

The importance of conducting criminal background checks

If a person commits a crime while they are “on the clock”, how does that affect their employer? A criminal act by an employee could certainly lead to negative publicity and subsequent financial loss for an employer, especially if the criminal act receives public attention. That isn’t necessarily the limit of the effect on the business, though.

Are employers responsible for employees’ actions?

Employers are responsible for their employees’ actions while the employee is performing their Scope of Employment - work assigned by the employer or engaging in work subject to the employer’s control. Direct liability applies because the employer is solely responsible for his/her employment decisions. An employee committing an act that does not fall within the scope of employment (such as a criminal act) while at work may result in a liability claim for the employer. Two common claims against employers are Negligent Hiring and Negligent Retention.

- **Negligent hiring** — When an employer fails to take reasonable care in hiring their workers. For example, a residential plumbing contractor will have plumbers that enter residences. As part of the contractor’s pre-employment process, criminal background checks should be conducted to ensure the employee has no criminal misconduct on his/her record that indicates the employee could potentially cause harm to a customer. The criminal check should include both a National Criminal background check, National Sex Offender Registry check, and when required by state law, a fingerprint check should be conducted.
- **Negligent retention** — When an employer learns of an employee’s potential danger to the public and/or business but continues to allow them to remain employed in the same position. If an employer is aware of an employee’s dangerous behavior and does nothing about it and a crime or accident results, the employer could be liable under Negligent Retention.

Criminal background checks are an important tool in the hiring process. These checks can reveal criminal misconduct, which can help employers avoid hiring a candidate that may pose a threat in the workplace or become a liability to an employer. This is especially true for servicing contractors that have employees interacting with the public - specifically, contractors who have employees that enter residences.

What can business owners do to avoid negligent hiring and negligent retention claims?

- Criminal checks should be performed any time employees work around or near potentially vulnerable persons, such as those that are in a Senior Living community, are clients in a Human Services industry, or live in a private residence.
- Business owners should perform state and federal criminal background checks during the post-offer pre-employment process and routinely thereafter. Employers should make routine criminal background checks every two to five years a part of their company policy. It should be noted that a background check should only be conducted after an offer of employment has been presented.
- Do your due diligence when hiring workers that interact with the public. Employers should ensure they are conducting a thorough screening if their employees have unsupervised access to residences. Employers who fail to do so may be liable for an employee’s wrongful acts.

- Business owners should consult with their Human Resources lead and Legal Counsel, regarding employment decisions
 - **It is important to note that laws regarding negligent hiring and negligent retention vary from state to state. Make sure you and your legal counsel are familiar with the current code in your state.**

All employers can benefit from conducting thorough criminal background checks. Here at Nationwide, we pride ourselves on providing excellent service and resources for clients. In keeping with this, Nationwide has partnered with Intellicorp¹ to give our clients discounted rates for criminal background checks.

¹ <https://www.mylosscontrolservices.com/other-resources/discounts>

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