

Have You Hired Your Next Lawsuit?



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Negligence and liability. Most of us think of automobile accidents or product liability when we hear these words. More and more, courts are issuing verdicts holding companies liable for the criminal, harmful and injurious acts of their employees. This is commonly referred to as negligent hiring liability, wherein courts hold employers responsible for determining existing conviction records. It arises in situations where an employer hired an employee who later commits a crime against either fellow employees or customers. These lawsuits claim that the employer failed to perform due diligence in the hiring process by not adequately checking the background of the employee. This due diligence process is particularly critical when dealing with the healthcare industry. In partnership with organizations such as, the American Academy of Podiatric Practice Management (AAPPM), IntelQuest, Ltd. can develop a high quality and rapid employment screening programs for its members.

The following are some examples of failure to screen employees prior to hiring:

- A Michigan heating and air conditioning company servicemen attacked an elderly customer while on a service call. The man had a prior criminal record and a parole violation. As of this writing, civil proceedings against the company are awaiting a pending appeal of the criminal case. The potential result is the bankruptcy of the company.
- A Florida furniture store delivery driver attacked a store customer in her apartment. The man was not on duty at the time, but had learned of the woman's address because of a prior delivery. The victim sued the furniture company claiming that the store was negligent in hiring the man for deliveries into peoples' homes. The deliveryman had a criminal record and a history of mental illness and was hired without any reference verifications or interviews that would have disclosed his past. The jury awarded \$1.9 million in compensatory damages and an additional \$600,000 in punitive damages. The case survived an appeal with the court holding the employer liable for the injurious acts of its employees.
- A 13 year old girl was raped in the pediatric ward of a well known New York hospital, then days later, the patient care assistant with a criminal record was arrested for selling cocaine and guns at the hospital. After which, the hospital hired an outside firm to do pre-employment screening of its applicants. As of this writing, the hospital has yet to settle the case.

By outsourcing the background screening process, companies can ensure that they are hiring a higher caliber of employees. In particular, Hospitals and clinics should be especially careful when hiring non-licensed staff. Since these staff members have not undergone criminal background screening in any licensure process, it is the responsibility of the Human Resources Department to ensure that they do not have a criminal record. If Human Resources is remiss in performing a background check, the hospital or medial office is opening itself up to a significant risk in terms of liability. On the other hand, when criminal background checks are consistently performed using research methods that provide comprehensive and accurate background information, those candidates with not-so-distant criminal pasts are filtered out from the beginning of the hiring process.

There are in excess of two million incidents like this every year. They can financially devastate a company and destroy years of goodwill from the resultant negative publicity. In the majority of these cases, if the employer had conducted some basic background check on the prospective employee, the employee either would not have been hired or would have been only hired for a position where they could not harm the company or their patrons.

Other growing problems AAPP employers may face are resume and application fraud.

- Human Resource experts estimate that one third of all resumes contain fraudulent or inaccurate information and the trend is getting worse. A recent survey of 2.6 million job applicants revealed that four (4) out of ten (10) lied about their work experience. Four (4) out of ten (10) applicants lied about their education, and two (2) out of ten (10) fabricated credentials or licenses.
- Competition for jobs has increased to the point where some applicants will say almost anything to land a job. Clever people who have created fraudulent resumes that appear very convincing have victimized many businesses. These people commonly use references that are difficult to verify, use phony addresses and phone numbers of business references and accomplices who answer the phone with a pre-arraigned business greeting. Unless crosschecks and subsequent callbacks are used it can be difficult to spot these individuals.

Compounding these problems, employers are reluctant to disclose adverse information on previous employees fearing lawsuits.

How do companies protect themselves from liability, resume and application fraud? Some companies have the resources to internally conduct thorough investigations, while others will hire a company that specializes in employee background investigations. Many smaller companies feel that they do not have the time or the resources to do complete screening. The truth is, that companies that use background checks generally find themselves with fewer problems; they reduce hiring and training costs, lower insurance costs, high stakes negligent hiring lawsuits, negative publicity and losses from employee theft and dishonesty.

There are several tools available to perform a background check. The most basic and necessary check is a criminal history of the applicant. The decentralized nature of information creates obstacles in getting background information easily. The only national repository of criminal records is the FBI's NCIC database, which is not available for pre-employment purposes. Some states, including Michigan, maintain a state repository for criminal histories, but the accuracy can be compromised by county courts that don't report diligently. In states that do not maintain centralized records individual county courts must be checked. Although an individual may have a felony conviction, without knowing the location of the court or where the individual has resided in the past, obtaining accurate information can be difficult.

- A social security search can be a valuable tool aiding in knowing where to look for information and in spotting gaps in resumes. It can verify previous addresses, names associated with a particular social security number, and the date and state the number was issued in.
- A driver's license check can show violations, convictions and restrictions. If the employee's job description includes driving, for example sales, service or delivery, this is a necessity for liability reasons and for purposes of making sure the company's insurance applies.
- More and more resumes in today's competitive job market contain false information on educational backgrounds. An education check can verify degrees, attendance and offer transcripts.
- A credit report reveals much about a person's character, how they handle money and whether they take responsibility for their personal obligations. It is for this very reason many states require credit reports for a variety of state issued licenses.
- Past and present employment verifications including written verifications and earnings histories are a necessity. Additional checks might include civil or Federal court records, professional license verifications, and personal reference checks.

By utilizing several of these checks concurrently, the employer will get a better look as to how everything fits together. A combination of cross checks works the best.

Employers must resist the temptation to grab the first warm body that seems to fit the bill, without thoroughly checking and verifying employees' resumes and backgrounds. Firms that specialize in background investigations can offer a cost effective means of providing information employers need to make intelligent hiring decisions. Employers frequently ask if prospective employees object to having their backgrounds checked. Usually the only ones who object are the ones that have something to hide. Is it legal to investigate employees' backgrounds? Yes, provided you have the written authorization of the employee, commonly contained in most employment applications. Companies that prepare investigative reports must follow the Fair Credit Reporting Act, the same act that regulates credit-reporting agencies that prepare your mortgage credit reports.

IntelQuest, Ltd. manages a national background screening program for clients as diverse as those involved in health care, banks, pharmacies, schools, casinos, distributors and manufacturers, some of which are Fortune 500 companies. If AAPP members have any questions, we can be reached at (517) 545-5530 or via email at intelquest@ameritech.net.