

Employee Screening and Risk Assessment

Recent headlines of workplace violence, violence by home service personnel, as well as convicted rapists working as private security officers or child care providers, have raised serious questions regarding employee screening programs.

- What is negligent hiring?
- Should all companies be expected to have a screening policy?
- Does every employee need to be screened?
- What is considered an acceptable screening program?
- How much should a company expect to pay for screening?
- What can it cost a company should they chose not to have a screening program?
- Are all screening companies alike?

According to attorney Charles A. Krugel, Human Resources Attorney & Consultant Labor & Employment Law on Behalf of Management www.charlesakrugel.com and Director, Legal & Compliance Services, The Human Resource Store (www.hrstore.com) as well as a member of the [Integra Security Alliance](#):

Negligent hiring and negligent retention lawsuits are increasing, and so are employer expense and liability as a result of these suits. Underlying the idea of negligent hiring and retention is an employer's legal responsibility to provide employees, customers and the public a reasonably safe environment, and the liability imputed to employers when they fail to exercise reasonable care in providing such an environment. It's when this failure occurs that as an employer, your business, could be held liable for negligent hiring or retention.

Consequently, from a cost containment and legal liability perspective, it's increasingly crucial that businesses conduct criminal background checks, conduct such checks in a competent manner and take reasonable action as a result of these inquiries. This means that if an employer undertakes criminal background checking, in order to avoid legal liability, it should carefully choose who does the screening as well as what records are searched.

Although, Illinois doesn't require many businesses to screen job candidates (most education and social service organizations are required to screen candidates), and the Illinois Human Rights Act mandates that an employer cannot use a candidate's "arrest record" as the basis for denial of employment (narrow exceptions exist), the possible liability resulting from a business' failure to screen can cripple that business. According to a 2001 report by the Society of Human Resources Management and American Background Information Services, Inc., the average settlement for negligent hiring lawsuits exceeds \$1.6 million.

Obviously, much of the burden falls on employers, utilizing the guidance of competent legal counsel and screening professionals, to determine what constitutes a competent background search. Generally, such a search is based upon the essential requirements of the position and the industry's particular circumstances.

Usually, the courts don't examine why screening is done. Courts look at why the essential duties of the job, and the particulars of the business' industry, necessitate the need to screen out convicted criminals, and which types of crimes will prevent a candidate from being hired. Therefore, just knowing that a job candidate has been convicted of a crime may not be enough to insulate your business from liability. You will probably need to know the exact nature of the conviction and then connect it to the job.

In short, as a business, if you undertake criminal record checking, then choose a competent screener and screening method, check all candidates and employees, conduct the search in a good faith and reasonable manner, and use the results of those checks in a good faith and reasonable fashion. As with all human resources related matters, in order to minimize expense and legal exposure, focus on prevention and proaction--research your screener and work with them to best determine what you need and why you need it.

Vendor Selection - *Tony Ramos*

Selecting the wrong screening vendor can be equal to or more devastating than hiring the wrong employee. The wrong vendor can provide you with nothing more than a false sense of security.

Select a vendor who has the knowledge and experience and one who can clearly explain your screening options and their limitations. Typical choices include statewide, county-court, national criminal databases and fingerprint searches. There are also choices of supplemental screening options which include driving record, credit reports, workers compensation, employment history, educational history and civil records as well. Your vendor can assist you in developing the right plan to match your needs.

Basic Program

▪ **Vendor Selection**

- Select a vendor who can demonstrate a **national hit rate of at least 10%**. Hit rate is the ***most*** effective way to determine the quality of the service. In short, for every 100 applicants screened, the vendor should be finding at least 10 with a criminal record. Don't be surprised if a vendor is hesitant or actually refuses to provide this information. Many operate with only a 6% or less hit-rate.

▪ **Social Security Trace**

- This will help validate the number and provide up to ten-years of past residential history and names or aliases used.

- **County-court Record Search**
 - Counties to be searched should be selected based on the results of the trace and never from the job application. This will also provide you with the most accurate and current information available.
- **National Criminal Database Search**
 - For a more comprehensive program, include a national criminal database search. **Important note**, database findings must be verified by court records before acting upon them. Also, databases searches should only be used to supplement an actual court record search and not in place of.
- **FCRA (Fair Credit Reporting Act) Compliant**
 - Ensure your vendor is fully FCRA compliant, this will provide you with additional protective immunity against some civil lawsuits.
- **Cost**
 - While there are many factors such as volume and types of screening options selected which determine the actual cost, one can expect to pay \$20 to \$35 per person.

Author: Tony Ramos

This article was written based on over 30-years of combined experience in developing, implementing and selling employee background screening to private/public corporations and governmental agencies nationwide. My experience has also led me to author "The Guide to Background Checks" which I developed for the Illinois Association of Chiefs of Police and is available for download from my web-site at www.integrasecurity.org

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