

RHR Information Services, Inc.

SelectSmart News

Editor's Note

Trick or Treat, Haunted Houses, Horror Stories and more!! Read this month's SelectSmart News....If you dare!!

Make sure you read the information on page 1, regarding what an employer can do when asked to provide a reference for a past employee.

Don't forget to review the story on page 2, Adverse Action: What an Employer Should Know. It contains step-by-step instructions for any employer wanting to take adverse action on an applicant/employee based on information found in a background check.

Our business is about making you and your business safe. That isn't always true about other business, look at the Horror Story and Scary Statistics to remind yourself of why you perform background checks.

Elizabeth Army

Client Relations Coordinator



Inside this issue:

Horror Story	2
Adverse Action	2
Scary Statistics	2
Nationwide Criminal Searches	3

Legal Information Regarding Employment References

Employers need to be concerned about providing factual and accurate references. In *Singer v. Beach Trading Co. Inc.*, former Beach Trading Co. employee, Marsha Singer, was terminated from her new position at another employer after a Beach Trading Co. representative errone-

ously reported that Singer had falsified the title of her position at Beach Trading Co.

In this case, the New Jersey appeals court ruled employers can be held liable for the negligent misrepresentation of a former em-

ployee's work history if certain factors are met.

Here are some tips for an employer facing a reference request:

- Respond only when the re-

(Continued on page 3)

Horror Story



The estate of a 32 year old man with quadriplegia murdered by his home health aide has settled a lawsuit with the company whose agent assigned the aide. The settlement grew out of a lawsuit that charged the company did not do their due diligence; a background check would have shown the aide's extensive criminal record.

According to the complaint the murdered man requested a re-

placement when the aide did not show up to work. Several weeks later the aide returned and murdered the man and his grandmother. The aide pleaded guilty to second degree murder.

The aide was hired after completing a job application in which he failed to answer the questions regarding past criminal convictions. The company failed to follow up on the questions or do a background check.

The suit alleged that a simple phone call would have revealed that the aide lied about his qualifications.

The jury's award included punitive damages and the parties later settled. The estate's council hope the verdict will serve as a warning to employers that they must make reasonable efforts to adequately screen prospective employees.

"After deciding to take adverse action, the employee must provide the applicant with 5 things."

Adverse Action: What an Employer Should Know

Before taking any adverse action based in whole or in part on the report from a CRA, employers must give applicants or employees a copy of their report and a summary of their rights under the FCRA. Then, the employer must wait a predetermined amount of days before actually taking the adverse action. After deciding to take adverse action,

the employee must provide the applicant or employee with the following 5 things:

- #1 Notice of adverse action being taken.
- #2 The name, address and toll-free number of the CRA that furnished the report.
- #3 A statement that the CRA

did not make the decision to take adverse action and is unable to provide the applicant with further information regarding the adverse action.

#4 Notice of the consumer's right to obtain a free copy of the consumer report within 60 days from the CRA.

(Continued on page 4)



Scary Statistics

Poor hiring practices can cost a company. It can result in lost productivity, theft and workplace violence. These incidents can result in damage to the company's reputation and depress their future earnings.

Juries have awarded high dollar

payouts to plaintiff's in negligent hiring suits. In *Read vs. The Scott Fetzer Company* (1988), the Supreme Court of Texas awarded the plaintiff \$160,000 in damages after she was raped by a door-to-door salesman. A routine background check would

have uncovered previous complaints of sexual misconduct.

Avoid becoming a scary statistic and make sure your company has Smart hiring practices in place. Contact a SelectSmart Representative for more information.

Nationwide Criminal Searches

A national criminal database search or a nationwide criminal records search is typically advertised as searching anywhere from 35 to 44 or more states and having anywhere from hundreds of thousands to millions of records. This product is often times sold as the foundation of a criminal background check.

It is important to know that even though a search like this may touch as many as 44 states, it touches each state in a different way. In some states you may find the search contains administrative records on statewide convictions on persons convicted of felonies, and /or gross misdemeanors. In other states you may find names of people that have ever been incarcerated, and people that are registered as level three sex offenders.

While a nationwide search has many shortcomings, a single county or statewide search could supplement it. Pairing a nationwide search with a state or county search seems to be of benefit, especially in a state where the nationwide search only gives Department of Corrections records. In this case,

that means that a person that was never sentenced to spend time in prison, despite having committed a felony or misdemeanor, may not even show up on this type of search.

That is why it is so important to understand what a product like this gets you in each individual state. Generally, this product should not be used as your primary criminal product, but as a supplement to a social security number trace, and a single county and statewide criminal search where available.

Screening solutions are hardly ever as easy as deciding on one product, and when you are working to create a Smart hiring solution it is important to spend time with your RHR Information Services, Inc. representative understanding the products and services available and how they can benefit your business.

Employee problems are caused by problem employees that can be avoided in the first place with a Smart hiring program!

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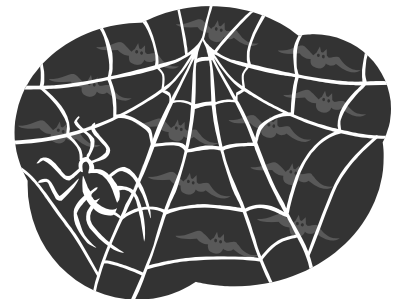


Legal Information, cont'd.

(Continued from page 1)

- Requestor has fully identified himself, including title and company.
- Provide only relevant and factually accurate information.
- Assign only one or two individuals the responsibility of responding to requests for references.
- Request a signed release before providing any information to a requestor.

Check your states laws and regulations for more information regarding giving employment references.



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The Right Path to the Right People

Disclaimer: This newsletter has been developed for informational purposes only for use by the customers of RHR Information Services, Inc., and should not be relied upon as definitively accurate. Due to the complex nature of your business, we strongly suggest that you work closely with legal council when making employment related decisions.

(Continued from page 2)

#5 Notice of the consumer's right to dispute the accuracy or completeness of any information in the consumer report furnished by the CRA

If you have any questions regarding your policies or responsibilities in regards to adverse action check with your Human Resources Department. Feel free to contact your RHR Information Services, Inc Representative for information on other resources.

