



Reference Checks

Karen Huyler

Lynn Budnik

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Why check references?

Think of the costs incurred from an unfortunate hiring decision:

- recruiting
- orientation and training
- staff turnover
- lost productivity
- incompetence
- theft or business loss
- legal and administrative expense
- unfavorable publicity
- negligent hiring claims



Why check references?

- Roughly 30% of job applicants misrepresent themselves on the employment application.*

* <http://www.managementfirst.com/articles/background.htm>



Recent high-profile cases

- Jesse L. Burns, President of Edward Waters College, claimed to have an MBA and a doctorate.
 - There was no record of Burns having earned a degree higher than a BS.
 - When Burns' lack of credentials became public, he was forced to resign.*

*<http://www.eminfo.com/articlesection/ReferenceChecking.htm>



More high-profile cases

- Seymour Schlager was appointed Medical Director for Becton Dickinson despite having served six years in prison for the attempted murder of his wife. (NY Times, 9/9/01, Melody Petersen)
- In the last 2 years, coaches from Notre Dame, Dartmouth, Vanderbilt, and UCLA were all fired for falsifying credentials. (Employment Action, Volume 5, Number 4, Fall 2002)



Negligent Hiring

Can you be held liable
if you don't check references?

Yes.



Negligent Hiring

- Negligent hiring lawsuits normally cost \$50,000 to \$250,000 to litigate.
- Employers lose 72% of those cases.
- The average jury plaintiff award in employment law cases is in excess of \$1,000,000. *

*<http://www.infolinkscreening.com/InfoLink/Background/BackgroundScreening.aspx#Negligent>



Negligent hiring real-life situations

- A hospital was found negligent in hiring a kidney transplant coordinator who was unskilled in reading medical charts. As a result, a patient was given a cancerous kidney in a transplant, which resulted in his death.*

*<http://www.infolinkscreening.com/InfoLink/Background/BackgroundScreening.aspx#Lawsuits>

- After a furniture store delivery person assaulted a customer while delivering furniture to her home, the furniture store owner was held liable for negligent hiring. If the company had conducted any background check at all, it would have found that the delivery person had a history of violent behavior.*

*http://www.noworkviolence.com/articles/corporate_liability.htm



5 Steps To Follow





1.) Check references

- The importance of checking references can not be stressed enough.
- According to HR NEWS (Jan 2002), there are six million threats of violence and two million workplace assaults each year. Thirteen people die due to workplace violence every week.*

*<http://www.infolinkscreening.com/InfoLink/Background/BackgroundScreening.aspx#Violence>



2.) Be consistent

- Some form of reference checking, appropriate to the position, should be carried out on all candidates.



3.) Check references BEFORE the job offer is made

- Once the top two or three candidates have been identified through resume screenings and interviews, references should be checked before any consideration is given to making a job offer.
- We suggest that you check references after interviews, not before.



4.) Require professional references rather than personal

- Ask candidates for the type of references you need to assess qualifications required for the position, not just the ones the candidates initially give to you.
- Seek a reference from people who have recent work experience with the candidate.
- Check MORE than one reference.



5.) Ask open-ended and follow-up questions

- Ask questions that require more than a “yes/no” answer.
- Keep questions job-related.
- If you receive a generally negative reference on an applicant, you should make the effort to contact a second reference.



Internal candidates

- When considering internal candidates, encourage hiring supervisors to check performance appraisals or other job related documentation on file in Human Resources.



Conducting the Reference Check

- Prepare carefully before you conduct a reference check
 - Familiarize yourself with the information the candidate has already provided – application, resume and interview responses. Identify areas that might require elaboration or verification.
 - Write down your questions before you call and highlight the information that you need expanded upon or verified.



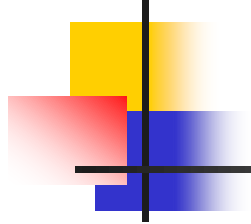
Rapport

- Try to establish a cooperative rapport with the reference.
- Ask for information such as dates of employment, job title and duties.



Describe the position

- Describe the responsibilities, duties and working environment of the position.
- After describing the position, ask references their assessment of the candidate's capabilities for the job.
- If you have a reference who resists giving supplemental information, rephrase questions as requests for verifications.



Providing References



Reasons for Providing References

- To help good employees get jobs.
- To encourage other employers to be honest with you.



Potential Liabilities

- Defamation
- Retaliation
- Breach of Confidentiality
- Negligent Misrepresentation



Defamation

- Defamation is the act of harming the reputation of another by making a false statement to a third person.
- The truth is an absolute defense to a claim of defamation.
- Speak in terms of behaviors, not labels.
- Example: Rather than saying the employee had “poor work ethics,” say the employee “missed four important deadlines.”



Defamation...continued

- Share only job related information; never provide false or malicious information.
- The average defamation settlement is about \$7,000. The average negligence settlement costs about \$2 million.*

*<http://www.shrm.org/ema/emt/articles/01summernixon.asp>



Retaliation

- Employers face the potential of liability for retaliation when a supervisor giving a reference strikes back at an employee who has filed a charge against the company.



Breach of Confidentiality

- Do not disclose employment information to anyone who does not have a legitimate need to know.
- Do not provide personal information, i.e. illnesses, family issues, etc..
- Avoid inappropriate conversation - stick to the job related facts.



Negligent Misrepresentation ("Failure to Warn")

- Workplace violence is the greatest security concern facing Fortune 1000 companies.* [Pinkerton's Top Security Threats & Management Issues Facing Corporate America study - 2000](#)
- According to the Bureau of Justice Statistics, 1 million employees are the victims of violent crimes in the workplace.* <http://www.shrm.org/government/vilence/refwhite.asp>



Negligent

Misrepresentation...continued

- Former employers may be held liable when they do not disclose information about a former employee which leads to the injury of a third party.
- When providing references, balance the rights of potential perpetrators with those of potential victims.



Guidelines for Providing References

- Ask if applicant has given permission for reference.
- Inquire as to the duties and responsibilities of position.
- Provide truthful, job related information.
- Share name, title, dates of employment, job duties/responsibilities, salary.
- Focus on knowledge, skills and abilities as they relate to the vacancy.
- Speak only to questions asked...do not volunteer information.



Guidelines continued...

- Verify information on candidate's resume.
- Maintain consistency.



Fortune Magazine reports.....

80% - 85% of supervisors will
“spill their guts” when contacted
for reference information.

(Fortune Magazine, 2002)



Internal Candidates

- Remind hiring supervisors to contact Human Resources for performance appraisals and other job related documentation.



Do Not....

- Provide character references.
- Address private, non-job related information.
- Provide information regarding disability, medical records, marital/family status, residence, arrest record, religion, race, national origin, child care provisions, pregnancy status, sexual orientation, age.
- Discuss if employee complained about sexual harassment or filed for workers' compensation.



Be cautious with language....

- Use of words like “troublemaker,” “screwed up” and “crazy” have put employers in court.
- In *Frank B. Hall & Co. v. Buck*, the plaintiff received 1.9 million dollars from his former employer who described him in a reference as a “classical sociopath”, a “zero” and “lacking in communication or scruples.”*

*<http://www.boonesmith.com/employer.html>