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Screening Job Applicants Without Discriminating

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A recent article, published August 11th with the headline, "*Some Job-Screening Tactics Challenged as Illegal*," highlights the ongoing struggle between employers who need to safeguard their businesses and their employees and job seekers who need employment, regardless of past legal history. This particular article appears to insinuate that employers should be less careful of who they hire, for fear of discriminating against certain minorities.

It is certainly true that, statistically speaking, a disproportionate majority of individuals with criminal records are minorities. However, in regard to hiring, this should never be a problem for employers. Employers who perform regular background checks on all potential employees should never have to worry about how these statistics affect their hiring practices.

There's a line between blanket pre-employment screening and pre-employment screening that is discriminatory – and that line is not as fine as the article in question leads readers to believe. Employers have a right to determine their own screening practices. As long as those practices are employed across the board, it is not likely to be considered discriminatory.

Employers develop policies regarding which offenses and individual may have on his/her record are exclusionary, as far as any given position is concerned. Some employers must follow state or federal guidelines regarding which offenses can be allowed and which cannot. Anyone who insists that such screening violates Equal Employment Opportunity Commission (EEOC) regulations is reaching, to say the least.

The bottom line for most employers is this: *An employer is liable if an employee commits a crime while under their employ; especially if that crime is committed against a fellow employee or a customer of the business.* If that employer knew that the employee had a criminal background and hired that employee despite his or her record, that employer can be held responsible, legally and financially, for the actions of said employee. After all, victims and the families of victims harmed during a crime rarely sue the perpetrator; the perpetrator rarely has any money. Victims sue the entity they feel is responsible for putting them at risk – i.e., the employer who knowingly hired someone with a criminal record.

This theory works the same way in regard to business to business transactions. Let's say that an accounting firm hires an individual with multiple DUI convictions. Certainly a DUI is not the same as theft which would automatically disqualify an individual from working for a financial institution. However, such convictions do indicate a tendency toward poor judgment. If the accounting firm hires the individual, regardless of his/her DUI convictions, and that employee embezzles client funds, it's the employer who is liable, especially when clients discover that the employee's criminal record was known.

Employers have to be careful about who they hire. Forcing any employer to hire individuals with criminal records because it may discriminate against any particular ethnic group ultimately discriminates against the employer, that employer's current employees, and the clients the employer serves.

A Recent Case in Point:

Pre-Hiring Neglect Leads to Rape

The BP oil spill has certainly resulted in quite a mess that needs cleaning up. But, the mess goes much farther than the spill itself. At least one very serious legal issue has arisen as a result of a lack of pre-employment screening.

According to reports, one Rundy Charles Robertson, 41, a temporary worker hired to work on the oil spill cleanup, raped a coworker – a woman on the crew he was supervising. Turns out the victim was working side-by-side with a convicted sex offender.

Robertson, with a criminal record dating back to 1991, a 1996 conviction for contributing to the delinquency of a minor, and a 2003 conviction for cruelty to children, was hired by an employment firm contracted by an environmental firm working for BP to provide cleanup workers. Now, everyone's playing "pass the buck."

BP hired the Miller Environmental Group, who hired Aerotek, the staffing agency, to provide workers for the cleanup. Aerotek did not perform background checks on the employees it hired for the job. One witness even said that potential workers were applying for jobs with house-arrest collars on. Aerotek claims that it did not require background checks because they were not required in their contract with Miller. However, they did start requiring checks about three weeks after the fact, per Miller's request.

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