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Employee Screening is Critical to Maintaining a Safe Work Environment, Minimizing Risk

By Tony Ramos, Integra Security

Recent headlines on violence in the workplace or by home service personnel, and convicted rapists working as private security officers or child care providers raises serious questions about employee screening programs:

- Does every employee need to be screened?
- What is considered an acceptable screening program?
- Are all screening companies alike?

The following discussion helps answer some of these key questions.

Negligent hiring and retention. 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 with 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 you could be held liable for negligent hiring or retention.

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, it should carefully choose who does the screening, as well as what records are searched, in order to avoid legal liability.

Although Illinois doesn't require many businesses to screen job 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, the possible liability resulting from a business' failure to screen can cripple that business. In fact, the average settlement for negligent hiring lawsuits exceeds \$1.6 million.

Employee screening. Much of the burden falls on employers (and their legal counsel) 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. 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, 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, minimize expense and legal exposure by focusing on prevention. Be proactive.

Vendor Selection. Selecting the wrong screening vendor can be as bad as hiring the wrong employee and can provide you with a false sense of security. Select a vendor that has knowledge and experience and can clearly explain your screening options and their limitations. Typical choices include state-wide, county-court, national criminal databases and fingerprint searches. There are also supplemental screening options, including social security trace, driving records, credit reports, workers compensation, employment history, educational history and civil records.

Select a vendor that 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 ten with a criminal record. 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. Make sure your vendor is fully FCRA (Fair Credit Reporting Act) compliant. This will provide you with additional protective immunity against some civil lawsuits. Last, the cost of employee screening can vary based on many factors, such as volume and types of screening options selected. As a rule of thumb, you can expect to pay \$20 to \$35 per person screened.

For further information on employee screening and risk assessment, contact Tony Ramos of Integra Security at tramos@integrasecurity.org.

About the Author

Tony Ramos of Integra Security has 30-years of experience developing, implementing and selling employee background screening to private/public corporations and governmental agencies nationwide. He is the author of "The Guide to Background Checks" developed for the Illinois Association of Chiefs of Police, which can be downloaded at www.integrasecurity.org.

Sources

Attorney Charles A. Krugel, Human Resources Attorney & Consultant Labor & Employment Law on Behalf of Management, www.charlesakrugel.com, Director, Legal & Compliance Services, The Human Resource Store (www.hrstore.com), and member of the Integra Security Alliance.

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