

# Background checks vital to hiring practices

By IAN McCANN Staff Writer

**N**ORTH DALLAS — In the litigious world of today, employers must use caution when hiring employees and checking their backgrounds.

Prospective employers can be exposed to invasion of privacy, negligent hiring and discrimination suits; former employers can be open to libel, slander and defamation charges.

The most simple way to avoid many of these claims is to have prospective employees sign a release, said Rogge Dunn, a partner with Matthews, Carlton, Stein, Shiels, Pearce, Dunn & Knott L.L.P. and a certified labor and employment law specialist.

By signing a release, job applicants allow former employers to give out information, whether favorable or unfavorable, to agencies doing background checking. Releases should be worded in such a way that it "clearly states that the applicant is releasing the former employer and the prospective employer and anybody that obtains and analyzes the information," Dunn said.

Such authorizations are valid under a Texas case in which a police officer was terminated but promised a favorable recommendation. When she applied for a job with the U.S. Marshal's Service, she signed an authorization. When the USMS contacted the police department, it gave the former officer a negative reference.

The woman sued her former supervisor, the city and city officials for defamation and breach of contract. In a summary judgment,

the court said that the authorization prohibited the employee from suing her former employer for giving the bad reference.

Dunn said that in doing background checks, former employers are most susceptible to libel, slander and defamation lawsuits.

While employers seeking information are most often liable for invasion of privacy and discrimination suits.

But if employers don't check, they could be liable for negligent hiring.

Negligent hiring suits can be filed by third parties if the employee's background causes damage to others.

For instance, if a maintenance worker with access to offices or residences had prior arrests for theft, and this past was not checked, the employer could be responsible. Or if an employee had a history of drunken driving that went unchecked, the employer could be open to lawsuits if this employee caused an accident.

"A few years back, a maintenance worker that had a criminal record of rape and assault and battery, and (a company) hired him," Dunn said. "He had a pass key, and he raped and killed a woman. They got hit for gross negligence."

## Caution areas

A new area of concern for former employers is negligent recommendation. In a California case, an insurance company employee had a history of violence. He was given a severance package and the company gave a good recommenda-



tion so he would get another job.

"He got his other job, and he went in one day with a gun and shot a couple of people," Dunn said. "The estate of the people that got killed sued successfully and said that (the insurance company) gave a negligent recommendation."

Jerry Patterson, chief financial officer of United Mechanical in Dallas, said that his company does three kinds of checks: a drug test, a review of the employee's driving record for driving while intoxicated violations, and of the employee's worker's compensation background.

The background checks are important for United Mechanical, which provides plumbing and air conditioning services.

"We try to deal with it in the company

manual," Patterson said. "We are a service company, and we go into a lot of people's houses. You can imagine if one of our employees goes into a home and rapes a person, then they're not going to go after the employee. They're going to come after us."

But employers can go too far in their fact-finding searches.

Dunn said that if employers check for information unrelated to a job and use this against a prospective employee, a discrimination suit could be filed.

"If you're asking for a credit check for a line cook at a restaurant, why would that be relevant to predicting success?" Dunn said. "Someone might say that using a credit check has a disparate impact on my ability

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to get a job, and that's discriminatory because credit rating is not an accurate predictor of success as a line cook."

Job descriptions should be made and information pertaining to only that description should be sought.

Information that can be used includes: educational records, arrest records, conviction records, performance records, personal history information and credit reports.

To check an employee's background, employers use a number of methods. Some conduct the checks internally, but many have begun to use outside sources.

Ruth Ford, human resources consultant with Cigna HealthCare of Texas

Inc., said that Cigna uses outside sources to conduct both its drug testing and its employment and education verification programs. This, she said, assures that hiring is made on the same level for all employees.

"It was a decision made by our (national) corporate offices," she said. "It's a policy, and I have implemented it."

Ford said that after the information is gathered, it goes to Cigna's national office and is processed there. Again, she said, this is to assure that the hiring process is consistent for all employees.

Dunn said that doing a background check is necessary for employers for two reasons.

"One is to get a good employee that's going to succeed in the job, and two is to ensure that you've done a good job to avoid potential liability for negligent hiring," Dunn said.