

Expected Practices in Background Checking: Review of the Human Resource Management Literature

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Abstract In recent years we have seen a growing attention to the issue of background checks. Research on pre-employment inquires suggests that job candidates engage in extensive misrepresentation of academic and work credentials listed on resumes and job applications. An employer who fails to perform a thorough background check on a prospective employee may be vulnerable to the charges of negligent hiring or employment discrimination. Based on a review of the scientific and professional literature in human resource management, we defined expected management practices in background checking including the need to understand the job requirements, methods of background checks, the extensiveness of the background checks, the role of the application forms, and the use of interviews. Recent legal cases are also included to illustrate what practices are or are not defensible.

Key words background checks · expected practices in background checking · negligent hiring

Introduction

In recent years, we have seen the growing attention to the issue of background checks. This was driven by several reasons. First, some evidence suggests that job candidates engage in extensive misrepresentation of academic and work credentials listed on resumes and job applications. For example, in its 2007 Hiring Index study, ADP¹ Screening and Selection Services (2007) reported that 41% of individuals' resumes showed discrepancies in employment, credentials, or education history. ADP's Hiring index is based on calculations of the 5.8 million

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background verifications (e.g., criminal records, employment, education records) performed by the company during the 2006 calendar year (<http://www.adphire.com/hiringindex/>). Similar results were reported in the InfoLink Screening Services' 2006 Background Screening Hit Ratio Report (InfoLink Screening Services 2007). That report also suggested that applicants stretch the truth more often in 2006 than in 2005. The discrepancies regarding what applicants reported to potential employers on their past employment increased from 36.5% in 2005 to 49.4% in 2006, and discrepancies in education verification increased from 14.1% in 2005 to 21.5% in 2006 ([http://www.infolinkscreening.com/InfoLink/Downloads/2006 Background ScreeningHitRatioReport.pdf](http://www.infolinkscreening.com/InfoLink/Downloads/2006%20Background%20ScreeningHitRatioReport.pdf)).

Second, an employer who fails to perform a thorough background check on a prospective employee may be vulnerable to the charges of negligent hiring or employment discrimination. Employers can be held liable for negligent hiring if they fail to do a background check on a prospective employee who then commits a crime or inflicts harm on a customer or third party in the course of performing his or her job duties (Anthony *et al.* 1999; Boles 1997; Cook 1988). Also, some research findings suggest that in the absence of background checks, employers may use race and other perceived correlates of criminal activity to assess the likelihood of an applicant's previous felony convictions and factor such assessments into the hiring decision (Holzer and Stoll 2006). That is, employers who do criminal background checks are more likely to eliminate applicants on the basis of revealed information, while employers who do not may eliminate applicants on the basis of perceived criminality. The Bureau of Justice statistics estimates that 28 percent of black males, 16 percent of Hispanic males, and 4 percent of white males will serve time in state or federal prisons (Bonczar and Beck 1997). Since the proportion of African Americans with past criminal conviction is quite large, employers may be more likely to eliminate black applicants on the basis of perceived criminality and thus discriminate against black candidates.

Despite the importance of and attention to background checking, some employers continue not to do background checks or not to do them adequately. The reports on surveys of hiring practices suggest that not all companies conduct background checks as part of their hiring processes (Anonymous 2004b; Burke 2005). Moreover, studies suggest that small businesses are less likely to conduct applicant background investigations (Anonymous 2004b; Holzer and Stoll 2006). For example, according to a survey conducted by the Society for Human Resource Management, only 34% of employers always verify educational records, 53% of employers verify former job titles, and 41% always verify certifications and licenses (Burke 2005).

Therefore, the purposes of this article are (1) to remind practitioners what the scientific and professional literature has recommending for some period of time, and (2) to illustrate what practices are and are not defensible. The expected practices in checking the backgrounds of job applicants are identified based on a review of the scientific and professional literature in human resource management. This will reveal overall expectations regarding background checks, knowledge of job requirements, expectations regarding application forms, interviews, reference checks, official record checks, and degree of thoroughness of the background check. Finally, recent cases on negligent hiring at the state appellate and state supreme court levels will be included to illustrate.

Human Resource Management Literature Search

The literature was searched using two databases: PsycINFO and Business Source Complete.

negligence, background checks and background checking, hiring and background checks, and hiring and reference checks. An initial search yielded 412 citations. After repeated citations were deleted, the remaining citations were narrowed down by relevance and by quality indicators (e.g., preference for peer-reviewed publications). In total, the search resulted in 119 articles and books on the topic.

Negligent Hiring and Background Checks

Virtually all found HR literature discusses background checks in the context of negligent hiring theory. The negligent hiring liability is one of the most serious negative consequences employers are likely to face when they do not perform background checking or perform it inadequately. Thus, the legal theory of negligent hiring determines the expectations regarding background checks and will be briefly discussed here as well.

The law of negligent hiring has evolved from the common law doctrine (court-made rulings) of master-servant relationships. This doctrine was recognized as early as 1894 in Illinois when the state Supreme Court held that a master has a duty to exercise reasonable care in selection and employment of careful and skillful employees (Tiangco and Kleiner 1999). In order for a claim based on negligent hiring to be successful, it must first be established that the employer had a duty to the injured third party, and there is some relationship between the injurious act and the employment situation. For example, in *Ponticas v. K.M.S. Investments* (1983) an apartment caretaker entered one of the units using master keys and attempted to sexually assault its resident. The company owed a duty of care to the plaintiff because it gave the employee in the caretaker position direct access to all privately occupied apartments. The company was found liable for negligent hiring because it failed to perform a necessary pre-employment investigation of the caretaker and did not discover his previous criminal assault conviction. The employment situation must provide the employee with the opportunity to cause the injury in order for the employer to be liable under a negligent hiring theory.

After the duty of care is established, most courts consider the following factors when deciding a negligent hiring case: (1) an employment relationship existed between the defendant and the tortfeasor; (2) the employee has characteristics that amount to incompetence or unfitness for the position; (3) the employer knew or should have known through reasonable investigation that the employee was unfit for the position; (4) the employee negligently or intentionally caused the plaintiff's injuries; (5) the negligent hiring was the proximate cause of the plaintiff's injuries; and (6) actual damage or harm were resulted from the tortious act (*Evans v. Ohio State University* 1996; Susser and Jett 1987; Woska 1991).

This doctrine has several direct implications for background checks such as: (a) an employer has a duty to perform a reasonable investigation of the employee's background; (b) job duties that might create opportunities for committing crimes should be identified; and (c) the background of job candidates should be screened against identified potential types of crimes.

Background Checking is an Expected Practice

The topic of negligent hiring and the requirement of organizations to conduct background checks are expected knowledge in human resource (HR) management. Three bodies of literature offer evidence in support of this assertion. The first one includes HR literature

journals. Textbooks can be considered as defining basic expected knowledge and practices in a field. Nearly all textbooks on HR describe negligent hiring and make recommendations to conduct background checks, including textbooks for specialty courses on hiring (Cascio 2003; DeCenzo and Robbins 2005; Fisher *et al.* 2006; French 2007; Harris 1997). The quotes below reflect the advice of common textbooks:

- “An employer is guilty of negligent hiring if he or she failed to perform a thorough background check on an employee whose infliction of harm on a customer or third party could have been predicted by the employing firm” (Anthony *et al.* 1999, p. 261).
- “Employers protect against negligent hiring claims by...rejecting applicants who...have conviction records for offenses directly related and important to the job in question” (Dessler 2005, p. 194).

The issue of background checking is extensively discussed in the popular HR magazines oriented to practitioners in the field such as

- Workforce (formerly Personnel Journal),
- HRFocus
- HRMagazine
- Personnel
- Personnel Today
- Employee Relations Today
- Society for Human Resource Management webpage
- Management Research News
- Managerial Law

Articles on the topic of background checking were also found in many research journals related to HR (e.g., Personnel Psychology, Public Personnel Management, Employee Responsibilities and Rights Journal, Society for Advanced Management Journal, Journal of Workplace Learning, and Business and Professional Ethics Journal).

The second body of literature supporting the assertion that background checking is expected knowledge in HR management is an extension of the first body of literature, except the articles are published in specialty magazines. These articles demonstrate that there has been communication with organizations that may not have an HR staff, such as small organizations. These specialty magazines include a wide range of industries, trades, and types of organizations. Examples include:

- Security (Dow 2001; Gold 2004; Lashier 2006; Service 1988; Svendsen 1999)
- Law enforcement (Hibler and Kurke 1995)
- Safety (Jacob 2004; Smith 2002)
- Nursing (Fiesta 1996; Nabhan 1998; Shumaker 2003)
- Healthcare (Bradley and Moore 2004; also see previously referenced Martanegara and Kleiner 2003)
- Child care (Kiraly 2002)
- Social work (Lynch and Versen 2003)
- Property management (Papi 1994; Walter 1994)
- Hotel management (Atkinson 2004; Clay and Stephens 1995)
- Restaurant management (Berta 2005; DeCotiis 2006; Kerr 2006)
- Heating and air conditioning (Hall 2004, 2005; Liegl 2001)

- Education (Fossey and Vincent 2000; Dorris and Kleiner 2003)
- Public sector (Connerley *et al.* 2001; Johnson and Indvik 1994; Kondrasuk *et al.* 2001; Zhoa and Kleiner 2003)
- Nonprofit (Le *et al.* 2003)
- Insurance (Spoden and Rosen 1998)
- Information systems (Khirallah 2002)
- Marketing research (McCarter 1995)
- Small business (Maxwell 2000; Usry and Mosier 1991)

The third body of literature supporting the assertion that it is expected knowledge in HR management that organizations should conduct background checks is the large number of legal articles on the topic. Examples include Arsenault *et al.* (2002), Camacho (1993), Crebs and Rush (1996), Fife (2006), Gregory (1988), HR Policy Association (2003), Lear (1997), Ongerth (2005), Oswald (2004), Schmitt (1980), Shattuck (1989), Smith (1999), Sullivan (1998), and Woska (1991).

Finally, courts seem to be agreeing with the assertion that background checking is an expected practice in selection of competent and safe employees. The mere fact that the background investigation was not conducted is evidence of negligence in hiring even when an investigation would not have disclosed information indicating the prospective employee's unfitness (Susser and Jett 1987).

Background Checks Should be Based on Knowledge of Job Requirements

A fundamental truism in HR management is that hiring procedures should be based on the job requirements. Every one of the textbooks cited above recommends acquiring knowledge of job requirements (usually through a job analysis) as the first step in developing a hiring process. The Federal Government's guidelines for the development and use of hiring procedures strongly emphasize this point ([Uniform Guidelines on Employee Selection Procedures](#), Sections 14A, 14B2, and 14C2). Many of the articles explicitly discuss the need for knowledge of the job requirements in order to determine the types of backgrounds that might be related to job performance. Some authors recommend a formal job analysis (e.g., Heneman and Judge 2006; Hibler and Kurke 1995; Kiraly 2002; Ryan and Lasek 1991), while others only suggest that the job requirements be determined in some manner (e.g., Dessler 2005; Martanegara and Kleiner 2003; Shattuck 1989; Woska 1991).

The theory of negligent hiring suggests identifying the opportunities that might exist for committing criminal acts by employees performing the required job tasks, as well as determining employment circumstances that may facilitate or enable employees to commit criminal acts (e.g., access to homes and personal possessions of others, wearing a uniform, and security responsibilities). Woska (1991) suggested developing a liability avoidance matrix. He suggested that employer should (a) identify potential liability factors for jobs (e.g., high stress, driving vehicles, working with children, access to private property), and (b) identify the traits related to the potential risk for each of the job tasks and determine the types of backgrounds that should be checked (e.g., propensity to violence, driving records, criminal records).

Two court cases (*Betty Y. v. Al-Hellou* 1999; *Carlsen v. Wackenhut Corp.* 1994) could be used to illustrate the importance of understanding job requirements in order to identify what types of background should be checked. In *Betty Y. v. Al-Hellou* (1999), a manual worker

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