

EFFECTIVE REFERENCE CHECKING BEFORE HIRING

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Your employees are critical to your success. Good employees can help you achieve levels of success you couldn't otherwise, and bad employees can significantly hinder your progress. That is why "having the right people on the bus" and "having them in the right seats on the bus" are so important.

The complete recruiting process is comprised of many different components. It begins with applicant screening, followed by interviewing, personality and job-matching assessments, skills assessments, and concludes with reference checking and background checks before the final hiring decision.



Unfortunately, many employers skip many of these steps. Why? There are lots of excuses, none of which are very compelling when you consider we're talking about the success of your practice or lack thereof.

Our focus in this article is the failure to conduct reference checks. Failing to conduct reference checks can have implications from a legal perspective. It's called "negligent hiring." Employers can be held liable for the wrongful actions committed by their employees within the scope of their employment.



A case for negligent hiring arises from the ability to demonstrate that the employer failed to adequately investigate the background of the person who committed a wrongful act. The rationale is, had the employer investigated the perpetrator's background and not hired him or her, the victim would not have been subjected to the wrongful act. If a reasonable person in the same situation as the employer's would not have hired the perpetrator, this may be a case of negligent hiring.

An attempt to investigate a prospective employee, regardless of the results, can help resolve a negligent hiring lawsuit in the employer's favor. Furthermore, there are techniques that, if used, may break down some of those barriers and elicit more meaningful information from the previous employer.

The use of an authorization and waiver form can increase your chances of getting former employers to open up about applicants. Simply put, an authorization and waiver form obtains permission from the applicant to speak with former employers about his or her employment, and waives any legal action related to the disclosure of such information. (Call us for a sample waiver form.)

When checking references, try to establish a rapport with the person giving the reference information before you ask

questions. He or she will likely feel more comfortable being honest about the candidate. Be thoughtful about the questions you ask; don't try to wing it. Prepare your questions in advance, and have them in front of you in a notebook to capture the information being given. Avoid asking too many yes or no questions as this will not supply you with enough data to assist with your decision.

Listen closely, not only to what is being said but how it's said. Tone of voice and enthusiasm (or lack thereof) can be good clues as to how a candidate truly measures up. Be sure to follow up with additional questions to gain clarity about what's being said.

Avoid asking questions that are considered discriminatory. Keep all questions related to the specifics of the job and the person's performance in doing that job. Other criteria about family status, relationships, race, age, sexual orientation, religion, etc., are protected characteristics and may result in legal liability for you if pursued.

In addition to asking specific, job-related questions, also confirm dates of employment, the position held, salary, and duties performed. Make sure that the completed application supports the information given. False information on an application may be grounds for immediate disqualification.

If you use a third-party entity to obtain reference information, the report from that agency will fall under the Fair Credit Reporting Act (FCRA) because it is considered a "consumer report." Be sure you know and follow the FCRA's regulations when accessing a "consumer report."

CONCLUSION

Bad hiring decisions should be minimized. Tools are available to support greater hiring success. Don't take shortcuts! The emotional stress and cost associated with turnover and liability claims will negatively impact your success. Excuses don't help and may hurt you. With due diligence, you could well be on your way to hiring the right person. **DE**

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