer

Generated October 8, 2026 for Orange Software (Jim Smith). This report applies the federal, state, and local employment-screening laws that govern the position described below. Where rules conflict, the strictest rule is shown as required.

- Required or prohibited by law
- Strongly recommended to reduce legal risk
- Best practice
- Informational reminder

Jurisdictions applied

- Federal: FCRA, Title VII / EEOC guidance, ADA — https://www.law.cornell.edu/uscode/text/15/chapter-41/subchapter-III
- Florida — http://www.leg.state.fl.us/statutes/

Start here: the foundation of every screening policy

These items apply to every position you screen. Put them in place before anything else.

REQUIRED

Stand-alone disclosure and signed authorization before every report

Before you order any report from a background screening company, give the applicant a written disclosure that consists solely of the statement that a consumer report may be obtained for employment purposes, and get a signed (or e-signed) authorization. Keep waivers, extra terms, and state notices off the disclosure page; put state-required language on a separate page. Certify to the screening company that you have done this and will follow the adverse-action rules.

Source: 15 U.S.C. § 1681b(b)(2)
Read the law: https://www.law.cornell.edu/uscode/text/15/1681b

REQUIRED

Apply the same screening package to every applicant for the same position

Order the same searches and apply the same written decision criteria to every applicant for this position. Deviations by individual (for example, checking one candidate's credit but not another's) are the most common source of discrimination claims, and Title VII disparate-treatment liability attaches to employers with 15 or more employees. Document any exception and the business reason for it.

Source: Title VII; EEOC Enforcement Guidance (2012)
Read the law: https://www.law.cornell.edu/uscode/text/42/2000e-2

REQUIRED

Two-step adverse action before any rejection based on a report

If a report may lead you to reject an applicant, first send a pre-adverse action notice with a copy of the report and the CFPB Summary of Rights, then wait at least five business days for the applicant to respond, and only then send the final adverse action notice naming the screening company, stating that it did not make the decision, and explaining the right to dispute and to a free copy within 60 days.

Source: 15 U.S.C. §§ 1681b(b)(3), 1681m
Read the law: https://www.law.cornell.edu/uscode/text/15/1681m

REMINDER

Keep a written background screening policy and adverse-action procedure

A written policy that names the searches ordered for each position, the timing, the decision criteria, the individualized-assessment steps, and the adverse-action sequence is what regulators and plaintiffs ask for first. Update your existing policy with the position-specific items below.

Source: EEOC guidance; state requirements

REMINDER

When rules conflict, the strictest one wins

This position is subject to 2 layers of law (federal, state, and local). Where they differ, follow the most protective rule for the applicant; that is the rule shown as "required" below. Recommendations are current as of October 1, 2026.

REMINDER

Keep the file

Keep the disclosure, authorization, report, assessment notes, and notices for at least one year after the decision (two years for federal contractors); several laws require longer (Maryland four years, Los Angeles and San Francisco three years, Massachusetts CORI acknowledgments one year with a dissemination log). Store reports separately from the personnel file and dispose of them securely.

Source: 29 C.F.R. § 1602.14; FTC Disposal Rule
Read the law: https://www.law.cornell.edu/cfr/text/29/1602.14

Laws applied to this position

REMINDER

Federal law

The Fair Credit Reporting Act governs every report prepared by a screening company; Title VII and the EEOC's 2012 guidance govern how criminal history may be used (15 or more employees); the ADA governs the timing of medical examinations.

Source: 15 U.S.C. § 1681 et seq.; 42 U.S.C. § 2000e
Read the law: https://www.law.cornell.edu/uscode/text/15/chapter-41/subchapter-III

REMINDER

Florida state law

Applied because work is performed in Miami, Miami-Dade County, Florida. No statewide ban-the-box law. Gainesville's ordinance covers private employers with 15 or more employees; other cities and counties removed the question from their own applications only.

Source: Fla. Stat. § 112.011 (public employers may not deny solely for a conviction unless directly related)
Read the law: http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0112/Sections/0112.011....

REMINDER

Headquarters state (California) not applied

Background-check laws follow the place where the work is performed, so your headquarters state's rules are not applied to this position. If your HR team in California also hires for roles located there, run this builder separately for those roles.

Read the law: https://leginfo.legislature.ca.gov/

When you may ask about criminal history

BEST PRACTICE

Consider waiting until after a conditional offer anyway

No fair-chance timing law covers this position, so you may ask about convictions on the application. Waiting until after a conditional offer is still the better practice: it removes the question from the application (which the EEOC recommends), keeps one process for all your locations, and lets you show that the record was the only reason for a change in decision.

Source: EEOC Enforcement Guidance (2012)
Read the law: https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-...

Which records you may consider

REQUIRED

Never consider sealed, expunged, set-aside, or pardoned records

Every jurisdiction that applies bars their use. Applicants may lawfully deny that these records exist, and screening companies may not report them. Clean-slate laws now seal eligible records automatically in many states, so a record that appeared on a report last year may be off-limits this year. Applicants may lawfully deny or fail to acknowledge arrests covered by a sealed or expunged record (Fla. Stat. §§ 943.0585(6)(b), 943.059(6)(b)) except when seeking employment with a criminal justice agency, admission to the Bar, employment or licensure with DCF, APD, AHCA, DOH, DJJ, DOE, school districts, charter or private schools, or child-care licensing, insurance agent licensing, or appointment as a guardian. Since July 1, 2026 (CS/CS/HB 1069, ch. 2026-114), a person screened through the Care Provider Background Screening Clearinghouse by a qualified entity under § 435.12 also may not deny such records, and FDLE discloses sealed records and the existence of expunged records to those entities.

Source: State sealing and expungement statutes

REQUIRED

Never consider juvenile records

Juvenile adjudications are confidential in every state that applies to this position and may not be requested or used.

Source: State juvenile-records statutes; FCRA § 605
Read the law: https://www.law.cornell.edu/uscode/text/15/1681c

RECOMMENDED

Treat arrests and non-convictions with caution

You plan to consider arrests, dismissed charges, or pre-trial diversions. A pre-trial diversion is entered before any plea and ends in dismissal, so it is a non-conviction, not a guilty or nolo contendere plea. No jurisdiction here flatly prohibits it, but an arrest is not proof of conduct, the EEOC treats reliance on arrests as a disparate-impact risk, and screening companies may not report non-convictions older than seven years (the seven-year limit is lifted for this position because it pays $75,000 or more). Consider only pending charges whose underlying conduct is job-related, and only after looking at the facts.

Source: EEOC Enforcement Guidance (2012); 15 U.S.C. § 1681c
Read the law: https://www.law.cornell.edu/uscode/text/15/1681c

RECOMMENDED

Deferred adjudication: a plea without a conviction

You plan to consider deferred adjudications. A deferred adjudication is a guilty or nolo contendere plea on which the court withholds judgment while the person completes probation; on completion the case is dismissed without a conviction. Treat it in two stages. While the deferral is open it is a pending matter: consider it only where the alleged conduct relates to this position, and re-check the disposition before deciding. Once it is completed and dismissed it is a non-conviction: screening companies may report it for seven years (longer for this position, which pays $75,000 or more) under the FCRA, but once the state seals or expunges it the applicant may deny it and it may not be used. Florida: a withhold of adjudication after a plea is not a conviction (Fla. Stat. § 948.01), but the plea and the withhold remain public record that private employers may consider until the record is sealed under § 943.059; once sealed, the applicant may lawfully deny it and it may not be used.

Source: State arrest-record and sealing statutes; 15 U.S.C. § 1681c; EEOC Enforcement Guidance (2012)
Read the law: https://www.law.cornell.edu/uscode/text/15/1681c

RECOMMENDED

Pending charges: job-related conduct only, and re-verify before deciding

Pending charges may generally be considered when the alleged conduct relates to the job, but do not treat a charge as a conviction. Re-check the disposition before any final decision.

Source: State fair-chance laws
Read the law: https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-...

RECOMMENDED

Reconsider using marijuana-only convictions

Simple-possession convictions are being expunged automatically in many states and rarely relate to job duties; using them invites disparate-impact claims.

Source: State marijuana-conviction protections

REQUIRED

Convictions: consider only those that relate to this job

Felony and misdemeanor convictions may be considered, but only through the individualized assessment described below and only where the offense relates to the duties of a Software Engineer. Blanket exclusions ("no felonies") are unlawful in the fair-chance jurisdictions that apply here and are treated as presumptively discriminatory by the EEOC everywhere.

Source: EEOC Enforcement Guidance (2012); state fair-chance laws
Read the law: https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-...

How far back you may look

BEST PRACTICE

Recommended lookback: seven years

No state seven-year cap covers this position. Under the federal FCRA, convictions may be reported at any age, and because the position pays $75,000 or more, non-convictions may also be reported beyond seven years. Recommended scope: seven years. The EEOC treats older records as weaker evidence of risk, and a fixed written limit is easier to defend than open-ended review.

Source: 15 U.S.C. § 1681c; EEOC Enforcement Guidance (2012)
Read the law: https://www.law.cornell.edu/uscode/text/15/1681c

Individualized assessment and required notices

RECOMMENDED

Use a written individualized assessment

No statute here mandates the assessment for this position, but the EEOC treats it as the safe harbor against disparate-impact claims: document the nature and gravity of the offense, the time elapsed since the offense or sentence, and the nature of the job; notify the applicant of the potential exclusion; and consider any explanation before deciding.

Source: EEOC Enforcement Guidance (2012)
Read the law: https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-...

Recommended searches for this position

RECOMMENDED

County criminal search: current and prior counties of residence

The county court is the source of record; order a search in each county where the applicant has lived or worked in the lookback period, identified through an SSN trace and address history. Statewide and national databases supplement, not replace, county searches.

Source: Industry standard; FCRA § 613 accuracy duties

RECOMMENDED

Statewide repository search where the state offers one

Add the statewide search for each work and residence state that has a usable repository; it catches counties the

address history misses. Some states (California, for example) have no public statewide search, and repository data quality varies.

REQUIRED

Database results must be verified at the source before you act on them

A national multi-jurisdictional database is a locator tool. Before any adverse decision, the record must be confirmed against the court of record (the FCRA requires screening companies to keep public-record information complete and current, and several states bar reliance on unverified database hits). Never reject on a database-only result.

Source: 15 U.S.C. § 1681k
Read the law: https://www.law.cornell.edu/uscode/text/15/1681k

REMINDER

Sex offender registry search

Included in your package; it is a reasonable addition for most roles and is required for positions serving vulnerable populations.

RECOMMENDED

Primary-source license verification

Verify the Professional Software Engineering Master Certification directly with the issuing board (status, expiration, and disciplinary history) before the start date and at each renewal.

Employment credit reports

REMINDER

No credit report planned

No credit-check restriction applies here. If you add one later, limit it to roles with financial responsibility and document the job-related reason.

Drug and marijuana testing

REMINDER

Test after the conditional offer

A drug test for illegal drugs is not a medical examination under the ADA, but alcohol tests and any related medical questions are, and must wait until after a conditional offer. Testing everyone after the offer keeps the sequence uniform and avoids collecting medical information (prescriptions, medical-cannabis certifications) before you must.

Source: 42 U.S.C. § 12112(d)
Read the law: https://www.law.cornell.edu/uscode/text/42/12112

RECOMMENDED

Adopt a written drug-testing policy

The policy should name the positions tested, the substances on the panel, the circumstances (random and suspicion), the laboratory and medical review officer, and the consequences of a positive or refused test.

Source: Best practice

REMINDER

Marijuana testing is permitted here

No jurisdiction that applies to this position restricts pre-employment marijuana testing or protects off-duty use. Keep the policy consistent across positions and remember that state law changes frequently in this area.

Salary history

BEST PRACTICE

Salary-history questions are permitted here, but not recommended

No salary-history ban applies to this position. Roughly half the states and many cities prohibit the question, so a single nationwide practice of not asking is simpler, and pay-equity claims are easier to defend when offers are based on the budgeted range rather than prior pay.

Source: Pay-equity best practice

Other checks and verifications

REMINDER

Employment verification

Confirm dates, titles, and eligibility for rehire. Do not ask prior employers for pay history where a salary-history ban applies (and Massachusetts and Washington extend the ban to screening vendors).

REMINDER

Education verification

Verify degrees with the registrar or clearinghouse and check the institution against diploma-mill lists; a false degree claim is a stronger and more defensible basis for rejection than most criminal records.

REQUIRED

Rescreening and continuous monitoring need fresh authorization and the same process

Obtain a new disclosure and authorization for post-hire checks unless the original clearly and lawfully covers ongoing screening (California and several other states do not permit "evergreen" authorizations for new reports), and apply the same individualized assessment and adverse-action steps to current employees. New York City, Philadelphia, and Los Angeles County extend their fair-chance procedures to current employees.

Source: 15 U.S.C. § 1681b(b); state and local fair-chance laws
Read the law: https://www.law.cornell.edu/uscode/text/15/1681b

RECOMMENDED

OIG and SAM exclusion screening

Screen against the HHS-OIG List of Excluded Individuals/Entities and SAM.gov before hire and monthly thereafter for any role paid with federal healthcare program funds (42 U.S.C. § 1320a-7; 42 C.F.R. part 1001; OIG Special Advisory Bulletin, May 2013, which notes the LEIE is updated monthly). Employing or contracting with an excluded person exposes the provider to civil monetary penalties of up to $25,595 per item or service furnished (42 U.S.C. § 1320a-7a(a)(6); 45 C.F.R. § 102.3, 2025 inflation adjustment published Jan. 28, 2026, with no 2026 increase), plus an assessment of up to three times the amount claimed and possible exclusion. State health department rules commonly require fingerprint-based checks for direct patient care and long-term-care roles.

Source: 42 U.S.C. § 1320a-7
Read the law: https://www.law.cornell.edu/uscode/text/42/1320a-7

REQUIRED

E-Verify is mandatory for this employer

E-Verify is required by Florida (employers with 25 or more employees; Fla. Stat. § 448.095 (July 1, 2023)). Keep running every new hire within three business days and post the required notices.

Source: State E-Verify mandates
Read the law: http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0400-0499/0448/Sections/0448.095....

Your process: what to change

RECOMMENDED

Treat arrests and non-convictions with caution

See "Which records you may consider" above. You plan to consider arrests, dismissed charges, or pre-trial diversions. A pre-trial diversion is entered before any plea and ends in dismissal, so it is a non-conviction, not a guilty or nolo contendere plea. No jurisdiction here flatly prohibits it,…

Source: EEOC Enforcement Guidance (2012); 15 U.S.C. § 1681c
Read the law: https://www.law.cornell.edu/uscode/text/15/1681c

RECOMMENDED

Deferred adjudication: a plea without a conviction

See "Which records you may consider" above. You plan to consider deferred adjudications. A deferred adjudication is a guilty or nolo contendere plea on which the court withholds judgment while the person completes probation; on completion the case is dismissed without a conviction. Treat it in two…

Source: State arrest-record and sealing statutes; 15 U.S.C. § 1681c; EEOC Enforcement Guidance (2012)
Read the law: https://www.law.cornell.edu/uscode/text/15/1681c

BEST PRACTICE

Recommended lookback: seven years

See "How far back you may look" above. No state seven-year cap covers this position. Under the federal FCRA, convictions may be reported at any age, and because the position pays $75,000 or more, non-convictions may also be reported beyond seven years. Recommended scope: seven years. The EEOC…

Source: 15 U.S.C. § 1681c; EEOC Enforcement Guidance (2012)
Read the law: https://www.law.cornell.edu/uscode/text/15/1681c

Draft policy language for this position

REMINDER

Background Screening Policy — Software Engineer

1. Purpose and scope. [Company Name] conducts background screening for the position of Software Engineer to verify qualifications, protect employees, customers, and property, and comply with applicable law. This policy applies to all applicants for the position. The same searches and criteria apply to every candidate for the position.

2. Consent. Before any report is obtained from a consumer reporting agency, the candidate receives a stand-alone written disclosure and provides written authorization. State-required notices are provided on a separate page. [Company Name] certifies its compliance to the screening company.

3. Timing. No fair-chance law sets the timing for this position. As a matter of policy, criminal history is not requested on the application or in job advertisements, and [Company Name] asks about, searches for, and considers criminal history only after a conditional offer of employment. Non-criminal checks (identity, employment, education, license) are completed first.

4. Searches. The screening package for this position consists of: county criminal court search in each county of residence and employment during the lookback period; statewide criminal search where available; national criminal database and sex-offender registry search, with all results verified at the source; license verification; education verification; employment verification; post-offer drug test under the written drug-testing policy; OIG and SAM exclusion screening. The lookback period is seven years. Records older than the lookback period, sealed, expunged, set-aside, or pardoned records, juvenile records, and arrests or charges that did not result in a conviction (other than pending charges whose alleged conduct relates to the position) are not considered. Pre-trial diversions that ended in dismissal are not considered. A deferred adjudication is considered only while the case remains open and the alleged conduct relates to the position; once completed and dismissed it is treated as a non-conviction and is not considered, and a sealed or expunged deferral is never considered.

5. Decision criteria. A conviction is considered only if it relates to the duties of the position. For a Software Engineer, the offense categories with a documented relationship to the job are listed in the position screening matrix. No candidate is rejected automatically because of a record.

6. Individualized assessment. Before withdrawing an offer because of a record, the hiring manager and Human Resources document the nature and gravity of the offense, the time elapsed since the offense or completion of the sentence, and the nature of the position; provide the candidate with the record and the preliminary reasons; allow at least 5 business days for the candidate to respond with evidence of inaccuracy, rehabilitation, or mitigating circumstances; consider the response; and issue a final written decision.

7. Adverse action. If a report may lead to an adverse decision, [Company Name] sends a pre-adverse action notice with a copy of the report and the Summary of Rights, waits the period in section 6, and then sends a final adverse action notice that names the screening company, states that the screening company did not make the decision, and explains the candidate's dispute rights and right to a free copy of the report.

8. Drug testing. Candidates are tested after a conditional offer under the written drug-testing policy, which names the panel, the laboratory, the medical review officer, and the consequences of a positive or refused test. [Marijuana is / is not] included in the pre-employment panel for this position in accordance with applicable law, and medical-cannabis certifications are handled through the accommodation process.

9. Salary history. [Company Name] does not ask candidates or prior employers about compensation history. Offers are based on the budgeted range for the position.

10. Records and confidentiality. Screening reports and assessment records are stored separately from personnel files, accessible only to those involved in the decision, retained for [one / two / four] years after the decision, and then securely destroyed.

11. Review. This policy and the position screening matrix are reviewed at least annually and whenever the position, its work locations, or applicable law changes. Rules current as of October 1, 2026.

Source: Draft for review by counsel

Your answers

Job title	Software Engineer
What type of employer are you?	Private company
How many employees do you have across all locations?	250
Is your organization in any of these regulated industries?	None of these
Will the background check be obtained from a background screening company (a consumer reporting agency) or run in-house by your staff?	Screening company
Where will this position perform its work?	At a fixed work site
Work site location	Miami, Miami-Dade County, Florida
Where is your company headquartered?	California
Who is being screened?	New applicant
Employment status	Full-time
Is this a managerial or executive position, or exempt from overtime under the FLSA?	No
Does the position involve any of the following?	None of these
Will the applicant drive as part of the job?	No
Is this a safety-sensitive position under federal law, state law, or your own written policy?	No
Is a background check for this position required by a federal or state law, a licensing board, a government contract, or a bonding or insurance requirement?	No
Does the position require a security clearance or work on a federal contract?	No
Does the position require a professional license or certification?	Yes
How is this position paid?	Annual salary
Expected annual compensation	$285,000

Will you ask the applicant about their prior salary or wage history?	Yes
Will you run a criminal history check?	Yes
Which criminal searches do you plan to run?	County courts (current and prior residences); Statewide repository; Federal district courts; National multi-jurisdictional database; Sex offender registry; Global watchlists / OFAC
Which record types do you want to consider?	Felony convictions; Misdemeanor convictions; Pending charges; Pre-trial diversion (no plea entered; charge dismissed on completion); Deferred adjudication after a guilty or nolo contendere plea (judgment withheld); Marijuana-related convictions; Convictions older than 7 years
How far back do you want to look?	Not sure, recommend for me
When do you currently ask about criminal history?	Only after a conditional offer
Will you use a written individualized assessment (nature of the offense, time elapsed, relation to the job) before rejecting an applicant because of a record?	Yes
Will you apply the same criteria to every applicant for this position?	Yes
Will you request an employment credit report?	No
Will you drug test?	Yes
When will you test?	Random after hire; Reasonable suspicion
Will the panel include marijuana (THC)?	Yes
Is the position subject to federal drug-testing rules (DOT, FAA, FTA, PHMSA, Coast Guard)?	No
Which verifications will you run?	Employment history; Education; Professional license
Will you pull a motor vehicle record (MVR)?	No
Will you review the applicant's social media or other public internet content?	No
Will any automated, algorithmic, or AI-based tool be used to score, rank, or screen applicants or background reports?	No
Will you rescreen employees or use continuous monitoring after hire?	Yes
Will you check federal exclusion lists (OIG, SAM)?	Yes
Has the applicant lived, worked, or studied outside the U.S. in the past 7 years?	No
At what stage do you currently run the background check?	After a conditional offer
Do you give applicants a stand-alone FCRA disclosure and get written authorization before ordering the report?	Yes

When a report leads you to reject someone, do you send a pre-adverse action notice, wait, and then send a final adverse action notice?	Yes, both notices
What would you like the builder to produce?	Both

Your screening policy checklist

Green: already in place. Amber: recommended addition. Red: required addition.

Stand-alone FCRA disclosure and signed authorization
You give the stand-alone disclosure and get written authorization before every report.

Two-step adverse action (pre-adverse notice, wait, final notice)
You send both notices and wait the required period.

Timing of the criminal-history question
No timing law applies, and you already wait until after a conditional offer.

Written screening policy and adverse-action procedure
You keep a written policy and procedure; update it with the position-specific items in this report.

Written individualized assessment before any rejection
You document the nature of the offense, the time elapsed, and the relation to the job before deciding.

Same searches and criteria for every applicant
You apply one package and one set of criteria to every applicant for the position.

Record types limited to what the law allows
Recommended: limit arrests, dismissed charges, and pre-trial diversions to job-related, verified matters; consider deferred adjudications only while open and job-related; never once completed and sealed.

Lookback period within the legal limit
Recommended: adopt a written seven-year lookback.

No salary-history questions
Recommended: stop asking about prior pay; no ban reaches you today, but a single practice of not asking is simpler and pay-equity claims are easier to defend.

Drug and marijuana testing rules
Your testing plan follows the timing and cannabis rules that apply here.

E-Verify and Form I-9
You are enrolled in E-Verify and run every new hire.

Rescreening and continuous monitoring
Recommended: obtain a fresh authorization for each post-hire check and apply the same assessment and adverse-action steps to employees.

Important

This report is general compliance information prepared from the laws in effect on the date shown. It is not legal advice and does not create an attorney-client relationship. Laws change frequently and local rules may add requirements; confirm the recommendations with your employment counsel before adopting a policy. screeningpolicy.com and Langley Porter AG LLC do not make hiring decisions and are not a law firm.