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Pre-employment screening: Check now or pay later

Failure to screen job applicants leaves gap in corporate security, invites lawsuits

The economic boom roars on. In January, unemployment dropped to a 30-year low of 4 percent, which statistically represents full employment. Employers added 387,000 jobs in January, the biggest monthly gain in two years. During the 1990s, more than 12 million new jobs were created. For all of 1999, worker productivity rose 2.9 percent, the fastest growth since 1992. The economic expansion, now in its 107th straight month, is the longest in U.S. history.

How do companies find people to fill all those new jobs? As the labor pool shrinks, qualified candidates are harder to come by; good prospects already have jobs. Managers need employees to meet the demand for goods and services. Human resources departments scramble to find them. Many companies face a dilemma: Lower employment standards or lose business. Thorough pre-employment screening is sometimes a casualty of the haste to hire.

Last month, The Lipman Report discussed drug testing, which some companies are dropping in the competition for workers. We pointed out the risks, noting what workplace drug and alcohol abuse costs: more accidents, higher insurance payments, less productivity. The same warnings apply to eliminating other aspects of a thorough screening program, such as checking criminal history, credit history, previous employers and driving records.

The tight job market argues for maintaining or tightening standards, rather than abandoning them. The depleted labor pool contains a higher percentage of at-risk job seekers. One San Francisco-based expert in background screening has noted a recent doubling of applicants with a criminal history, from 8 percent to 15 percent. Consider what industry insiders call the "funnel effect." The mere knowledge that a company tests for drugs or checks backgrounds deters undesirable applicants. Where do they go? To a company that does not drug test or only half-heartedly checks application information. Risky applicants are funneled to the lax company. It may take more time and money to screen candidates, but the long-term payoff in productivity and lowered risk more than makes up for it.

A company's investment in its employees is as important as its investment in a physical plant or

inventory. It makes sense to protect that investment by pre-employment screening. According to the U.S. Chamber of Commerce, nearly one-third of all business bankruptcies are caused by employee theft. In fact, employee theft causes a greater loss than shoplifting. Based on a 5 percent net profit margin, it takes \$20 in additional sales to offset every \$1 lost to employee theft.

First line of defense

Screening is a company's first line of defense. By hiring someone, a company gives him or her the keys to the kingdom: access to its physical plant, to other employees, to customers, and to the computer network. Employees become the public face of a company. Failure to check before hiring leaves a big gap in security coverage. Why patrol the parking lot and check visitors at the front door, only to leave the personnel door open?

"Low unemployment is the biggest problem facing employers," according to a labor lawyer in Los Angeles. "The single worst mistake is to adjust hiring procedures." Given the depleted labor pool, companies should be strengthening their screening, not weakening it. The lawyer notes that 95 percent of employment problems are caused by 5 percent of employees. Often, that 5 percent has a victim mentality, blaming others for problems and refusing to take responsibility. The key, the lawyer says, is to screen out that non-productive 5 percent, while always complying with state and federal employment laws.

A Los Angeles-based management consultant says many of his clients have a high turnover; with openings to fill, they have no time to screen. A human resources professor at San Francisco State University calls hurried hires a fact of life. Managers are screaming for talent, he says, and balance the risk of a poor hire against the cost of slowing production. At the other end of the scale, many companies offering well-paying jobs don't

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perceive the risk. They prefer to deal with any problems after hiring. Such attitudes, while understandable, invite trouble.

Amid the boom, some downsizing is happening, returning trained workers to the job market. A telecommunications firm recently announced plans to cut 2,100 jobs. A consumer products company announced 6,000 job cuts worldwide. Companies must explore new sources and use new tools when recruiting; putting an ad in the newspaper may not be enough. The Internet is becoming a key resource. Qualified workers can be found, if a company maintains its standards.

Negligent hiring lawsuits

Studies indicate that up to one-third of job applicants mislead, either by falsifying information or leaving key facts out. In the worst case, the lies could be an effort to conceal past criminal activity, activity that could resume at the new job. Negligent hiring lawsuits are increasing and can produce catastrophic damage awards. Courts have held companies liable when they should have known an employee posed a risk, or when a reasonable investigation could have disclosed the risk. The greater the contact with the public, courts have said, the higher the duty to check backgrounds.

A labor lawyer at a prominent San Francisco firm says employers face a new workplace environment. "First, the law is becoming clearer about a negligent hiring standard," he says. Second, he notes the competitive job market. As a company casts its net wider to find employees, it lands more applicants with a criminal history. "The most profound change," according to the lawyer, "is the availability of information on the Internet." With cheaper and quicker access to background information, the industry standard changes. If you don't keep pace, your liability can grow. "If all your competitors are screening," he says, "you have fewer excuses not to."

In 1998, the California Court of Appeals held: "Liability for negligent hiring and supervision is based upon the reasoning that if an enterprise hires individuals with characteristics which might pose a danger to customers or other employees, the enterprise should bear the loss caused by the wrongdoing of its incompetent or unfit employees."

In a Minnesota case, the manager of an apartment complex was convicted of raping a tenant. The owners were sued. Under the theory of negligent hiring, a court found the owners liable. The man had served prison time for armed robbery, and the court found it foreseeable that he would commit another crime.

Risks of not screening

Some recent cases show that failure to check backgrounds brings different levels of risk.

Personal risk. Edmond Safra, 67, founder of Republic National Bank and one of the world's wealthiest men, died of smoke inhalation in his Monaco penthouse on December 3. He had retreated to his bathroom during what turned out to be a fake break-in staged by his male nurse, 41. The nurse, from New York, had been in the household six months, and was jealous of another employee. He planned to raise a false alarm, stab himself, set a fire and save Safra from the "intruders," making himself a hero. Safra's security appeared impressive: cameras, alarms, bulletproof rooms, steel doors, and retired Israeli army personnel as bodyguards. Yet the nurse, who had worked at a New York hospital, gained access to Safra's inner circle without a thorough screening, which might have revealed an unstable personality. The nurse's ex-wife said he played Russian roulette and had threatened to kill her. A landlord called him aggressive. An elderly neighbor told of violent outbursts. But a pre-employment check failed to find these warning signs.

Risk to reputation. Fox Television was embarrassed by its show, *Who Wants to Marry a Multimillionaire?* A man described by producers

as a real estate investor worth \$2 million chose a bride from a field of 50 women. The total strangers were married in front of 23 million viewers. After the couple left for a honeymoon, some facts emerged. In 1991, the “multimillionaire,” who turned out to be a stand-up comedian, was the subject of a restraining order after an ex-girlfriend claimed he hit her and threatened her life. The show’s producers say he failed to reveal the information when asked about any embarrassing episodes in his past. Fox has cancelled the show and hired outside investigators to investigate the producers’ methods.

A corruption scandal has rocked the Los Angeles Police Department. An officer caught stealing drugs has accused colleagues in the anti-gang unit of planting evidence, beating suspects, lying in court and selling drugs. Twenty officers have either left the force or been relieved of duty. Forty people have been released from prison because of tainted convictions. The city’s liability for false imprisonment could top \$100 million. The police chief says the department’s rapid growth caused a breakdown in the selection process. People with criminal records, financial problems, drug use and past episodes of violence were hired.

Risk to others. A Southern governor has proposed mandatory background checks for new day care workers. The legislative proposal was prompted after two children left unattended died in sweltering day care vans. Also, a day care owner was charged with driving under the influence of drugs with a van full of children. And another worker was accused of running a counterfeiting operation out of a day care center. The state would pay the \$48 cost of the state and Federal Bureau of Investigation fingerprint check for new day care workers.

In a 1999 case in Alamo, California, workers for an auction firm gained entry to customers’ houses during pickups and deliveries. During an attempted robbery in November, a homeowner and a suspect were killed. The suspect, 22, had a gun-related conviction and numerous arrests for

violent gang activity. The auction house never asked about or investigated his criminal history. The references he listed on his application were his gang friends.

Risks to national security. Recent news reports have revealed problems in U.S. Department of Defense security clearances. The department’s Defense Security Service (DSS), which investigates the backgrounds of department employees and workers for defense contractors, has a backlog of as many as 500,000 cases. In a rush to ease the backlog, security checks are becoming slipshod, critics charge. Furthermore, the Defense Office of Hearings and Appeals (DOHA), which reviews security investigations, has often overlooked or overruled negative findings. DOHA has granted clearances, which allow access to classified material, to employees with troubled histories that include sex crimes, fraud, drug use, financial troubles and assaults. Employees with financial problems might sell secrets; those with embarrassing personal problems could be blackmailed. Critics have called for a congressional investigation. Defense Secretary William Cohen has promised to raise the standards for who gets clearances.

Skills shortage

The pressure to hire has downgraded or eliminated other pre-employment tests. According to an American Management Association (AMA) survey, 36 percent of job applicants tested by major U.S. firms in 1998 lacked the reading and math skills to do the job they sought, up from 23 percent in 1997 and 19 percent in 1996. Faced with this skill shortage, companies were willing to hire less qualified workers and offer remedial training.

And among the 1,054 AMA-member companies surveyed, the share using psychological testing for applicants dropped to 39 percent from 52 percent in 1998. Even before this cutback, companies had begun to downgrade the weight they gave the results. “A case could be made that the

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skills shortage is so severe that companies simply decided to skip the [psychological testing] process altogether," says AMA's director of management studies.

Labor lawyers and management consultants recommend hiring a professional background screening service. Using an outside firm has advantages. The firm is immune to the pressures to hire that might cause a manager or a personnel office to be less than thorough. Also, trained investigators know where to look for information and how to get around roadblocks. But be wary. Make sure the firm you hire is licensed and bonded and adheres to all legal standards, including the Fair Credit Reporting Act. Most firms will offer an array of background checks. The most important are:

Criminal history: A competent investigation will go back at least seven years. It requires legwork, checking criminal records at county courthouses.

Credit check: Credit history is important. A check will uncover any liens, judgments or bankruptcies in the applicant's past. A credit check can also uncover past addresses or employment that might be left off the application form.

Employment: Verify where and when the applicant worked, going back 10 years. A personnel department will usually only verify the job title and dates. A thorough investigator will be able to get a reference. Companies are wary of giving poor references for fear of a lawsuit, but a determined investigator can elicit useful information.

Education: Verify where the applicant went to school and what degree was earned. Inflated educational achievement is one of the most common falsehoods on applications.

Motor vehicle records: A company takes a great risk by hiring a driver without checking driving records.

Workers' compensation: Check any claims with the state, looking for multiple or suspicious claims.

Civil records: It requires a check at county courthouses and can also uncover liens and judgments against the applicant.

In management, as in life, there are short-term and long-term ways of thinking. Managers want to fill openings to meet production goals. Some are tempted to take the first "warm bodies" they can find. But such an approach can cost more in the long run in lost customers, in lost inventory, in higher medical and legal costs.

A company can protect itself by maintaining its employment standards. Are competitors screening? If they do and you don't, your liability in the event of an incident can increase. And the workers they reject will knock on your door.

But no matter what your competitors do, pre-employment screening is worthwhile. In the long run, productivity improves, morale rises, and turnover falls. Employees can feel proud that they and their co-workers have met a selective standard. Managers can be confident that they have done everything possible to reduce risk. When assessing security needs, companies often think of employee identification badges, alarms, cameras and trained security officers. But spending money on those security measures without pre-employment screening makes no sense. A trusted, screened workforce will enhance any company's security. Performing thorough pre-employment background examinations helps build and maintain such a workforce.



The Lipman Report Editors