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Prescreening hires weeds out bad apples

By JOANNE WOJCIK

LAS VEGAS-In today's tight labor market, it's more imperative than ever that employers do background checks on job candidates, a pre-employment screening expert says. Employers also must be careful, though, not to violate job candidates' rights to privacy, warns Barry J. Nadell, president and chief executive officer of Encino, Calif.-based InfoLink Screening Services Inc.

Employers risk being sued if they fail to prescreen workers who later perform criminal acts, Mr. Nadell told a group of human resource professionals attending a seminar during the Society of Human Resource Professionals' 52nd Annual Conference and Exposition, which was held June 25-28 in Las Vegas.

For example, he said, a Florida court in 1986 upheld the negligent hiring doctrine when it ruled in *Garcia vs. Duffy* that "the employer knew or should have known of the employee's unfitness, and the issue of liability focuses upon the adequacy of the employer's pre-employment investigation into the employee's background."

"Since that case, there have been lots of cases" holding employers liable for negligent hiring practices, said Mr. Nadell, who said the largest award to date was handed down in a 1998 case against Trusted Health Resources Inc. of Brockton, Mass. In that case, *Ward vs. Visiting Nurses Assn. and Trusted Health Resources Inc.*, a Massachusetts jury awarded the family of a murder victim $26.5 million after a health care professional employed by Trusted Health stabbed the 32-year-old patient to death.

Sometimes it's easy to spot a personnel problem in the making by how a candidate completes the job application, according to Mr. Nadell.

Following are some statements his firm has found on actual job applications:

- "I'm an expert at computers. At my last job, I showed the employees in my group how to change their passwords and find neat stuff on the Internet," one applicant wrote.

"Perfect IT person for you to hire, right?" Mr. Nadell quipped.

- "I left my last job because my boss was a jerk," another candidate wrote.

"That's not somebody that I think you'd want to hire," Mr. Nadell said.

- "I was working for mom. When they terminated the job position there was nothing else I could do there," wrote yet another job applicant.

"Has anybody ever terminated a job position because it's the only way you could get rid of somebody?" Mr. Nadell queried.

- "Please don't misconstrue my 14 jobs as job hopping. I have never quit a job yet."

Most of the time, however, spotting the so-called "employee from hell" isn't so easy, Mr. Nadell admitted. That's why it's so important to do background checks, he said.

Among the best sources of information are credit reports, arrest records, Social Security records, licenses and/or school records and references.

"Some people say, 'I stopped doing references. I don't get good information anymore.' Well, guess what? You will be sued for negligent hiring. You can't stop calling references," Mr. Nadell stressed. "And you know what? You never know what people will tell you."

Mr. Nadell advised against using credit report information "unless the person can affect you financially. Mr. Nadell encouraged employers to review driving records, though, even if an applicant won't be driving for the company.

"I find more about a person's character from the motor vehicle report than from anything else," he said. "It picks up DUIs, possession of drugs, current warrants for their arrest and failures to appear. If they don't appear in court to handle something, what makes you think they'll show up for work?" he asked, rhetorically.

Before an employer begins the task of investigating a potential employee's past, "you need to know the legal issues," Mr. Nadell warned. "The fact is that 75% of the companies to which I've made a presentation were currently violating federal law, state law or both."

For example, employers can be assessed both criminal and civil penalties if they violate provisions of the Consumer Credit Reporting Reform Act of 1996, which governs preemployment background checks. The law is enforced by the Federal Trade Commission.

"Credit is only 20% of this law," he pointed out. "Any other kind of background check is 80% of the law."

Among other things, the law requires that employers disclose to applicants that their background will be investigated and obtain their permission on a different form from the job application.

Penalties for employers that don't can be costly, Mr. Nadell warned.

In March 1998, the Federal Trade Commission fined Altmeyer Home Stores Inc. of New Kensington, Pa., more than $11,000 each time it failed to tell a job applicant that he or she had been denied employment as a result of information in the applicants' credit records.

Information employers obtain from consumer reporting agencies also must be less than 30 days' old.

Also, even though it might help with a background check, employers cannot ask applicants to give their maiden name, full date of birth, nor their gender or race, according to Mr. Nadell.

Some state laws are even more restrictive than the federal laws, he pointed out.

The California Labor Code, for example, requires employers to disclose the name of the consumer reporting agencies that will be used.