



Snapshot

A focused look at today's human resource issues

Preventing Negligence in Hiring

Employees in California have a constitutional right to privacy, and employers are restricted in inquires into many area of the private lives of both employees and applicants, including some which have an impact upon the job. However, in a wave of negligent hiring and retention lawsuits, employers are increasingly being held liable.

An employer owes a duty of care to those of whose interaction could have been reasonably foreseen as a consequence of their employment. This duty obligates employers to hire and retain only safe and competent employees. Breach of this duty can give rise to a cause of action for negligent hiring or retention. **A cause of action for negligent hiring or retention may be found when an employer:**

1. hires or retains an "incompetent" employee;
2. knows or should have known the employee was unfit to perform the job;
3. acts in a negligent manner (failure to act may also be negligent).

Current law emphasizes the importance of a thorough investigation into an employee's background, especially in sensitive positions or those with public contact.

Dealing with a potentially dangerous employee may involve communicating about that individual to others, such as a supervisor, other employees, or in responding to a request for references from another employer. Any of these communications has the potential to expose an employer to a claim for defamation.

Even an attempt to limit information provided during a reference check may create liability if a subsequent employer hires the worker and the worker injures another.

California law protects employers who give truthful and relevant information about former employees including their eligibility for rehire. Employers are unnecessarily exposed to defamation claims whenever a statement is malicious or communicated to someone who does not "need to know" the information.

What can employers do to protect their employees and themselves from workplace violence? How can employers shield themselves from negligence suits brought by third parties who have been injured by violent employees?

" Check references carefully, using the same guidelines for inquires as you would use in an interview. Questions that would be prohibited for you to ask in an interview would be in the danger zone to ask of a reference.

" Obtain a release protecting you, and the persons you contact regarding references, from invasion of privacy or defamation claims.

" Require proof of job related certifications and licenses.

Marquee HR Library

More information about these and other issues confronting California employers is available online at:

www.marqueestaffing.com



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