Exercising Strategy: Who Is Screening the Screeners?

In May of 2006, after an extensive legal proceeding following the typical procedures for rules of evidence, an administrative law judge for the Department of Labor concluded that Theron Carter, a 61-year-old unemployed truck driver from Michigan, was a hero. Carter was a whistle-blower, bringing to light safety violations at his place of employment that could have cost the lives of many innocent drivers. Despite being told by his supervisor to ignore a series of violations, Carter persisted in his objections, up to the point that he was eventually fired. The judge concluded that Carter’s termination was illegal and ordered the firm to pay him damages and back pay. The only problem, however, is that Carter is still unable to obtain work, because despite eliminating the discharge from his record, the background checking industry still has him listed as “a chronic complainer” based on his former supervisor’s report.

One can understand why, in an age when employers are constantly seeing and reading stories in the press regarding workplace violence, theft, and fraud, some would feel the need to closely vet each and every employee. This is especially the case since many employers can be held legally responsible for the illegal acts of people they hire via various negligent hiring lawsuits. Under U.S. law, lawsuits claiming negligent hiring are “uncapped,” and hence there is no limit to the liability that employers face if found guilty. For this and other reasons, over the last 10 years, the number of employers who conduct routine background checks has gone from 51% to 96%. In fact, demand for this information is so strong that one is seeing unprecedented growth in the employee background checking industry. Among the major players in this industry, in the period between 2007 and 2008, revenue is up over 20% and profits up over 50%. This has attracted a number of new entrants to the industry, and as one would expect, this type of growth in an essentially unregulated industry has led to a number of problems.

Perhaps the biggest problem within this industry over the last 10 years has been the expanding scope of background investigations. In the early days of the industry, screening companies merely searched for objective information related to past criminal history, and perhaps credit history. Increasingly, however, firms are going well beyond this and assembling “digital dossiers” based upon telephone interviews with friends, co-workers, and former bosses. Untrained call-center employees inquire about work habits, personal character, drug and alcohol consumption practices, and just about anything else that the source wants to talk about. Unlike past criminal convictions, however, that are typically handed out only after passing some due process criterion, almost all of these charges are just gossip and hearsay. Thus, in Theron Carter’s case, the background screening firm removed his termination from the record because it was court ordered, but still maintained that he was a chronic complainer, a charge they assert was not specifically addressed by the judge.

Lester Rosen, president of the Employment Screening Resources, notes that “essentially this is the Wild, Wild West—an unregulated industry with easy money and, ironically, not a huge emphasis on hiring quality people to do the screening.” Most companies compete on speed and price, and not accuracy, which is more difficult to assess. For this reason, Rosen’s firm still sticks strictly to criminal record and credit history checks as their service provided, and leaves the collection of all information regarding skills and personalities to more qualified and trained HR specialists. Since organizations are now increasingly being sued for discrimination claims based upon faulty back- ground checks, this might be a good policy for all organizations. At the very least, as a potential job applicant, you might want to check the accuracy of what these companies are saying about you. Most of these firms will share their information they have about you and correct it for a fee. It is again ironic, that the less accurate you suspect the company is, the more you would probably be willing to pay for that service.

Questions

1. What alternative selection procedures discussed in this chapter could an employer use to screen potential “bad actors” that would not involve outsourced background checks?

2. If one is committed to obtaining outsourced back- ground checks, what evidence might one want to collect that would allow an assessment of the value of the information in terms of the criteria (reliability, validity,and so on) covered in this chapter? 3. In today’s digitally networked world, in what ways is it easier for HR managers or line managers to do their own homework on applicants that would obviate the need for outsourced background checks?

SOURCES: F. Hanson, “Burden of Proof,” Workforce Management, February 2010, pp. 27–33; C. Terhune, “The Trouble with Background Checks,” BusinessWeek, June 9, 2009, p. 58; F. Hanson and G. Hernandez, “Caution amid the Credit Crunch,” Workforce Management, February 16, 2009,pp. 35–36; A. Hedger, “Three Ways to Improve Your Employee Screening,” Workforce Management, March 16, 2009, pp. 26–30.

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