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The Accuracy Specialists

**The Renewed Case for Pre-Employment and
Post-Hire Background Checks in 2023**



Why Background Checks and Monitoring are Essential to Your Organization

Workplaces are far from immune to the increasing and overwhelming violence in our country. Ban the box initiatives enacted in 33 states remove criminal history questions from employment applications. Providing a “second chance” or another opportunity is a worthy endeavor advocated by some as compassionate and others as compulsory for employers. The same advocates increasingly diminish the importance or necessity of background checks. The current hiring needs of numerous employers necessitate finding workers immediately. With “over 80 million Americans (or one in three adults) arrested or convicted of a crime” ([Criminal Record Statistics](#)) it is overwhelmingly evident those with criminal histories are being hired daily.

In this context, it is imperative employers have a thorough comprehension that they are directly liable for those who bring behavioral concerns and/or violence into the workplace. “The very strongest research evidence shows the best predictor of a person being violent in the future is prior violent behavior” (Beth McGinty, a mental health and substance abuse policy researcher at John Hopkins University). “The dilemma for HR and hiring managers lies in finding the balance between giving applicants with a criminal history a chance to be evaluated on their qualifications and being liable for negligent hiring.” (<https://www.shrm.org>)

Employers should be aware that cases of negligent hiring/retention and subsequent enormous monetary judgments have increased dramatically in recent years. Additionally, while statistics vary, it is widely accepted that well over half of those who have served time will return to prison within a few years of release. While second chances are honorable, there is considerable risk in these hiring decisions.

One recent case highlights a worst-case scenario. A Spectrum field technician brutally stabbed (with a Spectrum knife) and killed an 83-year-old at her home in Irving Texas in 2019 following a robbery (stole her credit cards and went on a spending spree) at her home. “He did some work at Thomas’ home in Irving and then returned the next day to kill her while off duty.” A judgment of \$1.147 Billion (the jury also found Spectrum forged a document to force the lawsuit into arbitration) was awarded to the family. “The company removed an employee screening program in 2016 and allegedly hired Holden without verifying his employment history, which he lied about on his application.” The company could have known about the applicant’s prior history influencing his potential hiring or retention. “Testimony in the trial found that Charter Spectrum ignored countless red flags about Holden from the date of his hire to the date of the murder.” [Spectrum ordered to pay](#)

Two recent mass shooting cases involving employer negligence include the 2021 Kroger mass shooting in Memphis TN in which the individual displayed “a great propensity to act violently and dangerously” [Kroger Negligence Lawsuit](#) and the 2022 Walmart mass shooting noting negligence in hiring and continued employment of a subject who “had known propensities for violence, threats, and strange behavior”. [Walmart Negligence Lawsuit](#)

What is abundantly clear, is that “In order to avoid liability, a thorough background check is the best defense against a negligent hiring lawsuit” [Negligent Hiring](#) In addition, daily hiring of those with criminal records necessitates employers strongly consider a continuous or post-hire & social media monitoring service. The actions and behaviors of employees outside of work hours directly impact the safety of all employees every single workday.

- “An employer might be aware that an employee has a history of violent behavior, either in the workplace or outside of it. If the employer does not take appropriate action to manage the risk and the employee engages in violent behavior, causing harm to others, the employer may be subject to a negligent retention claim.” <https://www.legalmatch.com/law-library/article/negligent-retention-lawyers.html>

While efforts to employ those who have committed crimes against others in an integration effort back into society are championed and advocated, those hiring must take the time to make sound decisions while equally exercising caution and common sense. Background checks and post-hire monitoring offer the opportunity to “know” whom you are hiring or not hiring/retaining. Courts and insurance companies are

clearly stating the risks to employers. The haste to hire must not be clouded by abandoning the potential to know the risk through foreseeability. The overriding goal in all hiring and retention decisions should be to reduce the likelihood of negligence and tools are available to enhance understanding in those decisions.

Protect your workplace, protect your employees, and protect yourselves:

- Noble Backgrounds provides an efficient and thorough history of applicants.
- Noble Post-Hire Monitoring provides continuous threat assessment.

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