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## Do you have a skeleton in your closet?

*Have bad credit? A run-in with the law? With more employers running background checks, your mistakes can come back to haunt you.*

BY KELLY PATE DWYER

SPECIAL TO THE SUN

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Let's say you've been at your job three years -- maybe 10 or 20.

Your boss won't know if you pay your bills late, drive too fast or recently got into a fight at a bar, so long as you do your job and don't let on that anything is amiss. Right?

Think again.

Employers are running background checks on long-standing employees as well as new ones. The number of checks on all workers has tripled during the past eight years, experts said, mostly because of growing security concerns, the technological ease in obtaining the information and its declining costs.

"Most of our clients who re-check do it on an annual basis," said Jason Morris, president of Cleveland-based Background Information Services Inc., whose company charges an average of \$66 for a background check.

Morris said most screeners charge \$25 to \$200 depending on the worker's level of responsibility and volume of business with an employer.

"Rescreening" is one of many reasons employment background checks -- into credit, criminal, driving, education, employment and other records -- are occurring more often. That is intensifying concerns about fairness to workers who may lose out on a job for a bad mark that's outdated, erroneous or -- in the opinion of some -- irrelevant to the position.

ADP Employer Services in Roseland, N.J., said it conducted 4.4 million background checks last year, up 16 percent from 2003 and a threefold increase from 1997.

A 2004 study by the Society for Human Resource Management in Alexandria, Va., showed that 82 percent of the 270 employers surveyed said they investigated backgrounds of potential employees, compared with 66 percent in 1996.

The group also found that 35 percent of employers check into workers' credit histories, a





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16 percent increase since 1996.

Workers have little recourse in stopping such checks because federal law allows bosses to conduct them when hiring, promoting or retaining employees. Workers need to provide permission for the background check just once (a few states require permission each time) and it's usually sought during an interview for the job.

The Fair Credit Reporting Act requires employers to tell applicants when they didn't get a job based on the results of a background check. But managers often just say that someone else was more qualified for the job, said Tena Friery, research director for San Diego-based Privacy Rights Clearinghouse, an information and advocacy group for workers.

Even when an employer is open about failed background checks, and applicants can supply proof that their records are incorrect, they have little recourse for getting a job they were denied.

A strong legal case must be made that the employer or background screening firm acted with negligence or willful conduct, said Joe Harkins, employment attorney with Littler Mendelson in Washington, which mostly defends employers.

Job seekers can better prepare for interviews and spotting errors by ordering their credit report annually and even by screening themselves. Capitalizing on the screening frenzy, Careerbuilder.com recently added a self-screening service for \$30 to \$50.

Melvyn P. Bennett's records tell the truth. The Baltimore 56-year-old was convicted of a felony 25 years ago, and he knows that will count against him. But he gets frustrated when an employer automatically discounts him for a mistake at age 21, when he's had a clean record since, strong references and job experience including tutoring and mentoring kids and owning a painting business.

Tired of the physical work in painting, Bennett sought a new job. Twice he applied for a license from the Maryland Public Service Commission to drive a limousine and taxi. Twice denied, he appealed the decisions. The second time -- with the help of a lawyer -- he was granted his license in September.

"I was very frustrated with the process," he said. "It was like throwing a blanket over people, not really judging them on an individual basis."

But he wants to encourage others like him not to give up trying.

Commission spokeswoman Christine Nizer said she could not comment on a specific case but acknowledged that some applicants are denied their license based on their criminal records. She added that applicants who appeal their case get a hearing before the commission.

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"The individual has the ability to bring in extenuating circumstances, character witnesses, anything they think will be helpful in explaining their character and that they are capable of contributing to society in a positive way," she said.

The number of background checks nationwide has grown, experts suggest, because of heightened concerns since Sept. 11, 2001, about terrorism and violence and lower costs thanks to technology.

Considering that 9 percent of background checks reveal something negative or inconsistent from what the applicant or worker told the employer, according to ADP, some bosses hope background checks can head off negligent-hiring charges.

Employers may not have done enough background checks in the past, said Lew Maltby, president of the nonprofit National Workrights Institute in Princeton, N.J. But he believes post-Sept. 11 concerns are often misdirected.

"Terrorists never have bad backgrounds," he said. "The whole point is to be an Eagle Scout until you blow up a building. But that whole distinction gets lost.





"The way I think about it, I'm very concerned about my child's school bus driver having a DUI conviction and I'm very concerned if my banker has bounced a check," Maltby said. "I don't care if my banker has a DUI conviction, and I don't care if my child's school bus driver has bounced a check. And that's not the way employers do it."

The result, he said, may be that the best person for the job doesn't get it.

Some employers would argue that bouncing checks, be it banker or bus driver, reveals a person's character, said Harkins, the employment lawyer.

"There is a point of view that these things give you a general sort of picture of what people are like [and employers] want a clean, responsible person with good judgment,"



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he said.

One client sought Littler's advice after discovering one of its employees, an 18-year-old man, was listed on a sex offender registry. The reason: A few years earlier the employee had had consensual sex with his underage girlfriend.

Similarly, a poor credit history doesn't necessarily mean the person has no willpower with credit cards. More than half of collections actions are medically related, according to the Federal Reserve Board.

Harkins said rescreening of current workers has grown popular in the past year or so, particularly as a condition of business deals. For example, a retailer might require a cleaning company to provide background reports on its employees before those people start work in the stores.

"There's sort of like an epidemic effect, a multiplier effect," Harkins said.

In the case of Northrop Grumman Corp., all employees are screened in hiring, and those people with a government security clearance are periodically rescreened, said spokesman Scott Maclean. However, he said the company isn't doing any more checks now than several years ago.

For employers, background checking is tricky ground. If a company doesn't check an applicant who has a history of sexual assault, hires the person and then that person attacks a co-worker, the employer could be blamed, experts said.

But background checks aren't the only way a company can avoid hiring the wrong person, according to human resource experts. Hiring managers should call previous supervisors, check resumes, conduct thorough interviews, learn and teach colleagues to recognize possible drug use and train employees about conflict resolution and what constitutes discrimination.

Morris, of Background Information Services, advises employers to do background checks but only with companies that abide by the Fair Credit Reporting Act and to stay current with changes in states' laws.

To that end, Morris is a founding member of the Durham, N.C.-based National Association of Professional Background Screeners, a trade group formed in 2003 to establish best practices for the mushrooming industry.

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