

For hire: background investigations

The cost of hiring an employee is significant – an average of \$3,500 per hire. But the cost of making a poor hiring decision is much higher – an organization can lose up to two and one-half times the amount of that person’s salary.

Those costs include direct costs related to replacing and training an employee, as well as the resulting indirect costs due to issues such as employee violence, theft and drug or alcohol abuse.

To minimize the costs of making a bad hire, a pre-employment background investigation program is critical for all organizations. In the long run, an effective program can save both time and money and provide peace of mind for your organization.

The need for validation

Traditionally, most pre-employment screenings - and hiring decisions – have focused on a review of basic information: the employment application, the resume and, most times, an interview. All tend to rely heavily on information provided by the candidate.

However, according to a February 2002 *HR News* article, “Unraveling the Applicant,” at least one in four job candidates is willing to falsify information to get a job — including false claims of college degrees and employment histories and misrepresentations of why they left their previous employers. Because of this, it’s critical for organizations to validate information provided by candidates. Types of validation include:

Reference checks – References can be valuable in determining a potential employee’s work habits and may include information from previous employers, educational institutions or personal references.

Motor vehicle record (MVR) checks – Drivers bring past driving habits along with them. Giving keys to an employee with a poor driving record can subject your entity to significant liability in the event of an accident. All states make MVRs available to employers for employment purposes.

Criminal background checks – Hiring an employee with a criminal history can pose a danger to fellow employees or the public; unfortunately, there isn’t a common national database for criminal histories. In general, arrest records cannot be used, and state and federal laws differ on the extent that an employer may consider an applicant’s criminal history in making hiring decisions.

Child abuse checks – The National Child Protection Act of 1993 gives “qualified entities” the ability to request fingerprint-based national criminal history checks on volunteers and employees. Qualified entities include organizations that provide services for children, the elderly and people with disabilities.

Credit checks – Infrequently used, credit checks are generally for candidates who work with money.

Establishing a policy

A first step in establishing a program for pre-employment background investigations is to draft a written policy. A written policy can help establish consistency in the process across departments in an organization. The policy should include the following:

- A requirement that a background investigation be conducted for all candidates
- An outline of the types of background investigations that will be required for different positions
- The kind of information needed from the candidate, including the candidate’s consent
- A description of how the resulting information can be used

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The type and depth of background investigations needed depend on the type of job and its scope of responsibilities. For example, the background investigation process for a laborer in a public works department may be less intense than that for an employee who works with children. You may only want to check references and the driving record for the laborer; for the candidate who will be working with children, you may want to check references and the driving record, plus criminal history and child abuse records.

Legal issues

Implementing a process to conduct criminal background investigations sounds straightforward. But prior to the investigation - and when the resulting information is used in employment decisions - there are legal issues to consider. These include:

Fair credit reporting act (FCRA) – Your organization needs consent from the candidate for a background check — most often in the form of a release included in the employment application. You are required to inform the candidate if you make the decision not to hire the candidate based on information contained in the background investigation. The candidate has the right to contest the information.

Federal civil rights laws – In general, these laws prohibit denial of employment solely on the basis of a prior criminal record that is unrelated to job performance. Care must be taken to weigh the offense against the requirements of the position.

State laws – Laws vary from state to state regarding the types of background investigations that may be conducted. Restrictions on how the resulting information can be used also vary.

Because of these legal issues, involve legal counsel when developing and using a background investigation program.

Costs go beyond the wrong hire

Beyond the costs involved in hiring the wrong employee, there are several other reasons to require pre-employment background investigations:

Negligent hiring liability. Negligent hiring arises under tort law when the employer knows of a dangerous condition (previous criminal history, poor driving record, etc.) and hires the applicant anyway or fails to perform a reasonable background investigation.

According to an article from the Northeast Human Resources Association (NEHRA) Website, “Best Practices in Hiring, Part 1: Looking Beyond the Resume,” the Negligent Hiring Doctrine is now recognized in more than half of all states, and employers lose more than 70 percent of negligent hiring suits brought against them.

Security and safety concerns. Positions related to public safety (police, fire, etc.) have always been subject to extensive pre-hire background investigations. Since 9/11, there has been an increased focus on other positions that are “security sensitive” - such as operators at water and wastewater plants.

Negative publicity for the organization or for elected and appointed officials. Negative publicity in conjunction with employee violence, child or elder abuse can impact your organization at a variety of levels.

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