

Expected Practices in Background Checking: Review of the Human Resource Management Literature

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Abstract In recent years we have seen a growing attention to the issue of background checks. Research on pre-employment inquiries suggests that job candidates engage in extensive misrepresentation of academic and work credentials listed on resumes and job applications. An employer who fails to perform a thorough background check on a prospective employee may be vulnerable to the charges of negligent hiring or employment discrimination. Based on a review of the scientific and professional literature in human resource management, we defined expected management practices in background checking including the need to understand the job requirements, methods of background checks, the extensiveness of the background checks, the role of the application forms, and the use of interviews. Recent legal cases are also included to illustrate what practices are or are not defensible.

Key words background checks · expected practices in background checking · negligent hiring

Introduction

In recent years, we have seen the growing attention to the issue of background checks. This was driven by several reasons. First, some evidence suggests that job candidates engage in extensive misrepresentation of academic and work credentials listed on resumes and job applications. For example, in its 2007 Hiring Index study, ADP¹ Screening and Selection Services (2007) reported that 41% of individuals' resumes showed discrepancies in employment, credentials, or education history. ADP's Hiring index is based on calculations of the 5.8 million

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background verifications (e.g., criminal records, employment, education records) performed by the company during the 2006 calendar year (<http://www.adphire.com/hiringindex/>). Similar results were reported in the InfoLink Screening Services' 2006 Background Screening Hit Ratio Report (InfoLink Screening Services 2007). That report also suggested that applicants stretch the truth more often in 2006 than in 2005. The discrepancies regarding what applicants reported to potential employers on their past employment increased from 36.5% in 2005 to 49.4% in 2006, and discrepancies in education verification increased from 14.1% in 2005 to 21.5% in 2006 (<http://www.infolinkscreening.com/InfoLink/Downloads/2006BackgroundScreeningHitRatioReport.pdf>).

Second, an employer who fails to perform a thorough background check on a prospective employee may be vulnerable to the charges of negligent hiring or employment discrimination. Employers can be held liable for negligent hiring if they fail to do a background check on a prospective employee who then commits a crime or inflicts harm on a customer or third party in the course of performing his or her job duties (Anthony *et al.* 1999; Boles 1997; Cook 1988). Also, some research findings suggest that in the absence of background checks, employers may use race and other perceived correlates of criminal activity to assess the likelihood of an applicant's previous felony convictions and factor such assessments into the hiring decision (Holzer and Stoll 2006). That is, employers who do criminal background checks are more likely to eliminate applicants on the basis of revealed information, while employers who do not may eliminate applicants on the basis of perceived criminality. The Bureau of Justice statistics estimates that 28 percent of black males, 16 percent of Hispanic males, and 4 percent of white males will serve time in state or federal prisons (Bonczar and Beck 1997). Since the proportion of African Americans with past criminal conviction is quite large, employers may be more likely to eliminate black applicants on the basis of perceived criminality and thus discriminate against black candidates.

Despite the importance of and attention to background checking, some employers continue not to do background checks or not to do them adequately. The reports on surveys of hiring practices suggest that not all companies conduct background checks as part of their hiring processes (Anonymous 2004b; Burke 2005). Moreover, studies suggest that small businesses are less likely to conduct applicant background investigations (Anonymous 2004b; Holzer and Stoll 2006). For example, according to a survey conducted by the Society for Human Resource Management, only 34% of employers always verify educational records, 53% of employers verify former job titles, and 41% always verify certifications and licenses (Burke 2005).

Therefore, the purposes of this article are (1) to remind practitioners what the scientific and professional literature has recommending for some period of time, and (2) to illustrate what practices are and are not defensible. The expected practices in checking the backgrounds of job applicants are identified based on a review of the scientific and professional literature in human resource management. This will reveal overall expectations regarding background checks, knowledge of job requirements, expectations regarding application forms, interviews, reference checks, official record checks, and degree of thoroughness of the background check. Finally, recent cases on negligent hiring at the state appellate and state supreme court levels will be included to illustrate.

Human Resource Management Literature Search

The literature was searched using two databases: PsycINFO and Business Source Complete. Keywords used in the search included the following: negligent hiring, hiring and

negligence, background checks and background checking, hiring and background checks, and hiring and reference checks. An initial search yielded 412 citations. After repeated citations were deleted, the remaining citations were narrowed down by relevance and by quality indicators (e.g., preference for peer-reviewed publications). In total, the search resulted in 119 articles and books on the topic.

Negligent Hiring and Background Checks

Virtually all found HR literature discusses background checks in the context of negligent hiring theory. The negligent hiring liability is one of the most serious negative consequences employers are likely to face when they do not perform background checking or perform it inadequately. Thus, the legal theory of negligent hiring determines the expectations regarding background checks and will be briefly discussed here as well.

The law of negligent hiring has evolved from the common law doctrine (court-made rulings) of master-servant relationships. This doctrine was recognized as early as 1894 in Illinois when the state Supreme Court held that a master has a duty to exercise reasonable care in selection and employment of careful and skillful employees (Tiangco and Kleiner 1999). In order for a claim based on negligent hiring to be successful, it must first be established that the employer had a duty to the injured third party, and there is some relationship between the injurious act and the employment situation. For example, in *Ponticas v. K.M.S. Investments* (1983) an apartment caretaker entered one of the units using master keys and attempted to sexually assault its resident. The company owed a duty of care to the plaintiff because it gave the employee in the caretaker position direct access to all privately occupied apartments. The company was found liable for negligent hiring because it failed to perform a necessary pre-employment investigation of the caretaker and did not discover his previous criminal assault conviction. The employment situation must provide the employee with the opportunity to cause the injury in order for the employer to be liable under a negligent hiring theory.

After the duty of care is established, most courts consider the following factors when deciding a negligent hiring case: (1) an employment relationship existed between the defendant and the tortfeasor; (2) the employee has characteristics that amount to incompetence or unfitness for the position; (3) the employer knew or should have known through reasonable investigation that the employee was unfit for the position; (4) the employee negligently or intentionally caused the plaintiff's injuries; (5) the negligent hiring was the proximate cause of the plaintiff's injuries; and (6) actual damage or harm were resulted from the tortious act (*Evans v. Ohio State University* 1996; Susser and Jett 1987; Woska 1991).

This doctrine has several direct implications for background checks such as: (a) an employer has a duty to perform a reasonable investigation of the employee's background; (b) job duties that might create opportunities for committing crimes should be identified; and (c) the background of job candidates should be screened against identified potential types of crimes.

Background Checking is an Expected Practice

The topic of negligent hiring and the requirement of organizations to conduct background checks are expected knowledge in human resource (HR) management. Three bodies of literature offer evidence in support of this assertion. The first one includes HR literature which consists of general textbooks on HR and practitioner- and research-oriented HR

journals. Textbooks can be considered as defining basic expected knowledge and practices in a field. Nearly all textbooks on HR describe negligent hiring and make recommendations to conduct background checks, including textbooks for specialty courses on hiring (Cascio 2003; DeCenzo and Robbins 2005; Fisher *et al.* 2006; French 2007; Harris 1997). The quotes below reflect the advice of common textbooks:

- “An employer is guilty of negligent hiring if he or she failed to perform a thorough background check on an employee whose infliction of harm on a customer or third party could have been predicted by the employing firm” (Anthony *et al.* 1999, p. 261).
- “Employers protect against negligent hiring claims by...rejecting applicants who...have conviction records for offenses directly related and important to the job in question” (Dessler 2005, p. 194).

The issue of background checking is extensively discussed in the popular HR magazines oriented to practitioners in the field such as

- Workforce (formerly Personnel Journal),
- HRFocus
- HRMagazine
- Personnel
- Personnel Today
- Employee Relations Today
- Society for Human Resource Management webpage
- Management Research News
- Managerial Law

Articles on the topic of background checking were also found in many research journals related to HR (e.g., Personnel Psychology, Public Personnel Management, Employee Responsibilities and Rights Journal, Society for Advanced Management Journal, Journal of Workplace Learning, and Business and Professional Ethics Journal).

The second body of literature supporting the assertion that background checking is expected knowledge in HR management is an extension of the first body of literature, except the articles are published in specialty magazines. These articles demonstrate that there has been communication with organizations that may not have an HR staff, such as small organizations. These specialty magazines include a wide range of industries, trades, and types of organizations. Examples include:

- Security (Dow 2001; Gold 2004; Lashier 2006; Service 1988; Svendson 1999)
- Law enforcement (Hibler and Kurke 1995)
- Safety (Jacob 2004; Smith 2002)
- Nursing (Fiesta 1996; Nabhan 1998; Shumaker 2003)
- Healthcare (Bradley and Moore 2004; also see previously referenced Martanegara and Kleiner 2003)
- Child care (Kiraly 2002)
- Social work (Lynch and Versen 2003)
- Property management (Papi 1994; Walter 1994)
- Hotel management (Atkinson 2004; Clay and Stephens 1995)
- Restaurant management (Berta 2005; DeCotiis 2006; Kerr 2006)
- Heating and air conditioning (Hall 2004, 2005; Liegl 2001)
- Trucking (Zahl 2000)

- Education (Fossey and Vincent 2000; Dorris and Kleiner 2003)
- Public sector (Connerley *et al.* 2001; Johnson and Indvik 1994; Kondrasuk *et al.* 2001; Zhoa and Kleiner 2003)
- Nonprofit (Le *et al.* 2003)
- Insurance (Spoden and Rosen 1998)
- Information systems (Khirallah 2002)
- Marketing research (McCarter 1995)
- Small business (Maxwell 2000; Usry and Mosier 1991)

The third body of literature supporting the assertion that it is expected knowledge in HR management that organizations should conduct background checks is the large number of legal articles on the topic. Examples include Arsenault *et al.* (2002), Camacho (1993), Crebs and Rush (1996), Fife (2006), Gregory (1988), HR Policy Association (2003), Lear (1997), Ongerth (2005), Oswald (2004), Schmitt (1980), Shattuck (1989), Smith (1999), Sullivan (1998), and Woska (1991).

Finally, courts seem to be agreeing with the assertion that background checking is an expected practice in selection of competent and safe employees. The mere fact that the background investigation was not conducted is evidence of negligence in hiring even when an investigation would not have disclosed information indicating the prospective employee's unfitness (Susser and Jett 1987).

Background Checks Should be Based on Knowledge of Job Requirements

A fundamental truism in HR management is that hiring procedures should be based on the job requirements. Every one of the textbooks cited above recommends acquiring knowledge of job requirements (usually through a job analysis) as the first step in developing a hiring process. The Federal Government's guidelines for the development and use of hiring procedures strongly emphasize this point ([Uniform Guidelines on Employee Selection Procedures](#), Sections 14A, 14B2, and 14C2). Many of the articles explicitly discuss the need for knowledge of the job requirements in order to determine the types of backgrounds that might be related to job performance. Some authors recommend a formal job analysis (e.g., Heneman and Judge 2006; Hibler and Kurke 1995; Kiraly 2002; Ryan and Lasek 1991), while others only suggest that the job requirements be determined in some manner (e.g., Dessler 2005; Martanegara and Kleiner 2003; Shattuck 1989; Woska 1991).

The theory of negligent hiring suggests identifying the opportunities that might exist for committing criminal acts by employees performing the required job tasks, as well as determining employment circumstances that may facilitate or enable employees to commit criminal acts (e.g., access to homes and personal possessions of others, wearing a uniform, and security responsibilities). Woska (1991) suggested developing a liability avoidance matrix. He suggested that employer should (a) identify potential liability factors for jobs (e.g., high stress, driving vehicles, working with children, access to private property), and (b) identify the traits related to the potential risk for each of the job tasks and determine the types of backgrounds that should be checked (e.g., propensity to violence, driving records, criminal records).

Two court cases (*Betty Y. v. Al-Hellou* 1999; *Carlsen v. Wackenhut Corp.* 1994) could be used to illustrate the importance of understanding job requirements in order to identify what types of background should be checked. In *Betty Y. v. Al-Hellou* (1999), a manual worker rehabilitating vacant apartments sexually assaulted a fourteen year-old boy who lived at an

apartment in the same building. The employer was aware that the worker has been convicted of child molesting before the worker was hired. The employer was sued for negligent hiring. The trial and appellate courts agreed that the employer is not guilty of negligent hiring because the manual worker was not hired to work with the victim, and the job duties did not facilitate or enable the worker to commit the rape. The court concluded that a child sex offender performing manual labor in vacant apartments does not represent an unreasonable risk of harm to others.

In *Carlsen v. Wackenhut Corp.* (1994), a part-time security guard, who worked for the company that provided security at a concert, attempted to rape a girl who asked for his help during the concert. The company was sued for negligent hiring. The appellate court reversed summary judgment in favor of employer because the employer did not conduct a background check or a reference check, and did not investigate inconsistencies in the job application. Although the company argued that it had no duty to investigate the security guard background because he was only a part-time (“T-shirt”) employee, and his job application did not suggest he had any propensity for assaultive behaviors, the appellate court stated that his job put him in a position of responsibility and authorized to perform security functions during concerts (e.g., protect young concertgoers, performing pat-down and metal searches of incoming patrons). Therefore, the company should have more extensively examined his background before hiring him.

In addition, a number of states have laws concerning the job requirements for certain positions, including security personnel, firefighters, real estate brokers, financial institution personnel, bus drivers, emergency service personnel, and personnel who work with children or vulnerable adults (e.g., the elderly, the disabled). For example, a New Mexico law requires that a job candidate may not be permanently appointed as a police officer unless he or she is found, after examination by a certified psychologist, to be free of any emotional or mental condition which might adversely affect his or her performance (NMSA 1978, § 29-7-8(A)(4); Bennett 2006). Thus, the knowledge of job requirements may help an employer to identify the potential liabilities and the types of background checks to be performed in order to hire a competent and safe employee for a particular position.

Methods of Background Checks

Application Forms Virtually all hiring processes start with an application form. It typically includes the candidate's name and contact information, education and work history, and possibly information relevant to skills possessed and positions sought. For purposes of avoiding negligent hiring, the minimum expectations based on the HR literature reviewed are threefold. First, the education and work history should be examined for any unexplained gaps because such gaps might represent jobs from which the candidate was terminated, time spent in prison, or other negative information (e.g., Anonymous 2006b; Dessler 2005; Dorris and Kleiner 2003; Green and Reibstein 1988; Gomez-Mejia *et al.* 2007; Heneman and Judge 2006; Le and Kleiner 2000; Le *et al.* 2003; Smith 2002; Susser and Jett 1987; Wang and Kleiner 2000; Woska 1991).

Second, the application should seek references and include a written authorization to check references and background that the candidate must sign (e.g., Anonymous 2006b; Anthony *et al.* 1999; Arsenault *et al.* 2002; Barada 1996; Camacho 1993; Davis 2006; Dessler 2005; Dorris and Kleiner 2003; Garvey 2001; Green and Reibstein 1988; Heneman and Judge 2006; Jacob 2004; Sack 1993; Shumaker 2003; Smith 1999, 2002; Wang and Kleiner 2000; Woska 1991). Third, the application form should specifically ask about criminal history (e.g., Anonymous 2006b; Arsenault *et al.* 2002; Gatewood and Feild

2001). Finally, the application form should be examined for any omissions or incomplete parts that might signal some problems in the work history. For example, in *Cramer v. Housing Opportunities Commission of Montgomery County* (1985), the job candidate did not complete a portion of application requesting dates of military service. During the court case, it was discovered that the job candidate was imprisoned for 4 years right after he was discharged from the military.

References, Official Records, and Criminal Records Two types of checks are usually recommended such as reference checks and official record checks. Almost all organizations conduct reference checks (e.g., Gatewood and Feild 2001; Green and Reibstein 1988; Heneman and Judge 2006; Kiraly 2002; Le and Kleiner 2000; Le et al. 2003). References should be contacted to confirm that the applicant actually worked at previous jobs during the time periods stated on the job application and in the positions indicated and to inquire about the candidate's work ethic, reliability, integrity, or other work-related attributes or job performance capabilities (e.g., Andler and Herbst 2003; Anonymous 2006a; Arsenault et al. 2002; Barada 1996; Camacho 1993; Dorris and Kleiner 2003; Edwards and Kleiner 2002; Fenton et al. 1997; Furman 1995; Gatewood and Feild 2001; Green and Reibstein 1988; Heneman and Judge 2006; Kiraly 2002; Le and Kleiner 2000; Le et al. 2003; Sack 1993; Smith 2002; Towle 2002; Wilson 2001; Zhao and Kleiner 2003). References can be from past supervisors, co-workers, teachers, or friends. Previous employers may be contacted in person, by telephone, or by letter.

Many courts considered the failure to check references from the most recent jobs that would contain information about an employee's wrongdoing as evidence of negligent hiring (*Hebert v. Aulerich* 2008; *Interim Healthcare of Fort Wayne, Inc. v. Moyer* 2001). For instance, in *Interim Healthcare of Fort Wayne, Inc. v. Moyer* (2001), a home health aide, who was not qualified or authorized to administer medication to her patients, injected one of her patients with insulin causing a seizure. The company was sued for negligent hiring. Before the aide was hired, the company conducted the background investigation of the aide, including reference check, and a criminal record check. The company received two positive written references, and no prior criminal history was revealed. Also, the aide passed a required series of written and skills tests. However, the company was found liable for negligent hiring because it failed to check the references from the most recent employers².

At the same time, many employers are reluctant to provide reference information to prospective employers because they fear a lawsuit on grounds of invasion of privacy or defamation of character (Matejkovic and Matejkovic 2006). However, this concern is mainly unwarranted because only 3% of employers have had legal problems with reference checks (Heneman and Judge 2006). Moreover, job candidate's consent to release such information and qualified privilege, or immunity from liability to provide references about former employers, might give employers powerful defenses, even when they communicate damaging information (Walsh 2007).

Official records should always be checked. Depending on the job, some of the following information should be verified: social security numbers (identity verification), eligibility for

² Although the court was presented with the evidences showing that the former employers would have revealed negative employment information (e.g., one of the aide's patients (with no history of seizures) suffered a seizure under the aide's sole care), the evidences were not required by the court.

employment for non-residents, educational data and histories (e.g., degree verifications), employment verification, license verifications, driving records (e.g., citations, accidents, and licenses), credit information, military service, and criminal records (e.g., county and federal court criminal histories). For example, public carriers, including buses, trains, airlines, and taxis, are expected to verify operator's licenses and the history of driving violations of potential job candidates. Moreover, checking employment eligibility is required by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended 8 U.S.C. 1324a.

Checking educational and criminal records is virtually always recommended (e.g., Andler and Herbst 2003; Anonymous 2004a, 2006a; Arsenault *et al.* 2002; Camacho 1993; Connerley *et al.* 2001; Davis 2006; Dorris and Kleiner 2003; Edwards and Kleiner 2002; Elzey 2002; Fenton *et al.* 1997; Furman 1995; Gatewood and Feild 2001; Green and Reibstein 1988; Heneman and Judge 2006; Hibler and Kurke 1995; Le and Kleiner 2000; Martanegara and Kleiner 2003; Perline and Goldschmidt 2004; Sack 1993; Shumaker 2003; Smith 2002; Svendson 1999; Wang and Kleiner 2000; Zhao and Kleiner 2003). Some courts stated that the failure to obtain a criminal history record for job applicants for the positions involving a serious risk of harm to others may constitute a breach of duty and leads to liability for negligent hiring (*Cramer v. Housing Opportunities Commission of Montgomery County* 1985; *Morris v. JTM Materials, Inc.* 2002). The expectation to perform a criminal record check may be partially due to increased availability of job candidates' history of criminal record to employers. More than half of all states allow free internet access to some or all criminal records. Otherwise, employers can obtain access to a job candidate's conviction history for about \$20 and a few minutes online (Geiger 2006).

The liability for negligent hiring may even arise in situations when job candidates lie about their criminal convictions. For example in *Morris v. JTM Materials, Inc.* (2002), an employee of an interstate motor carrier injured a person when he was driving a tractor. The employee was intoxicated at the time of the collision. The carrier was sued for negligent hiring. The employee had falsified his employment application, stating that he has never been convicted of a crime. The employer did not perform a criminal background check and failed to discover several offences (e.g., driving while intoxicated, and possession of methamphetamine). The appellate court found the company liable for negligent hiring stating that the company did not exercised reasonable care by qualifying as a driver an individual who had committed several drug- or alcohol-related offenses and had falsified his employment application.

It is important to note, however, that the fact that an employee has been convicted of a crime does not automatically render that employee "incompetent" and should be rejected. The Equal Employment Opportunity Commission argues that a policy of denying an individual employment on the basis of criminal conviction is unlawful under Title VII unless the employer can prove the business necessity to do so (Matejkovic and Matejkovic 2006). Also, some states (e.g., New York, Pennsylvania, Wisconsin, Hawaii, and Kansas) prohibit the denial of employment solely on the basis of applicant's criminal history except for certain occupations that are closed to individuals with a felony conviction under state or federal law, or crimes which directly, substantially, or reasonably relate to the duties of the job (e.g., Geiger 2006; Gerlach 2006; Walsh 2007). For example, in *Grafer v. New York City Civil Service Commission* (1992), a man with drunk-driving convictions applied for a position with the New York City Fire Department. Considering the relationship between the nature of the prior criminal record and the responsibilities of the position, the Appellate Division upheld the department's rejection of his application, concluding that: "petitioner's prior offenses are such as to involve an unreasonable risk to property and to the safety and welfare of the general public" (p. 337).

In another case (*Estate of Douglas Presley, Jr. v. CCS of Conway* 2004), a person was killed when he was crushed between two semi-tractor trailers. Trucking companies were sued for negligent hiring of truck drivers. Although one of the drivers had alcohol related offenses but completely stopped drinking alcohol two years before he was hired by one of those trucking companies, the court stated that the driver's previous alcohol-related offenses would have no bearing on whether he was a good choice for a truck driver. The court dismissed the claim. Thus, a more individualized assessment of criminal convictions should occur, focusing on the seriousness of the offense, its relation to the job in question, and its recency.

A distinction should be made between arrests and convictions. It is recommended that employers should not use information related to prior arrests in making hiring decisions (Geiger 2006; Gerlach 2006; Walsh 2007). Individuals who are arrested might be picked up for questioning due to proximity to a crime, mistaken identity, or other reasons. Therefore, an arrest does not indicate any valid information about a job candidate's character, prior behavior, or job fit.

It is also recognized that an organization may become aware of criminal history not through an official records check, but through an admission from the candidate. In such instances, there is an obligation to follow up on such information to understand its potential impact on the employment decision (e.g., Andler and Herbst 2003; Crebs and Rush 1996; Gomez-Mejia *et al.* 2007; Usry and Mosier 1991; Wang and Kleiner 2000; Zhao and Kleiner 2003).

Interviews It is common HR advice to conduct an employment interview as one component of the process to avoid negligent hiring (e.g., Fenton *et al.* 1997; Hibler and Kurke 1995; Martanegara and Kleiner 2003; Sack 1993; Wang and Kleiner 2000; Zhao and Kleiner 2003). The doctrine of negligent hiring states that an employer may be liable for the negligent or tortious conduct of its employees if the employer breaches its duty to use due care in selecting and retaining only competent and safe employees (Camacho 1993). The interview provides an opportunity to assess both the job related credentials of candidates and candidate's propensity for committing dangerous acts at the work place. The interview is the single most utilized selection approach (Huffcutt and Youngcourt 2007).

When an employer is charged with the tort of negligent hiring of a dangerous employee, the employee's character may become a viable issue and any evidence which relates to the particular employee's reputation or prior violent history may be introduced. The interview is an opportunity to address some of the issues noted above, such as asking for explanations for gaps in work and educational history and for omissions on the application forms, assessing an applicant's honesty or trustworthiness, and following up on any admissions of criminal history. For example, In *Welsh Manufacturing v. Pinkerton's Inc.* (1984), the court held that an adequate investigation into the background of a potential security guard includes not only checking both past employers and references, but also soliciting affirmative statements from the applicant attesting to an applicant's honesty, trustworthiness, and reliability. Also, in *Cramer v. Housing Opportunities Commission of Montgomery County* (1985), the appellate court was concerned with the fact that during the employment interview for the position of housing inspector, the employer did not ask questions about the parts of the job application that were not completed and did not ask any questions assessing job candidates' trustworthiness.

The interview is also an opportunity to inquire about candidate attributes or behavioral tendencies that might be related to violence. For example, candidates could be asked direct questions about past violent or criminal behavior (e.g., Gomez-Mejia *et al.* 2007; Zhao and

Kleiner 2003), past behavior questions about how they have dealt with conflict, difficult people, frustration, or other challenges in the past (e.g., Barron 1993; Dorris and Kleiner 2003), and hypothetical questions about how they might deal in the future with conflict, difficult people, frustration, or other challenges in the work setting (e.g., Baron 1993; Greengard 1995). Furthermore, there is substantial evidence that there are relationships between violent behavior and certain personality traits such as psychopathy (Catchpole and Gretton 2003; O’Neal 2005), hostile attribution style (Dodge 2006), stress reaction and aggression (Jockin *et al.* 2001), and MMPI scales like anxiety, anger, and low self-esteem (Parker *et al.* 2005). Such traits might be identifiable through the employment interview.

Thoroughness of the Background Check

This review suggests that background checks must always be conducted. However, there is no single standard for how thorough background checks must be. The thoroughness of a background check may depend on a combination of public policy and the nature of the job (Walsh 2007). Some industries and occupations have specific legal requirements for screening employees. For example, criminal background checks are mandatory in childcare, trucking, and airport security. At the same time, an extremely common recommendation in HR is that the importance of background checking and the thoroughness of the checking depend on the job (e.g., Arsenault *et al.* 2002; Bradley and Moore 2004; Camacho 1993; Caudron 2002; Clay and Stephens 1995; Connerley *et al.* 2001; Crebs and Rush 1996; Dow 2001; Edwards and Kleiner 2002; Extejt and Bockanic 1989; Gatewood and Feild 2001; Gregory 1988; Kiraly 2002; Kondrasuk *et al.* 2001; Le *et al.* 2003; Lear 1997; Little and Sipes 2000; Mondy and Noe 2005; Sack 1993; Smith 2002; Susser and Jett 1987; Usry and Mosier 1991; Walsh 2007; Woska 1991; Zugelder *et al.* 2000).

The more “sensitive” the position, the more extensive the background check that should be performed. Characteristics of the job that create greater “sensitivity” include the anticipated degree of contact that the employee will have with other people in performing his or her job duties. For instance, jobs dealing with customers or the public, vulnerable people (e.g., children, ill, disabled, elderly), jobs involving personal care and medical treatment, relatively unsupervised work, operation of motor vehicles or dangerous equipment, jobs affording substantial access to employer property and the homes and personal possessions of others, and positions entailing responsibility for security or safety (e.g., Arsenault *et al.* 2002; Bradley and Moore 2004; Camacho 1993; Clay and Stephens 1995; Connerly *et al.* 2001; Crebs and Rush 1996; Dow 2001; Edwards and Kleiner 2002; Extejt and Bockanic 1989; Gatewood and Feild 2001; Gregory 1988; Johnson 1994; Kiraly 2002; Kondrasuk *et al.* 2001; Le *et al.* 2003; Lear 1997; Little and Sipes 2000; Mondy and Noe 2005; Sack 1993; Smith 2002; Susser and Jett 1987; Usry and Mosier 1991; Walsh 2007; Woska 1991; Zugelder *et al.* 2000).

The court also agrees that the greater the risk of harm, the higher the degree of care necessary to constitute ordinary care (*Carlsen v. Wackenhut Corp.* 1994; *Hebert v. Aulerich* 2008; *Welsh Manufacturing v. Pinkerton’s Inc.* 1984). For example, in *Hebert v. Aulerich* (2008), a driver for a small company providing nonemergency medical transportation services for individuals with disabilities sexually assaulted a 61-year-old disabled woman. The woman sued the company for negligent hiring. Before the driver was hired, the owner of the company personally conducted an interview with the candidate, checked his driving record, conducted a drug screening check, and contacted the last employer where the candidate worked for the last 6 years. Based on the collected information, the owner believed that the candidate was credible, well qualified for the position, and enjoyed driving. Despite

of this effort, the appellate court stated that company failed to exercise reasonable care in adequately investigating the driver's qualifications, history, and background prior to hiring him. During the court investigation it was discovered that the candidate had lied on his application about working at his last place of employment. Further, he did not mention that he was accused of sexually molesting his daughter and terminated from his last job for sexual harassment. The court also raised concerns about the thoroughness of the conducted reference check. Although the owner of the company claimed that she called to check the reference, she did not document the call, she could not recall who she talked to, she did not ask about the candidate's termination date, nor did she verify whether he was still working there part time. Moreover, the owner admitted that she contacted only one previous employer. The court concluded that the employer failed to exercise reasonable care in conducting a thorough reference check (e.g., contacting more than one previous employer, verifying employment information), and found the company liable for negligent hiring.

Moreover, several courts stated that the lack of negative background information does not necessarily indicate that job applicants fit jobs with a high degree of risk to others (*C.K. Security Systems, Inc. v. Hartford Accident & Indemnity C.* 1976; *Welsh Manufacturing v. Pinkerton's Inc.*, 1984). Companies need to be more proactive in finding information that will attest that job candidates once hired will not inflict harm to others while performing a highly sensitive job. For example, in *C.K. Security Systems, Inc. v. Hartford Accident & Indemnity C.* (1976), a security guard, who had been employed by a security company to provide a security services to other companies, stole and forged the check from the premises that he was patrolling for the purposes of protecting persons and property. The guard's employer was sued for negligent hiring. In support of his motion for summary judgment, the guard's employer argued that it had exercised ordinary care in the selection of the guard by showing the following: (a) the guard has passed a personnel test with a high grade; (b) he had received a permit to serve as a guard by the local police department; (c) the security company had contacted the guard's previous employers, and (d) the guard has passed a criminology course. However, the court disagreed with the company arguing that the information obtained during the preselection investigation did not indicate or measure the job candidate's honesty or trustworthiness. The court stated that the company did not exercise ordinary care in the selection of the guard. The company needed to exercise a greater amount of care to attest its employees were honest and were not likely to commit thefts.

Discussion

Main Findings

Employers are expected to make a reasonable effort to assure that hired candidates meet minimal professional standards, are competent to do their job (have the required education, experience, skills and capability), and do not pose a foreseeable danger to their customers and employees. This can be achieved by a thorough background investigation of potential candidates involving collection of information about an applicant as well as verification that the applicant is providing truthful information.

This review suggests that organizations should be aware of the issue of negligent hiring and their responsibility to perform appropriate background checks. Background checks should be based on knowledge of job requirements obtained through a job analysis or other means and identified risks associated with performing the required job tasks. Different methods of background checks should be used, including application forms, references,

Table 1 Expected practices and recommendations in background checking.

Expected practice	Recommendations
1. Background checking is an expected practice	Always conduct a background check
2. Background checks should be based on knowledge of job requirements	Identify job requirements based on a job analysis Identify the types of background checks to be performed based on job requirements
	Check State laws concerning job requirements for certain positions, such as
	<ul style="list-style-type: none"> • security and safety personnel • financial institution personnel • personnel who work with children or vulnerable adults • truck and bus drivers
3. Use different methods of background checks	Corroborate answers via the use of
	<ul style="list-style-type: none"> • application forms • reference checks • official records such as criminal records • employment interviews
4. Expectations about application forms	Examine education and work history for any gaps Ask job candidates to provide references
	Ask job candidates to sign a written authorization to check references and background
	Ask specifically about criminal history
5. Expectations about references	Always conduct a reference check, especially the most recent employers
	Document all efforts to obtain information on job candidates
	Ask supervisors, co-workers, teachers, or friends in person, by telephone, or by letter
	Ask references to confirm
	<ul style="list-style-type: none"> • dates of employment • positions performed
	Inquire about the candidate's
	<ul style="list-style-type: none"> • Job performance capabilities • Work-related attributes, such as work ethic, reliability, integrity, etc.
	Ask for references that are based on documented job-related facts rather than on speculations or impressions
	Remind the reference about qualified privilege
6. Expectations about official records checks	Always verify
	<ul style="list-style-type: none"> • educational data and histories (e.g., degree verifications) • employment eligibility
	Depending on the job, verify the following types of information
	<ul style="list-style-type: none"> • social security numbers (identity verification) • employment verification (for non-residents) • license verifications • driving records (e.g., citations, accidents, and licenses) • credit information • military service

Table 1 (continued)

Expected practice	Recommendations
7. Expectations about criminal record checks	<p>Conduct criminal record checks (e.g., county and federal court criminal histories)</p> <p>Do not use information related to prior arrests in making hiring decisions</p> <p>Reject candidates only on the basis of past convictions which directly, substantially, or reasonably relate to the duties of the job</p> <p>Always follow-up on candidate's admission of past criminal convictions</p>
8. Expectations about employment interviews	<p>Always conduct employment interviews as a part of background checks</p> <p>Use the interview to assess the job candidate's</p> <ul style="list-style-type: none"> • competency to perform the job • attributes or behavioral tendencies that might be related to violence (e.g., psychopathy, hostile attribution style, stress reactions, aggression) • reputation or prior violent history • honesty or trustworthiness <p>During the interview</p> <ul style="list-style-type: none"> • Ask for explanations for gaps in work and educational history • Ask for clarifications of any discovered inconsistencies • Follow-up on any admissions of criminal history • Ask direct questions about past violent or criminal behavior • Ask past behavior questions about how candidates have dealt with conflict, difficult people, frustration, or other challenges in the past • Ask hypothetical questions about how they might deal in the future with conflict, difficult people, frustration, or other challenges in the work setting
9. Expectations about the thoroughness of the background checks	<p>The thoroughness of background checks depend on a combination of public policy and the nature of the job</p> <p>Follow legal requirements for screening employees in certain industries such as</p> <ul style="list-style-type: none"> • childcare • trucking • airport security <p>Perform extensive background checks for "sensitive" jobs</p> <ul style="list-style-type: none"> • jobs dealing with customers or the public • jobs dealing with vulnerable people (e.g., children, ill, disabled, elderly, etc.) • jobs involving personal care and medical treatment • jobs involving relatively unsupervised work • jobs involving the operation of motor vehicles or dangerous equipment • jobs affording substantial access to employer property and the homes and personal possessions of others • positions entailing responsibility for security or safety

official records, criminal records, and employment interviews. Table 1 summarizes the recommendations.

Practical Implications and Recommendations for Future Research

This review has several implications for practice and recommendations for future research. First, despite the fact that scientific and professional literature has recommended that practitioners perform background checks for some time, not all employers follow that recommendation. When employers do not perform background checking they may face many negative consequences, such as negligent hiring liability, charges of discrimination, decreased organizational performance, negative organizational reputation, and decreased employee morale. Future research should be conducted to explore why employers are not doing what they should be doing (e.g., lack of resources, time, or knowledge).

Second, background checks are likely to be useless when performed in a pro forma manner. Employers need to be more proactive in conducting background checks. It is critical that inconsistencies and gaps in information provided by job applicants be detected and understood. If these gaps or inconsistencies cannot be cleared up in interviews and through corroboration by other sources, the person should not be hired (Walsh 2007). Future research should be conducted to explore what companies do when they discover inconsistencies in background information provided by candidates, what inconsistencies companies consider as expected and acceptable, and what is unacceptable.

Third, the extensiveness of background checks should always be based on an assessment of the likelihood of the risks associated with the job and not on the perceived status of the job (e.g., part-time vs. full-time, low-paid vs. high-paid). For a job with high risk, employers may need to go beyond what is stated on a resume or application blank and seek out detailed personal information on an independent basis rather than merely confirm information supplied by a job applicant. The legal cases discussed suggest that many jobs that present foreseeable harm are not regarded by some employers as important or worthy of a great deal of concern and effort to perform an extensive background check because they are low-paid, part-time or temporary jobs, require low levels of skill, and have a high turnover rate (e.g., delivery jobs, maintenance jobs, security guard jobs). At the same time, employers are being sued more often for inadequate and insufficient background checks of employees who perform low-paid, part-time jobs with a high risk of harm to others.

Fourth, the expectations about the extensiveness of background checks may also depend on the costs of conducting background checks and availability of the information. For instance, the availability of criminal records online, their inexpensiveness, and ease of retrieval may lead to an increased expectation that all employers must always conduct criminal record checks.

Fifth, employers need to evaluate and design their HR practices in a way that will help them to avoid liability in negligent hiring cases. For example, when job analysis is conducted, it is important not only to describe the job tasks, but also the opportunities that might exist for committing criminal acts. Or when employment interviews are designed, it is important to develop questions that will assess job candidates' honesty and trustworthiness, or allow probing for discovering inconsistencies. Analysis of the described legal cases suggests that defensible background checks are based on the knowledge of job requirements, and include (a) reference checks from at least the two most recent places of employment, (b) documentation of all efforts to obtain information on job candidates (even when they are unsuccessful), (c) verification of all information provided by job candidates,

(d) a criminal record check, and (e) assessing trustworthiness and reliability of job candidates.

Sixth, when a company is using an outside company to perform a background check on candidates, it must follow the Fair Credit Reporting Act (FCRA) (15 USC §1681). For example, a reference verified by the employer is not covered by the FCRA, but a reference verified by an employment or reference checking agency (or other consumer report agencies) is covered (<http://www.ftc.org>). Under the FCRA, the employer must obtain the applicant's written authorization before the background check is conducted. The authorization must be on a separate document and not a part of an application form. Under federal law, if the employer uses information from the consumer report (or background check report) for an "adverse action" (e.g., denying the job applicant, withdrawing a job offer), it must give the job applicant a "pre-adverse action disclosure" (before the adverse action is taken), and an "adverse action notice" (after the adverse action is taken). According to the FCRA, the job candidates must receive from the employer (a) a copy of the report if a pre-adverse notice is given, (b) the document containing the name, address, and phone number of the employment screening company, and (c) a statement that the candidate has the right to dispute the accuracy or completeness of any information in the report. The FCRA is designed to protect the privacy of consumer report information that may include information about a job candidate's personal and credit characteristics, character, general reputation, and lifestyle. In addition, FCRA is designed to make sure that inaccurate or incomplete consumer reports do not cause job applicants to be denied jobs.

Finally, background checking is an expected practice not only in the United States but in many other countries. Human resource practitioners around the globe are facing the same problems, and resume fraud may be a truly international problem. A news agency in South Korea reported that several prominent persons have been exposed as having exaggerated or fabricated their academic credentials. For instance, one of the professors at Dongguk University, the top university in Korea, claimed to have a Ph.D. degree from Yale and other degrees from the University of Kansas. However, it was discovered that the professor had never attended Yale and never graduated from the University of Kansas. The professor was fired from the university and left for the United States (Lee 2007). A similar situation was reported in Russia. A professor worked in seven different universities with a faked Ph.D. degree in law before fraud was discovered and the professor was fired (Genina and Borodinov 2008).

The identified expectations about background practices are likely to be relevant to practitioners around the globe. This study attempted to include literature from around the globe. However, there will be some cultural differences in practices as well as differences in government and legal regulations that will shape the expectations about background checking in different countries. In Russian companies, for example, background checks are usually performed by two departments, the human resource department and the department of security (Chumarin 2003). The responsibility of the security department includes verification of educational, criminal, credit, driving, and other types of records. The responsibility of the human resource department includes performing reference checks and conducting interviews with job candidates in order to discuss and clarify any inconsistencies between information provided by job candidates and information discovered during the background checks. For high level positions or managerial positions, the managers of security department perform additional reference checks on job candidates by contacting the security departments of the most recent employers of job candidates. Many countries have their own government regulations designed to protect the privacy of

information that employers can collect about job candidates in order to make employment decisions (e.g., EU Privacy Protection Directives; UK Data Protection Act 1998, Chapter 29). Therefore, background checking may be a problem of international dimensions and one that researchers in other nations should explore further in future.

Conclusion

Background checking is an important responsibility of employers. It is hoped that this article will help organizations understand this responsibility and the specific actions that should be taken to avoid liability and improve their hiring practices.

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