

Screening Employees Secures Workplace

Failure to do proper due diligence exposes firm to liability suits if violence occurs

BY ROBERT THOMSON

WITH THE LOOMING potential of terrorism or other types of violence threatening those in the workplace, it's more important than ever for risk managers to take every precaution to protect workers and customers.

Certainly the intention is to provide a safe work environment and avoid hiring individuals with a predictable propensity for stealing money or assets. To this end, an important part of any safety plan is having a good employment screening strategy.

If the unthinkable happens in an organization, immediate physical injury, property damage or monetary loss could be just the beginning of the repercussions. Actual and punitive damages resulting from a negligent hiring lawsuit can be astronomical.

What's more, an employer must be able to demonstrate reasonable due diligence in hiring, and a substandard screening strategy that misses existing criminal records will present a weak defense.

So, how do you determine what messages are valid and what priorities should apply to your business and employees?

It can be argued that there are three main elements necessary for an effective background-screening program: quality, low price and fast turnaround time.

Many organizations, however, embark on an employment-screening program with a critical misunderstanding of how the elements of an effective program fit together. Here are the elements from a logical perspective.

► Quality Is The Factor:

One of the biggest misconceptions among buyers, and the equation that far too many vendors sell, is that low price plus fast turnaround time equals quality. Quite the opposite is true.

Because it is much more dynamic, quality is harder to comprehend in a value proposition against price and time. Quality in a screening strategy must be discussed as a combination of, but not limited to, the following vital attributes:

► Reliability Of Information:

A screening vendor should adhere to industry standard research methods and provide practical oversight to achieve confidence that any criminal conviction reported is valid, compliant and identified with the correct individual.

Simply stated, if your candidate has a reportable criminal record, you should find it. Similarly, a "clean" record must come with reasonable confidence there are indeed no existing reportable convictions in the areas where the individual has resided, worked, or attended school.

► Customer Service:

A screening vendor should have customer service personnel available to answer questions within a reasonably urgent response time.

Customer service representatives need to be knowledgeable of the vendor's practices, products and methods, and should be able to explain the sometimes less than clear legal language or credit codes and abbreviations included in consumer reports.

► Legal Compliance:

A screening vendor must make every effort to ensure clients are in compliance with all applicable federal, state and local laws governing access to, and reporting of consumer information.

The vendor should be sufficiently networked to be cognizant of pending legislation at all levels, and have

communication procedures in place to notify affected clients of changes that may impact their screening strategy or candidates.

► Privacy Protection/Data Security:

A screening vendor must perform due diligence on each new client to mitigate the risk of identity theft and security breaches.



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Industry-mandated due diligence requires validating the existence and physical address of a client, and making sure reasonable security is present at the facility.

Screening vendors need to educate clients on the sensitivity of consumer information and the importance of keeping consumer data secure and confidential.

Similarly, a screening vendor must have extensive internal technology, procedures and precautions in place to protect the privacy of the individuals on whom it produces consumer reports.

If these quality attributes sound important, it should be obvious that quality is directly correlated with both price and turnaround time—that is to say, increasing quality requires commensurate, while reasonable, increases in price and time.

BEWARE PERFECT STORM

Warning: if you are using an instant nationwide database check as the sole criminal history inquiry on your applicants and employees, you are using a product that is cheap and fast. This should be raising a flag by now.

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KEY POINTS

PLAYING IT SAFE

A quality screener needs:

- Reliable information
- Knowledgeable customer service
- Legal compliance
- Privacy protection/data security

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solutions." Specifically, he cited:

- ▶ Tax incentives for homeowners to save money for future disasters.
- ▶ Federal incentives to encourage stronger building codes.
- ▶ The creation of a bipartisan commission to look into the problems along coastal regions.

TERRORISM

Meanwhile, although it is likely just a coincidence, the House is expected to take up a bill on Sept. 11 that would extend and expand the Terrorism Risk Insurance Act. The bill is being strongly supported by the industry, although its scope and duration is likely to be reduced when it is dealt with in the Senate—probably before Thanksgiving.

The House bill expected to hit the floor soon extends the program for 15 years, which is strongly supported by the industry,

but also adds coverage for nuclear, biological, chemical and radiological events—risks that insurers are not eager to absorb.

Regarding concerns that disputes over the length of the extension might derail the bill, Ms. Pusey said Congress "knows this program expires" at year's end. She added that neither the White House nor members of Congress want to be seen as the reason the country's terrorism reinsurance backup is allowed to sunset, leaving the industry and policyholders exposed to terrorism risks.

While she acknowledged the 15-year extension period "will be an issue in the Senate," she noted "this is a bipartisan bill," which should ease passage before expiration.

Regarding potential amendments on the House floor and in the Senate bill cutting back on the expanded coverage mandate, she sees strong support for the "certainty" provided by the NBCR provisions. However, that doesn't mean the industry will accept whatever new risks Congress wants

to pass on to insurers. "We don't want it at any price," Ms. Pusey said. "It needs to be done in a workable way."

She also said the industry would not support NBCR coverage as the price to pay for supporting the coastal catastrophe provisions, but added that no one in Congress has proposed any linkage between the two bills.

Joel Wood, senior vice president of government affairs at the Council of Insurance Agents and Brokers, expects "relatively easy passage" of the Financial Services Committee's TRIA extension bill on the House floor. He also believes "there is a better than even chance that flood insurance reform will again be passed."

He predicts the flood bill "will probably" encompass the provisions adding wind coverage to the scope of the federal flood program proposed by Rep. Gene Taylor, D-Miss., "given Speaker [Nancy] Pelosi's strong support for Rep. Taylor." However, Mr. Wood added, "I don't envision that

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SCREENING EMPLOYEES

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Choosing a screening vendor based solely on price and turnaround time creates a risk that is immeasurable—but erroneously perceived to be small.

To help understand this risk, consider three more elements. All three don't happen in succession every time, but like the proverbial perfect storm, you probably don't want to be around when they do:

▶ **Bad apples:** The average job candidate applying to the average company has not been convicted of a serious or violent crime. In fact, most candidates will be considered "employable" by your organization's employment standards.

There will also be candidates who walk through your door that have been convicted of one or more serious and/or violent crimes that would disqualify them in accordance with your organization's employment standards. These are the "bad apples."

▶ **Poor quality background check:** The faster and cheaper the background check, the more likely it is that an existing criminal record will be missed.

Conversely, you could be sued by an otherwise strong candidate for disqualify-

ing them from a position based on a bogus or expunged record attributed to that individual by a background check lacking sufficient oversight

▶ **Incident on the job:** This is where the perfect storm occurs. A bad apple with a history of serious or violent convictions applies for a position with your company. Your instant, cheap background check fails to reveal this adverse history and you hire the bad apple. This employee commits theft or assaults a customer or co-worker.

Suffice to say that plaintiff's attorneys will spend significantly more time and money than you did looking for information that could be considered a predictor of the current incident. The consequences can be devastating.

Your selected screening vendor should be able to discuss in detail the quality attributes described above. Best practices in employment screening dictate criminal history research in each county jurisdiction and under all alias names revealed by a Social Security number trace.

It typically takes up to three business days to accomplish this, and the cost will vary depending on how many places the candidate has lived or spent significant time.

"Nationwide" database tools should only be considered as a supplement to

county criminal research to attempt to identify "vacation" criminal records. Depending on the position applied for and the level of responsibility or access the individual will have, additional screening services may be relevant.

With virtually any service product, successful businesses are naturally predisposed to be concerned with price and turnaround time. Effectively managing risk, however, requires more consideration. It is typically only when something bad happens that everyone is suddenly interested in the quality of your background-screening program.

If you want to truly minimize risk, do not leave quality out of your value proposition. It will take a little longer and cost a little more in the short run, but in the unlikely event of a negligent-hiring lawsuit, you will save the difference many times over.

A cheap, instant background check will provide little shelter in a perfect storm. ■

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