

the hospital acted with reasonable care in hiring and supervising the employee and that its management did not authorize, participate in, consent to, or ratify the employee's alleged conduct. Similarly, in *Vinci v. Las Vegas Sands, Inc.*, 984 P.2d 750 (Nev. 1999), the Nevada Supreme Court determined that the employer could not be held liable for negligent hiring since there was no evidence that it failed to conduct a reasonable background check.

*** Simple Steps to Prevent Claims ***

Clearly, the best way to limit negligent hiring claims is to follow common sense procedures to get as much information from the candidate as you can and then to verify the information before offering a position. To accomplish these goals, consider taking the following eight steps:

1. Train your interviewers. Every interviewer should be familiar with your hiring policy and know what types of background checks are required.
2. Have each applicant fill out an application form which you carefully review. Pay particular attention to gaps in employment and inconsistencies, and require references.
3. Question the candidate about any gaps in work history. Make sure you have an accurate timeline of past employment dates and know what happened during any periods of unemployment.
4. Check references. At a minimum, confirm the applicant's dates of employment and position. Try to get substantive information about past performance and disciplinary records.
5. Ask about criminal convictions. Remember, however, that asking about arrest information (as opposed to convictions) could violate state discrimination laws.
6. Perform additional background checks appropriate to the position being sought. For example, consider credit checks on candidates who will handle money and review the motor vehicle records of potential drivers.
7. Conduct criminal conviction checks on candidates who will be in "positions of confidence." For example, if you are filling a position in which the employee would work in a customer's home, with impaired individuals, or in a daycare center or hospital, a criminal check is appropriate (and required by some state laws). Make sure these checks cover each jurisdiction where the candidate has lived.
8. Document the steps you take to investigate the candidate. Even if you can't get in touch with a reference or if a background check does not produce any information, make sure you have a clear record of the steps you took. Remember, too, if you ask a consumer reporting agency to conduct any of your investigations, you must comply with the notice and disclosure requirements of the Fair Credit Reporting Act.

*** Better Safe than Sorry ***

As a practical matter, most negligent hiring claims involve extreme but isolated incidents of employee violent conduct. However, the risks of having to defend against these claims,

and the negative publicity surrounding them, far outweighs the time and cost of taking a few simple steps to prevent them. As a general rule, your first line of defense is to weed out high-risk applicants before making hiring decisions. Your last line is to have clear documentation showing you took the reasonable steps a prudent employer is expected to take to avoid a negligent hiring action.

Subscribers to the Personnel Policy Manual and HR Policy Answers on CD can find more information on negligent hiring in Hiring, Chapter 202, notes 11 and 21.

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