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BACKGROUND SCREENING: SCREEN NOW, SAVE LATER

By: Constance Semler

In the effort to hire the right talent, employers and recruiters use résumés, interviews and tests to identify suitable candidates. The alarming truth is that despite these efforts, employers still make bad hires.

A bad hire is costly to any employer, and for a smaller business it can be devastating. In this paper we will explore this problem as well as ways employers and recruiters can protect their businesses and ensure they hire the right people.

BAD HIRES ARE COSTLY

Sometimes bad hires are made because candidates lie in the application and interview process and their lies go undetected. Bad hires also occur because important information about candidates was either not requested or not obtained.

Bad hires have a number of costs that may include:

- attrition and wasted hiring budgets,
- theft or embezzlement,
- damaged employee relations and morale,
- danger to employees, clients, and business associates,
- lost productivity,
- litigation,
- scandals and negative publicity.

Experts estimate that hiring the wrong person can cost an organization between one and five times that person's annual salary. Some experts go even further. Author Bradford Smart gives the following example:

“With an average base salary of \$114,000, the average total cost associated with a ‘typical’ mis-hire is \$2,709,000 – greater than 24 times the person’s base compensation.”¹

Astronomical estimates like this are plausible, particularly if an employee commits fraud on the job. In its FraudTrack report on 2008, BDO UK reports that “management fraud, third party fraud and employee fraud create the “triple whammy” accounting for 60% of all fraud in 2008.”²

Since bad behavior in the past or during the hiring process is a good indicator of future bad behavior on the job, the best way to avoid these costs is to detect the bad hire before it happens.

THE WRONG PEOPLE ARE EVERYWHERE

The main challenge for recruiters and employers is that the wrong people are everywhere – and often difficult to detect. The job market is flooded with people that appear to be suitable candidates but in reality are not.

Résumé Fraud

David Edmondson was CEO of RadioShack until he resigned in February 2006 after it was revealed he fabricated two degrees on his résumé. In fact, he had no degrees. He had been a capable leader, but his board valued integrity over ability and agreed Edmondson should go.³

In 2007, The New York Times reported the resignation of Marilee Jones, a long-time dean at Massachusetts Institute of Technology, after officials discovered Ms. Jones had fabricated multiple degrees on her résumé decades earlier. She had continued to add lies after she was hired.⁴

In fall of 2008 as news of investment manager fraud splashed across headlines around the world, The Wall Street Journal observed that an ailing economy may be fueling résumé fraud.⁵ Recruiters testify to the trend in a 2009 article published by prominent job site TheLadders.⁶

¹ Bradford Smart, *Topgrading: How Leading Companies Win by Hiring, Coaching and Keeping the Best People*. (New York: Penguin Group Inc., 2005).

² FraudTrack 4, BDO UK. <http://www.bdo.uk.com/services/advisory/forensic-accounting/fraudinvestigations/>

³ Associated Press, “RadioShack President, CEO Steps Down Amid Resume Questions”, FoxNews.com, February 21, 2006. <http://www.foxnews.com/story/0,2933,185462,00.html>

⁴ Tamar Lewin, “Dean of Admissions at M.I.T., Resigns”, The New York Times, April 7, 2007. http://www.nytimes.com/2007/04/26/education/26cnd-mit.html?_r=1

⁵ Cari Tuna and Keith J. Winstein, “Economy Promises to Fuel Résumé Fraud”, The Wall Street Journal, November 17, 2008. <http://online.wsj.com/article/SB122671047127630135.html>

⁶ Lisa Vaas, “To Tell The Truth”, TheLadders 2009. www.theladders.com

In the United Kingdom, the recruitment agency review site Hirescores reported that an astounding 69% of 1,277 employed people admitted anonymously to lying on their résumés.⁷ Another 2009 survey in the United Kingdom revealed that 19% of résumés contained discrepancies, an increase over the 2008 findings, and the second year in a row discrepancies increased.⁸

Substance Abuse

Another labor market concern is substance abuse. In the United States, a majority of people with a substance abuse problem are employed. 2007 data from the Department of Labor indicate the danger employers face:⁹

- 13.1 million of the 17.4 million current illicit drug users age 18+ were employed.
- 44.0 million of 55.3 million adult binge drinkers were employed.
- 12.3 million of the 20.4 million adults classified with substance dependence or abuse were employed full-time.
- 8.4 percent of those employed full-time were current illicit drug users, and 8.8 percent reported heavy alcohol use.

Smaller businesses are especially vulnerable. In 2007, though roughly 50% of all workers in the United States worked for small and medium sized businesses, close to 90% of illicit drug users and heavy drinkers worked for firms of that size.¹⁰ Smaller businesses are attractive to those with substance abuse issues:

“Smaller businesses are less likely to have programs in place to combat the problem, yet they are more likely to be the employer-of-choice for illicit drug users. Individuals who can’t adhere to a drug-free workplace policy seek employment at firms that don’t have one, and the cost of just one error caused by an impaired employee can devastate a small company.”¹¹

Criminal Records and Behavioral Problems

Past bad behavior of job candidates is another serious concern. Recruiters and employers must make extra effort to obtain all pertinent information.

⁷ OnRec, “Would I lie to you...Yes If it means I get the job”, November 18, 2009.

http://www.onrec.com/news/would_i_lie_to_you_yes_if_it_means_i_get

⁸ The Powerchex Annual Pre-employment Screening Survey 2009.

<http://www.powerchex.co.uk/interface/files/surveys/PowerchexAnnualPre-EmploymentScreeningSurvey2009.pdf>

⁹ Substance Abuse and Mental Health Services Administration, Office of Applied Studies (2008). Results from the 2007 National Survey on Drug Use and Health: National Findings (NSDUH Series H-34, DHHS Publication No. SMA 08-4343). Rockville, MD

¹⁰ United States Department of Labor, <http://www.dol.gov/asp/programs/drugs/workingpartners/stats/wi.asp#6>, citing Larson, S.L.,

Eyerman, J., Foster, M.S., and Gfroerer, J.C. (2007). *Worker Substance Use and Workplace Policies and Programs* (DHHS Publication No. SMA 07-4273, Analytic Series A-29). Rockville, MD: Substance Abuse and Mental Health Services Administration, Office of Applied Studies.

¹¹ Ibid.

A recent survey by the Society for Human Resource Management indicates that a majority of respondents obtain criminal background reports on all candidates, but 19% practice this for only select positions and 7% do not practice it at all.¹²

In March 2010, Michigan Governor Jennifer Granholm ordered that both criminal and credit background checks be conducted on tax break recipients. A week earlier Michigan had approved a \$9.1 million tax abatement to a man that later proved to be a convicted embezzler.¹³

Workplace violence is yet another concern. According to the Bureau of Labor Statistics, in 2004, “nearly five percent of the 7.1 million private industry business establishments in the United States had an incidence of workplace violence” in the 12 months prior to the survey.¹⁴ Workplace violence entails everything from bullying and intimidation to criminal acts.

Even if information a candidate presents is true, other pertinent information may be missing. For example, a candidate may omit work experience from a résumé if employment ended on bad terms. Candidates provide false references for the same reason.

HIRING THE WRONG PEOPLE CAN BE A SERIOUS LEGAL MATTER

A bad hire can inflict immediate damage on a business and also place it on the wrong side of the law. Negligent hiring laws are becoming common throughout the United States. So are negligent hiring lawsuits.

“Thirty-six of fifty states allow people to bring cases against employers for negligent hiring, and the standards for establishing a claim vary from state to state. However, the key elements of a negligent hiring claim that are consistent across jurisdictions, and must be proven in any case are: (1) Duty of Care; and (2) Forseeability [sic].”¹⁵

Duty of Care and Foreseeability

An important New York case, *Ponticas v. KMS Investments*, illustrates these two concepts. An apartment manager with access to apartments as part of his job responsibilities, sexually assaulted a female resident. The woman sued the owner of the apartment complex for negligent hiring.

The court found the owner negligent in not exercising duty of care to protect the people its employee would interact with in his job, i.e., residents, through diligent background screening. Giving the employee access to apartments meant entrusting to him the safety of residents.

¹² “Background Checking: Conducting Criminal Background Checks”, Society for Human Resource Management, January 22, 2010. <http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundCheckCriminalChecks.aspx>

¹³ Mark Hornbeck, “Granholm orders background checks for business tax break recipients”, Detroit News, March 24, 2010. <http://www.detnews.com/article/20100324/POLITICS02/3240352/1024/POLITICS03/Granholm-ordersbackground-checks-for-business-tax-break-recipients#ixzz0j74ySgRU>

¹⁴ Bureau of Labor Statistics press release, “Survey of Workplace Violence Prevention, 2005”, United States Department of Labor, October 27, 2006. <http://www.bls.gov/iif/oshwc/osnr0026.pdf>

¹⁵ April L. Frazier, Esq., “Negligent Hiring: A Myth or A Reality for Employers?”, National H.I.R.E.Network, New York, New York, 2008. http://www.eastcounty1stop.org/docs/neg_hiring_1_30_08.pdf

The apartment complex owner had conducted checks, including multiple credit checks, and had contacted a previous employer.¹⁶ It did not perform a criminal background check which would have uncovered a criminal record indicating the man was unfit for the job.

The court found the defendant negligent in terms of foreseeability because it could have become aware of the man's criminal background through diligent checks. The employer had information that indicated further checking was warranted: large gaps in employment, only three months of employment in five years, and early military discharge.¹⁷

Negligent hiring law is sufficiently complex that employers find it prudent to purchase insurance against negligent hiring. This solution alone, though, is insufficient. Only thorough pre-employment background screening reduces risk early on and demonstrates due diligence.

Costs of Negligent Hiring

Law partner Teresa Jakubowski of Barnes & Thornburg, warns:

“It only takes one unfortunate incident in the workplace, whether it is a sexual assault or an employee unloading with the gun. The first that the victim’s counsel will do is to get information on the perpetrator. The argument the employer will face is, ‘If you had done a criminal background check, you would have discovered that this person has a history of violent offenses. If you had been doing your job, you would not have hired this person and my client would not have been injured.’”¹⁸

USA Today reported in 2003 that employers lose negligent hiring suits over 79% of the time, with an average settlement of \$1.6 million.¹⁹ Some experts say the average settlement is now closer to \$2 million.²⁰

Federal Legislation Impacting Employers

The Financial Services and Markets Act 2000 (FSMA) in the United Kingdom, and the 2002 Sarbanes-Oxley Act in the United States, are part of the reason organizations are accountable for personal misconduct of principals and finance and accounting employees. When hiring choices backfire in these areas, the results can be expensive litigation, not to mention a millstone of negative publicity. Dishonest workers in the financial sector can rock whole economies, as the world saw recently.

In the United States, a 2009 federal law states that employers with federal contracts or subcontracts that contain the “Federal Acquisition Regulation (FAR) E-Verify clause” must

¹⁶ Larry Besnoff and Arthur J. Cohen, “Hazardous Hires”, Waste Age magazine, April 1, 2007.

http://wasteage.com/mag/waste_hazardous_hires/

¹⁷ Ibid.

¹⁸ Mary Swanton, “EEOC Focus on Criminal Background Checks Raises Negligent Hiring Concerns”, InsideCounsel, April 2010.

<http://www.insidecounsel.com/Issues/2010/April-2010/Pages/EEOCFocus-On-Criminal-Background-Checks-Raises-Negligent-Hiring-Concerns.aspx>

¹⁹ Stephanie Armour, “Competitive Job Market Locks Out Former Offenders”, USA Today, November 21, 2003. (Citing journal Public Personnel Management.) http://www.usatoday.com/money/economy/employment/2003-11-21-workers_x.htm

²⁰ Jason Morris, How to Ferret Out Instances of Résumé Padding and Fraud, Compensation & Benefits for Law Offices, June 2006. Cited at <http://www.privacyrights.org/ar/LeslieFlint-BGChks.htm>

use E-Verify to verify employment eligibility of employees that work on the contracts. The law applies to employers' new hires whether or not they work on a federal contract. Other federal legislation, such as EEOC Title VII, constrains employers from being discriminatory in or because of background screening.²¹

All this legislation is intended to foster safe workplaces and just societies. Yet it places a huge burden squarely on employers, forcing them to walk a very fine line – with often scarce resources – toward the goal of hiring the right people.

PRE-EMPLOYMENT SCREENING IS A CHALLENGE

Though the practice of pre-employment background screening is growing, screening practices and policies still vary widely. For some, a background check may amount to no more than a simple Google search or a couple of telephone calls to work and personal references. For others, it may entail everything from validation of education, certifications, and work history, to drug testing and criminal, credit, and military service background checks.

Resource and Expertise Requirements

Thorough pre-employment background screening is time-and-resource-intensive. This is a challenge for all organizations, and small and medium-sized businesses in particular. Pre-employment background screening also requires specialized expertise that recruiters and employers often lack. For example, “criminal background check” means different things to different people. Not everyone knows all applicable laws or the limits of specific data sources. Laws about background checks can differ among jurisdictions, making screening tricky at times.

In addition, screening entails more than the actual checks. Employers must also obtain formal documented consent from candidates, and manage the process and the documents. In addition, many organizations require employees to sign company codes of conduct, and this process must be managed and documented as well.

BEST PROTECTION IS PROFESSIONAL BACKGROUND SCREENING

Though inadequate background screening poses the greatest threat to employers, outsourced recruiters are not immune. Bad hires can tarnish reputations even if recruiters have agreed with clients in advance that background screening is a client responsibility.

Yet recruiters and employers know that it is extremely difficult with internal resources alone to perform adequate background screening 100% of the time and cost-effectively manage the end-to-end process.

The good news is that any business can protect itself and its hiring investments by working with a professional background screening firm.

²¹ The U.S. Equal Employment opportunity Commission, “Employment Tests and Selection Procedures”.
http://www.eeoc.gov/policy/docs/factemployment_procedures.html

In a January 2010 survey conducted by the Society For Human Resource Management, an overwhelming majority of respondents outsource common checks.²²

Type of check	Totally outsource	Partially outsource
Criminal background	78%	10%
Credit background	81%	6%
Reference background	28%	20%

A key benefit of retaining a professional background screening firm is a reduction in hiring cycle time and in the number of staff hours allocated to screening activities. A quality background screening firm screens candidates more efficiently and more knowledgeably than most recruiters or employers. Firms with broad coverage are up-to-date on federal, state and provincial laws that impact screening in a range of jurisdictions and are better able to ensure regulatory compliance.

Hiring a background screening firm also frees valuable time for employers and recruiters to spend on business development, on-boarding, and other critical and revenue-generating activity.

A SUPERIOR BACKGROUND SCREENING FIRM ADDS VALUE

Due to the increased popularity of background screening, firms with poor qualifications have entered the industry. Some claim to be able to perform background checks that are illegal or impossible.

A reputable background screening firm has industry certifications and memberships that indicate their practice meets with accepted industry standards, such as those of the National Association of Professional Background Screeners (NAPBS) in the United States.

The best background screening firms offer not just quality screening services but added value. For example, they can help employers assess risk and create a plan to address it. In addition, the best firms offer tools to integrate screening in employers' processes and systems.

STERLING INFOSYSTEMS

Sterling Infosystems works with over 6,000 customers worldwide to ensure the right hires. We assist a range of organizations, from small local businesses to Fortune 100 companies.

What sets Sterling Infosystems apart is our level of experience, our scope, and our ability to add significant value to our clients' hiring processes. For example, our integration with Taleo

²² "Background Checking: General Background Checks", Society for Human Resource Management, January 22, 2010. <http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundCheckingGeneral.aspx>

software lets us offer clients ways to easily manage background screening in the hiring process.

Sterling Infosystems also offers:

- criminal background checks,
- education and employment verification,
- professional credential and certification verification,
- and forty-seven other services.

Sterling Infosystems is a member of the National Association of Professional Background Screeners (NAPBS) and is ISO 9001:2000 certified, indicating our adherence to the highest standards of quality. Sterling is also among an elite group of organizations to obtain HR-XML certification, the mark of a technology leader. Sterling's membership in these and other industry organizations shows our commitment to providing customers with the best background screening services.

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