



Information Bulletin

NUMBER 50

Pre-Employment Background Checks

- *After driving for a telephone company for only a week, an employee was involved in a traffic accident. The jury learned that the company never saw the employee's driver's record which had five traffic tickets within 18 months. They awarded the injured party \$550,000.*
- *A car rental company recently paid \$750,000 to an employee who was raped by a fellow employee.*
- *An Appellate Court awarded \$4 million to a woman who was raped by an employee. His employment application indicated no criminal convictions and the employer did not perform a complete background check.*
- *In Nebraska, a delivery driver for a major pizza chain raped a woman after delivering a pizza to her home. The delivery driver had a previous sexual assault charge and the employer had not done a background check. The pizza chain was ordered to pay \$175,000 to the victim.*
- *In Ohio, an employee of a major fast-food chain sexually assaulted a 3-year-old customer on the property of the restaurant. The employer did not make a background check and the employee had a criminal record, including sexual assault. Restaurant was found liable.*
- *A guard service was found guilty for inadequately checking a guard's references when the guard helped steal from their client. The charge - negligent hiring as they failed to investigate and the employee had a criminal record. The damages paid were over \$300,000.*
- *In 1999, a hospital was ordered to pay \$26.5 million dollars to the family of a patient murdered by an employee.*

Regardless of the size of your business, background screening is a necessary hiring practice to avoid lawsuits and costly hiring mistakes. Gone are the days of a simple reference check and a few phone calls to screen new employees. Amid security concerns, corporate scandals, workplace violence, workplace theft, and fraud, pre-employment background checks have become common place. Over 96% of HR professionals report that their companies do background checks of new hires, up from 66% in 1996 according to The Society for Human Resource Management Workplace Violence Survey.

One solution for small businesses undertaking pre-employment screening is to employ the services of a background checking company. Hiring an outside company can help in finding accurate, complete information on job candidates. A competent agency can steer you through the legal requirements as well as federal and state regulations of background screening. Background checks vary in price based on agency and depth of information requested. A typical combination criminal, credit, and motor vehicle record check is around \$40-\$50. In depth executive background checks may be \$350.

Regardless of the type of background check to be made, an essential component is the release form signed by the applicant. These are required by most states and they also act as an additional screening method, as many problem applicants will not pursue the position any further if they know you are going to conduct a background check. **Regulations regarding background checks vary by state and it is always a good idea to have an attorney review your background check policies and procedures.**

This bulletin is intended only as a reminder and is offered solely as a guide to assist management in its responsibility of providing a safer working environment. This bulletin is not intended to cover all possible hazardous conditions or unsafe acts that may exist. Other unsafe acts or hazardous conditions should also be noted and corrective action taken

Common Types Of Background Checks

- **Criminal History Checks.** This procedure entails a search of the applicant's criminal history record, which may include theft, drug use, driving while intoxicated, sex crimes, and violent crimes. These checks are suggested for all positions, but should be mandatory for any job positions that involve working in, or visiting customer's homes, working with children and the elderly, and any other position that involves working closely with customers or the general public. Remember, failure to screen applicants and to use proper care in hiring can result in legal liability.
- **Credit History Checks.** These checks determine a subject's financial credit history and his/her payment patterns along with any liens against him/her, including unpaid taxes and child support. This can also verify an applicant's prior addresses, previous employers, and social security number. All checks must be done in compliance with the Fair Credit Reporting Act (FCRA).
- **Driving History Checks.** These should be conducted on any person required to drive while on the job, whether in a personal, company, or customer's vehicle. Checking an applicant's driving history can reveal the validity of an individual's driver's license, as well as indicate previous traffic violations.
- **Employment History Checks.** It is common for resumes and applications to contain false information. Investigative agencies can verify an applicant's work history. If possible, it is best to question an applicant's former supervisor directly, as most personnel/HR departments will only give dates of employment and positions held and not details about job performance or character.
- **Workers Compensation History Checks.** Workers' compensation background checking is a cost-effective way to reduce workers' compensation claims caused by fraud and re-injury. In 1980, state records to determine previous work related injuries became available and in 1990 the Americans with Disabilities Act (ADA) placed restrictions on using these records. These records are currently available in 33 states. States that currently (as of January 2009) do not release this information include: Alabama, Georgia, Indiana, Maine, Michigan, Montana, Nevada, New Mexico, New York, North Carolina, Oregon, Rhode Island, Texas, Utah, Washington,

West Virginia, and Wisconsin. States on this list do change periodically.

The ADA does not allow the employer to ask questions about an applicant's workers' compensation history or other medical conditions on a job application or during a job interview. These questions can be asked and a workers' compensation background check can be done only when the applicant has been given a conditional job offer, after which the employer has already evaluated all relevant non-medical information.

It is important to note that the ADA does allow an employer to reject applicants who are a safety or health threat or who are unable to perform the essential functions of the job as stated above. However, the employer who has such an applicant must first consider "reasonable accommodations" to allow the person to perform the job safely. A disabled applicant may only be rejected when the necessary accommodation would result in an undue hardship on the employer.

Workers' Comp background checks must also be made uniformly within a department. If you conduct it on one applicant for a given position, you must conduct it on all applicants for that position. One of the main benefits of conducting these checks is the simple fact that the release form acts as a screening tool. Individuals who are out to commit fraud may reconsider working here if they know you are going to check their history.

Remember, employers can be sued and held liable if they fail to use reasonable care in the employment-selection process. "Reasonable care" is dependent on not just whether the employer knew about the candidate's proclivities but also whether the employer *should have known*. Negligent hiring litigation is a growing problem! Employers lose 79% of all negligent hiring suits and the average jury plaintiff award in employment law cases continues to be in excess of \$1.6 million! (Public Personnel Management - USA Today - Nov. 21, 2003)

Referenced:

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- **Avoid hiring your next work comp problem.** John Eubanks 5-29-02
- **Background checking-**Risk Management Society Publishing, Inc 2008
- **New Ideas to reduce work comp losses.** Peter Bullard 6-7-07
- **Pre-screening applicants can pay off.** Greg Norred.