

The Benefits of Pre-employment Screening

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Introduction:

Employers face a number of human resource challenges. Recruiting the right employee for the right job is one of the most critical challenges, and that task has become more difficult with a global economy and very mobile workforce. Employers can no longer rely solely on candidate interviews to make a sound hiring decision. Pre-employment screening is a process that allows employers to verify information such as education, and prior job history and performance. In addition the screening process reveals important information about a candidate's prior behavior which can help an employer assess potential risk posed by the candidate. Prior behaviors can include substance abuse, credit history and bankruptcy, driving records, and criminal convictions, and civil litigation.

Benefit: Better Candidates Lead to Better Employees

Employers who utilize pre-employment screening as a part of their recruitment process realize a number of important benefits. One of those benefits is a general improvement in the quality of applicants which ultimately leads to better workers, higher productivity, increased quality, and lower employee turnover. Simply announcing to all applicants the intention to conduct background checks will discourage some candidates from applying. At a minimum, candidates will be more likely to represent themselves honestly. Statistically 51% of all resumes contain inaccuracies in employment, job performance and educational achievement. Equally important, the announcement will encourage some high risk candidates with criminal backgrounds to eliminate themselves, which saves time and money in the recruitment process. Conversely, the announcement does not discourage good qualified applicants who know their background check will not reveal significant problems.

When businesses began implementing pre-employment drug testing in the mid 80s, the practice quickly discouraged drug users from applying for employment at companies who conducted the test. Drug users could only apply for work where drug testing was not conducted. Deploying pre-employment screening provides the same impact. As more and more companies utilize pre-employment screening, those who do not will become the employer of choice for those who have criminal behavior or other high risk behaviors in their background.

The return on investment for background checks is easily realized in turnover reduction. Background checking helps prevent the hiring of a problem employee which will ultimately become a turnover statistic. With the cost of a third party provided background check generally less than a single day's pay, it is not hard to see a fast hard dollar return while the longer term benefits of productivity, quality, and increased customer satisfaction are being realized.

Benefit: Reduction in Non-violent Employee Misconduct

Another benefit provided by pre-employment screening is a reduction in non-violent employee misconduct in the workplace. Non-violent employee misconduct can include theft of company or customer assets, fraud, drug possession or solicitation, and identity theft or other confidential information abuses. In addition to the obvious financial impact, these acts can result in lost customers, deflated employee morale, and company brand and image destruction.

Pre-employment screening can be an effective method for identifying applicants who have a track record of non-violent, but damaging acts of misconduct in the workplace. Employment verification and reference checking can identify applicants who have a history of employee misconduct. While some employers may be reluctant to reveal this information, the courts have protected companies which provide true and accurate information about applicants to potential employers. It is safe to advise a potential employer that a candidate was fired for stealing, if in fact that statement is true.

Other forms of pre-employment checks can be utilized to determine whether a candidate has a propensity for theft or fraud. Credit reports and bankruptcy reports can be used to determine whether a candidate may be under extraordinary financial strain. That condition, combined with the appropriate opportunity, may lead to an act of theft or fraud. However, employers must use good judgment when denying employment based on credit history. If the position in question does not have the opportunity for theft or fraud, employment denial may be considered discriminatory.

A candidate's driving record is an obvious consideration if the position requires the operation of company or customer vehicles. But frequent moving violations may also indicate a pattern of unsafe behavior or disregard for safety regulations. Knowing this may be important if the position operates equipment or machinery where safe operating practices are required.

Employment verification, reference checking, credit and bankruptcy reporting, driving records, and criminal conviction checks can all lead to a reduction in incidences on non-violent, but costly employee misconduct.

Benefit: Reduction in Risk of Negligent Hiring Litigation

Negligent hiring is a legal theory under which employers are held responsible for injuries caused by their employees if the employer failed to take reasonable care in the employment selection process. The employer can be held liable even if they did not know about the employee's history if it is determined that they should have known. An employer may be found liable if the employee injures a co-worker, customer, or member of the general public even if the employee is not acting within the scope of their job duties when the injury occurs.

Employers must demonstrate reasonable care relative to the position that is being filled. Although there is no defined list of jobs and the specific checks that are considered reasonable for those jobs, employers can follow some common sense guidelines. As a general rule, positions with a greater exposure to co-workers, customers, and the general public have a higher standard for reasonable care. Positions of special trust such as care givers or security personnel have a higher standard for reasonable care.

An employer can reduce their risk of negligent hiring liability by implementing a reasonable and consistent background checking program as a part of their recruitment process. The program should contain the following elements:

1. The background check should be consistent with the specifics of the job. If the position operates a vehicle, then a driving record check should be performed. If the position has little contact with others then a rigorous check may not be required.
2. Review the job application for gaps in employment. The applicant should provide a reasonable explanation for any gaps listed on the application. If they cannot provide a reasonable explanation, then an investigation is in order.
3. Verify all employment and education claims on the application and resume. Check all references that are provided.
4. Document all reference and background checks that were performed. Make note of the references or employers who did not respond.
5. Be consistent and follow the process that has been established. It is important take all the necessary steps in spite of time pressure to fill a position.
6. It's better to be safe than sorry. When in doubt take the extra step and conduct a more thorough search.

Not every state recognizes negligent hiring, and the standards for determining liability can vary by state as well. Where employers have been found negligent in the hiring process, the financial penalties have been substantial and can include actual and punitive damages. The most severe cases of negligent hiring have had judgments in the millions of dollars.

Compliance Issues:

The Equal Employment Opportunity Commission (EEOC) stipulates that employers may use arrest and conviction information, and misdemeanor offenses in the selection process, as long as they consider the whole picture of an applicant. The whole picture should include interview performance, education, work experience, job fit assessment results, as well as background screening information. The EEOC has established the four criteria that employers should follow when reviewing pre-employment screening results:

1. Determine whether the applicant is likely to have committed the alleged conduct. (Because this may be difficult without an actual conviction record, many employers choose to only consider actual convictions.)

2. Consider the nature of the offense(s). The employer should not implement a blanket policy against hiring anyone with a conviction. The significance of the act should be considered.
3. Consider the amount of time that has passed since the conviction. The EEOC does not specify the amount of time required to pass before a conviction is no longer relevant. In most cases standard screening reports cover the past seven years.
4. Consider how the offense(s) relate to the nature of the job. It may be considered discriminatory to deny employment based on a conviction that is not relevant to the core responsibilities of the job.

Employer should follow the EEOC criteria in a consistent manner across all recruiting and hiring activities to avoid potential discrimination.

The Fair Credit Reporting Act (FCRA) is a federal law which governs the use of background screening for employment purposes. The FCRA rules apply to employers who use a third party provider to complete background investigations. The main provisions of the FCRA include:

1. Employers must have a permissible business purpose to order background checks. Pre-employment screening is considered a permissible business purpose by the FCRA.
2. Employers must give applicants written and signed advance notice, gain their express and signed authorization to conduct a background check, and provide the applicant with a written copy of their rights under the FCRA. The summary of rights explains the course of action available to applicants if they wish to dispute the findings of the background check.
3. When the employers plan to deny employment based on the background check findings, they must provide adverse action notification in the form of a pre-adverse action letter, followed by an adverse action letter. The notices provide the applicant with instructions if they believe the findings are incorrect.

Summary:

According to the Alexander Hamilton Institute – Employment Law Resource Center, 16,400 threats are made to employees, 723 workers are attacked, and 43,800 employees are harassed in the workplace each day in the United States. Employees who have a history of criminal behavior or workplace misconduct carry out a large percentage of these incidents. It is estimated that theft, espionage, and lawsuits stemming from poor hiring decisions cost U.S. businesses \$18 billion per year.

Poor hiring decisions can be minimized by implementing a recruitment process that includes work history, education, and reference verification and a series of position appropriate background checks. Background checks can include criminal history, driving record history, credit and bankruptcy history, and civil litigation history. It is important to implement a screening process that is consistently applied. The EEOC has issued guidelines to help employers utilize background information in the recruitment process,

and the FCRA is a federal law which regulates the use of background information for employment purposes, and guarantees certain rights to applicants.

Employers can be held liable for the actions of their employees if they have not taken reasonable steps to identify potential risks posed by the applicant. Negligent hiring lawsuits can cost a company millions in legal fees as well as actual damages and punitive damages if the company is found to be negligent.

Many companies choose to outsource some or all pre-employment screening to a specialized firm. Companies who choose a pre-employment screening provider should exercise due diligence to make sure they have the specialized skills and knowledge required to perform all functions correctly and in full compliance with the EEOC and the FCRA.



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