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The Importance of Employee Screening and Risk Assessment

By Tony Ramos and Charles Krugel

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 choose not to have a screening program?
- Are all screening companies alike?

According to attorney Charles Krugel: 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 oc-

curs 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's searched.

Although Illinois doesn't require



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Obviously, much of the burden falls on employers, with 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.

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, with 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.

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.

Usually, courts don't examine why screening is done. The 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 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'll probably need to know the exact nature of the conviction and 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.

Tony Ramos, owner of Integra Security Alliance, www.integrasecurity.org, has also authored "The Guide to Background Checks," which he developed for the Illinois Association of Chiefs of Police and is available for download at www.integrasecurity.org/GuideMay2004.pdf.

Charles Krugel, www.charlesakrugel.com, is a management side labor and employment attorney and human resources counselor in Chicago. ■

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