

## *The Law in Academe*

<http://chronicle.com/free/v51/i38/38b01301.htm>

From the issue dated May 27, 2005

### **Why Background Checks Matter in Academe**

By D. FRANK VINIK

Do you really know who is working on your campus? Are you perhaps employing a day-care worker who molested children, an accountant who declared personal bankruptcy, or a bus driver who was convicted of drunk driving? You won't be in the position to know unless you conduct background checks.

Some institutions have found out salient details about employees only years after they were hired. For example, a research university in California learned that a tenured professor in the literature department didn't have a bachelor's degree only after he was nominated to be the state's poet laureate. A liberal-arts college in New England discovered that an employee who had served time in jail for molesting an 11-year-old had been given master-key access to every campus building.

A 2004 survey by the Society for Human Resources Management found a substantial increase since 1996 in the number of employers performing various background checks on potential employees. The popularity of such checks is growing in part because electronic-data-collection techniques make it quicker and easier to find out information about current and prospective employees. Also, high-dollar verdicts against organizations and institutions for negligently hiring employees have focused employers on potential liability. Meanwhile, in the wake of September 11, 2001, people are accepting greater intrusions into their privacy if it helps protect their communities.

Background checks are conducted to obtain a variety of types of information -- criminal records, credit histories, previous residences, job credentials. Academic-credential reviews reveal a surprising number of discrepancies. According to the Screening and Selection Services division of Automatic Data Processing, which performed 4.3 million background checks in 2004, 42 percent of education-credential checks revealed a difference between what the applicant stated and what the verifying source reported.

Colleges should check the references, work history, educational credentials, and professional licenses of all prospective employees. However, not every check is necessary for every employee. For example, it makes little sense, on the one hand, to investigate the credit history of a French professor. On the other hand, failing to investigate the background of a child psychologist thoroughly could expose your institution to legal liability, adverse publicity, and loss of trust within the community. You should link the type of check to the actual job responsibilities of each person.

Faculty members and administrators at most colleges are capable of checking references and verifying academic credentials. Criminal background checks, however, are more complicated because records are decentralized and maintained at the federal, state, and county levels. Your institution may need to check the records in each state and county in which a person has lived over the past five to 10 years. If you perform criminal-record checks in-house, make sure that your employees have the skills to obtain accurate criminal records from multiple sources.

Another option is to hire a company that conducts background checks. The most effective companies are national in scope, understand the record systems of many local jurisdictions, and actually send people to county courthouses to verify records. You should also perform due diligence on background-checking companies

themselves before contracting with them. The background-checking industry is loosely regulated, and anyone with a private-investigator license can claim to operate a background-checking company. Some companies buy computer disks or data tapes that are infrequently updated.

An institution that contracts with an outside company must follow the requirements of the Fair Credit Reporting Act even if the background check isn't focused on credit records. That law requires that you obtain written consent from the person to conduct a check, inform the person of his or her rights under the statute, and notify him or her if information from the check is used in an adverse decision. A good summary of the requirements can be found at the Federal Trade Commission's Web site (<http://www.ftc.gov>).

If you learn negative information through background checks, you should handle each situation on a case-by-case basis. Some questions you should ask include: How long ago did the misconduct occur? How serious was it? How closely related is it to the individual's job responsibilities? Was it a one-time occurrence? How have similar instances been handled in the past? How likely is the infraction to recur?

In addition, some states restrict the use of prior-conviction information in making employment decisions. Other states allow the use of conviction information but prohibit consideration of arrest information. Be sure to consult with an employment lawyer in your area before acting.

You should also keep in mind that background checks are not fail-safe. Even the most diligent screening cannot identify all past misconduct. No national system exists for criminal-history background checks, so you may never find out about a criminal act committed by someone far from his or her home or place of employment. Sex offenders in particular are notoriously difficult to identify. They are usually very careful to avoid detection and may leave town before charges are filed. Some plead guilty to lesser offenses so that they do not appear on registries. In addition, not all states contribute information to the supposedly "national" sex-offender registries.

Despite the shortfalls of background checks, they are an important defensive measure for educational institutions. Simply notifying prospective employees that background checks will be conducted often deters people with something to hide from applying. Most important, you never want to be put in a position in which a jury is told that your college might have prevented a tragedy if it had paid a few dollars for a background check.

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Section: The Chronicle Review

Volume 51, Issue 38, Page B13