

**Screening Job Applicants to Minimize Theft, Fraud,  
Drug Use and Negligent Hiring Liability in the Property  
Management Industry**

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White Papers



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### INTRODUCTION

Employee theft and other forms of counter productivity (e.g., violence, drug use), including the legal liability flowing therefrom, are highly significant issues for the property management industry. This article will focus on the various means by which property owners and managers can screen job applicants who have a propensity of stealing things from tenants and the company, as well as engaging in other problematic behaviors. The advantages and disadvantages of each approach will be discussed, along with underlying legal issues. Based on an analysis of the various approaches to applicant screening, best practices for the property management industry are recommended.

### THE SIZE OF THE PROBLEM

Almost every property manager or owner is somewhat aware of the risks associated with hiring and placing unqualified, violent or dishonest employees within a property. However, not all managers and owners realize the extent of the problem—both from the perspective of screening job applicants, as well as how frequently significant problems arise due to employees engaging in various problematic behaviors. The following findings and reports are helpful in providing insight on how frequently these problematic behaviors occur:

- Recently, there has been a rash of liability suits that allege property management companies were negligent in hiring particular employees, and that those employees ultimately harmed a tenant or

visitor. The vast majority of these suits stem from the violent or dishonest acts of employees. As an example, one apartment building owner was required to pay a tenant \$5 million after being raped by a manager because the owner did not have appropriate hiring procedures in place. In contrast, another apartment complex was found not to be liable for negligent hiring under similar circumstances because the resident manager had conducted an interview, administered an assessment and received favorable references.

- According to an article in *Units* magazine, it is common for employees to abscond with entire rent rolls, dupe residents into giving them money, dip into the rent box and use company credit cards for personal gain. In one instance, a commercial and residential property company discovered that an employee had spent \$7,000 on the company credit card to set up an after-hours maintenance company within a storage area of the apartment building.
- A 2004 article in *HR Magazine* estimates that 40 to 70 percent of job applicants embellish or outright lie on their resumes.
- A 2005 study by *CareerBuilder.com* found that 20 percent of workers lie at least once a week.



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- A study released in 2007 by the U.S. Substance Abuse and Mental Health Administration indicated that employee drug abuse is still a significant issue with use approaching 20% in some industries. Additionally, in December 2009 the Wall Street Journal reported that almost one-third of high school seniors used marijuana in 2009. Thus, over 30 percent of tomorrow's job applicants are illegal drug users.

### ADDRESSING THE PROBLEMS

In light of the above observations and headlines, it is obvious that a prudent employer must address these general ethical issues when evaluating job applicants for employment. Some of the tools that are helpful to address these issues are reference checks, criminal background checks, interviews, drug testing and written integrity testing. Following is a discussion of the advantages and disadvantages of each of these tools.

### REFERENCE CHECKS

Reference checks are a very important component of any applicant screening process. They can be useful in documenting that the information provided by the applicant via resume and/or interview is truthful. Additionally, the reference check is imperative to help insulate an employer against negligent hiring liability.

Unfortunately, there are many downsides to conducting reference checks. First, they are time consuming and costly to conduct. Second, applicants' previous employers often provide no substantive information

due to the potential of being subject to defamation claims. Finally, if an employer utilizes a third party to conduct reference checks, then the employer has to ensure that it is complying with the Fair Credit Reporting Act ("FCRA"), along with its many notice requirements.

### CRIMINAL BACKGROUND CHECKS

Since past behavior is a good predictor of future behavior, criminal background checks are useful in helping determine whether a prospective employee will steal from an employer. If an applicant has a recent conviction for a theft-related crime, then it should be a legitimate and useful basis for denying employment. Also, conducting a criminal background check demonstrates that the employer is attempting to discharge its duty of care in hiring employees, thus, making such checks a useful defense in negligent hiring suits.

On the other hand, ADP's 2007 Annual Screening Index indicates that only 5 percent of criminal background checks reveal a conviction. And of these convictions, many are not theft-related crimes. Another issue with respect to criminal background checks stems from the fact that they exhibit a disparate impact on the basis of race. As a result thereof, the Equal Employment Opportunity Commission ("EEOC") has indicated that it will highly scrutinize an employer's rejection of applicants on the basis of criminal convictions. This means that the employer needs to ensure that applicants must only be rejected on the basis of convictions that are job-related and consistent with business necessity.



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Another limitation to criminal background checks stems from using them with younger job applicants. In the vast majority of cases no information regarding juvenile convictions will be provided, since juvenile records are typically sealed by the courts. Finally, the vast majority of employers who utilize criminal background checks in the employment process retain a third party to procure such information. Use of these third parties requires that the employer comply with the FCRA. Parenthetically, employers must be very circumspect in retaining these parties to help ensure that procured criminal background information is free of errors and omissions.

### INTERVIEWS

Interviews are an integral part of the hiring processes and can be very useful when conducted by trained professionals using a structured format. While interviews can be useful to help identify falsehoods contained within an applicant's resume, they generally are very poor predictors of ethical behavior. Hence, an employer should focus on ensuring that its interviewers are well trained, unbiased and focused on uncovering resume misrepresentations.

### DRUG TESTING

Drug testing is a very accurate means of ascertaining whether a job applicant recently used illegal drugs. As a result, drug testing is a somewhat useful means of predicting some forms of employee counter productivity. Specifically, this form of screening should lead to lower levels of absenteeism, tardiness and healthcare costs, while increasing workplace productivity and safety. Drug testing can also be a reasonable line of defense in negligent hiring suits.

On the downside, drug testing is a relatively expensive undertaking, which needs to comply with various state statutes. While courts have pretty much allowed drug testing regardless of the position a job applicant is seeking, it is commonly viewed as invasive and has stimulated extensive litigation. In terms of positive hits, research recently released by Quest Diagnostics, the nation's leading provider of employment drug testing, reported that only 3.8 percent of drug tests for job applicants are positive. Ostensibly this rather low hit rate somewhat stems from the fact that many savvy job applicants simply abstain from the use of illegal drugs for a few days before they must submit a urine sample for testing.

### WRITTEN INTEGRITY TESTING

Integrity tests have been used by employers for over forty years. These instruments have been developed to predict whether an applicant will engage in various forms of workplace counter productivity (e.g., theft, drug use, common forms of violence). Research in the area of personnel psychology has consistently shown that these tests are extremely effective in addressing workforce counter productivity. A representative quote from an extensive review of the research on written integrity tests states: "Results indicate that integrity test validities are substantial for predicting job performance and counterproductive behaviors on the job, such as theft, disciplinary problems, drug use and absenteeism."

In addition to the strong validity evidence discussed above, integrity tests have been shown not to exhibit disparate impact.



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These tests have been administered to millions of job applicants over the last forty years and have not been a lightning rod for litigation (only about 35 challenges). Moreover, in the case of every challenge, the EEOC or the relevant state human rights agency has found in favor of the employer. Also from a legal perspective, integrity tests can be a useful form of defense to negligent hiring suits.

Finally, written integrity tests are relatively inexpensive compared to all of the hiring procedures discussed in this paper. The use of these tests is further facilitated by the fact that they can be easily and quickly administered either online or via a toll free number. As a result, high risk applicants can be screened from contention for a job before wasting time and money on interviews, criminal background checks, references and drug testing.

As an aside, employers who are interested in utilizing a written integrity test need to exercise diligence in their selection of such an assessment. This stems from the fact that not all test publishers offer appropriately researched assessments. Employers should look for a publisher with appropriate professionals (e.g., industrial psychologists, employment attorneys, measurement specialists) on staff, as well as documentation of the test's validity. Additionally, an employer should look for a publisher who is a member of the Association of Test Publishers.

### CONCLUSION

In summary, without appropriate diligence in the hiring process, the property management industry exposes itself to extensive liability and negative PR. These employers can effectively combat these problems in the employment process through the use of various screening tools. Certainly an employer's goals and jobs will dictate whether all or just some of these tools are used in the hiring process. However, given the effectiveness and utility of written integrity tests, prudent employers should strongly consider their implementation.

If you have any questions or would like further information regarding this topic, please contact Wonderlic's General Counsel (Dr. David W. Arnold).