



Strategic|HR|Partnerships

Employment Screening Facts

Why Conduct Background Checks

You want to avoid problems from the outset, so it's important to know a potential employee's history —before it becomes a liability.

Real Negligent Hiring Cases:

Employee with criminal record sexually abused child; \$1.75 million award for negligent hiring and retention. *Doe v. MCLO*

Nursing home found liable for \$235,000 for negligent hiring of unlicensed nurse with 56 prior criminal convictions who assaulted 80-year-old visitor. *Deerings West Nursing Center v. Scott*

Furniture company found liable for \$2.5 million for negligent hiring and retention of deliveryman who savagely attacked woman customer in her home. *Tallahassee Furniture Co., Inc. v. Harrison*

Employer settled for \$2.5 million in a suit seeking to hold it liable for negligent hiring and entrustment of intoxicated security guard who had on-duty traffic accident in company car that killed himself and another motorist. *Butler v. Hertz Corp*

Vacuum cleaner manufacturer found liable for \$45,000 because one of its distributors hired a door-to-door salesperson with a criminal record who raped a female customer in her home. Manufacturer should have required its distributors to do pre-hiring screening of door-to-door salespersons to prevent hiring of persons with criminal histories. *McLean v. Kirby Co*

A settlement of \$5 million in suit by family of deceased female tenant against apartment complex owner and management. Suit claimed the tenant was killed by brother of complex's assistant manager and that it was negligent hiring to hire assistant manager without a criminal background check. *Liebman v. Hall Fin. Group, Inc*

Store customer detained by security guard as suspected shoplifter was injured while being restrained. Awarded \$10 million in damages in suit against store claiming negligent hiring. *Porter v. Proffitt's, Inc.*



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II. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR EMPLOYMENT PURPOSES

If information from a CRA is used for employment purposes, the user has specific duties, which are set forth in Section 604(b) of the FCRA.

The user must:

(1) Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained. (2) Obtain prior written authorization from the consumer.

Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or regulation, and that, if any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the consumer.

Before taking an adverse action, provide a copy of the report to the consumer as well as the summary of the consumer's rights.

Storing Background Check Results

When you're ready to store your results, you need to ensure the privacy of your applicants' information is securely maintained at all times.

Security is one of the most important factors when storing results of background checks done on employees. Background checks deal with highly sensitive and personal information about people's lives.

Employers may opt to store their results digitally, whether on hard drives or backed up on disks. If opting for this method, employers must make sure the results they are storing are secured. This should mean setting up security methods on their computers, such as unique passwords and even setting up a firewall to ensure that information cannot be "hacked" from outside their office.

When storing results, employers can print hard copies of the background reports and store them in employee files. These files must be locked and secured with the person and staff who manage them.



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Using Social Media for Background Checks

- Why do companies look at social media during the hiring process?
 - Obtain information you would not receive in an interview or resume
 - See if an individual fits the “culture” of your business
 - Determine if the individual poses any specific risk to your business

Legal risks of using social media in hiring

- ***Discrimination***
 - Access to profile provides information regarding protected classes that you may not want imputed to your employment decision
 - i.e., race, pregnancy status, age, disability, religion, genetics, sexual orientation, smoker, etc.

- ***Fair Credit Reporting Act***
 - Applicant must be:
 - Informed of the investigation
 - Given an opportunity to consent
 - Notified if the report is used to make an adverse decision