

# **Growing Resume Inflation Makes Due Diligence in Hiring More Important than Ever**

**By Eric Conn and David Yates**

**Segal McCambridge Singer & Mahoney, Ltd.**

Economic lulls force corporations to search for savvy methods to protect profitability. Most follow the obvious paths of containing costs and practicing fiscal conservatism; however, when it comes to saving on the costs associated with risk management, some may not realize the payoffs to be gained by investing in human resources expertise.

With a slow economy and high unemployment rates, good and even great employees are jobless. These conditions create the right environment for an opportunistic business to overhaul its work force with new, more qualified employees. Doing so can help to correct the cause of every single risk management problem: employees.

The best risk management practice is for a company to do their homework prior to making a new hire. This type of due diligence does not start with the interview process; on the contrary, the best method to finding the right employee is to do your research *before* you grant him or her an initial interview.

## **Perform Due Diligence Prior to Hiring**

Steve Williams of EctoHR, a leading national human resource consulting and outsourcing firm has discovered a frightening trend that has occurred since July 2008. Typically, EctoHR is called upon to perform reference and background checks for their clients. In reviewing his company's yearly data, Mr. Williams has found that through the first quarter of 2008, 13.5% of all resume and background verifications his company completed came back with a flagged result, such as a criminal conviction, education discrepancy or employment history fabrication. However, when looking at the time period from July 2008 through the present, that number has risen to over 20%.

The real problem has been with employment history fabrication. Historically, Mr. Williams noted that EctoHR has had an average of 6.5% of applicants caught misrepresenting their employment history. That number has jumped to 13% this year and the reason, Mr. Williams states, is obvious: "As the time between jobs stretches on, a higher percentage of job seekers change their resume in an attempt to be a more attractive candidate."

To the unwitting employer, such deceit can have major financial repercussions, especially when it comes to the risk management arena. Inexperienced or unqualified employees present multiple issues prior to and during litigation. Prior to litigation, an employee that does not have the experience to observe a dangerous condition or does not have the knowledge to perform routine, industry accepted protocols, can lead to disastrous results such as severe personal injury, costly property damage and even death. Further, when faced with an accident investigation or other serious matter, such an employee will likely not appreciate company policy, causing the company excessive litigation costs and attorneys fees where they could have been avoided.

During litigation, inexperienced or unqualified employees present similar problems. During an attorney meeting, such employees are often afraid to provide pivotal facts that leave defense attorneys without a clear liability picture. They also tend to share irrelevant and harmful information at deposition and trial. Finally, they can make a bad presentation to a jury when discussing their knowledge and experience about their job.

Realistically, these problems can cost an average company hundreds of thousands of dollars in litigation costs, attorney fees, settlement fees and insurance premiums each year. However, the solution can be had for fraction of that. Background checks that include verification of criminal, educational and employment history typically cost less than \$50.00.

From a risk management standpoint, trying to save money by performing just an employment verification is not recommended. Most states have rules of evidence similar to the federal rules, that permit felony and misdemeanor convictions involving theft and dishonesty to be used to discredit an employee's testimony. An attorney typically will request education records to verify the deposition testimony of an employee. Therefore, if your business is going to skip a criminal and educational background check, be aware that should a bad hire lead to a lawsuit, the opposing attorneys will not be skipping any checks.

### **Reap the Benefits of your Diligence after Hiring**

Criminal, educational background and employment verifications can also assist the employer after a hire is made. Consider, for example a common carrier that employs a driver to deliver goods interstate. If the employee is involved in an accident resulting in personal injury, a common claim made against the employer is one of negligent hiring. In a claim for negligent hiring, the injured party's attorney must prove that the employer did not perform due diligence in hiring its driver.

Typically, employers for such transport companies do not perform the type of investigation that is suggested above. In fact the industry norm is usually to obtain an application and a driving record. By obtaining this basic information, an unwitting employer is essentially relying on an application that is increasingly likely to be inaccurate and a driving record that usually comes after the employee is hired. If your company is doing little more than this when making employment decisions, you could be setting yourself up for a claim for negligent hiring. However, if you had obtained an employment and education verification and performed a criminal background check and retained that information in your employee's file, you would have taken great steps toward limiting your company's susceptibility to a claim for negligent hiring.

Performing routine background checks can also protect an employer from liability in a claim brought by an applicant that was not hired. Occasionally, applicants that are not hired file claims with the Equal Employment Opportunity Commission (EEOC) or the state equivalent to the EEOC. When such claims are made by applicants, it is imperative for an employer to demonstrate consistency in hiring to refute claims that the justification for not hiring the applicant was discriminatory. Often times, an employer can refute that allegation by relying on background documentation to establish a non-discriminatory basis for failing to hire the applicant.

## **Conclusion**

In a difficult economy, trouble and opportunity go hand in hand. Competitive businesses have the opportunity to upgrade the quality of their work forces. But each individual hiring decision made is more important in this situation, given the overall rise in unemployment. Smart employers will not skimp on human resources expertise so they can ensure that each hiring decision is appropriate. They also know that performing due diligence now will save them risk management headaches later.