



# How to Hire Dr. Jekyll What to Do When Mr. Hyde Arrives Instead

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# Enfield Struggles to Describe What He Feels He Knows About Hyde

“He is not easy to describe. There is something wrong with his appearance; something displeasing, something downright detestable. I never saw a man I so disliked, and yet I scarce know why.”

# Today's Take-Aways

Can Screening Help me Find 'The Good Doctor'?

What Can I Hope to Learn?

What Else Do I Need to Do?

What Do I Do With Mr. Hyde?

# The Case For Screening

34% of resumes and 73% of applications contain false information

35% of business failures due to employee theft

Employees steal 10x more than shoplifters



# Other Costs of a Poor Hiring Decision

Legal costs – harassment, workplace violence, or negligent hiring claims

Lost productivity, decline in morale, high turnover, and lost training time

Negative impact on clients, customers, or business reputation

# Who is Most at Risk for Fraud

Leanly staffed – fewer people, greater and more diverse responsibilities, and less oversight

High level of trust

Minimal controls & security measures

Poor economy increases risks for all

# Realities of Violence at Work

1M incidents of violence per year in the workplace, 18% of all violent crime happens at work

Each workday – 43,800 harassed, 16,400 threatened, 732 workers attacked

Estimated cost to business - \$36B

# Negligent Hiring

## Reasonable investigation duty

- Looking for confirmation of fitness and for red flags

## Knew or should have known standard

- What would you have learned if background check requested?

Conduct can occur at work or outside scope of employment

# 3 Easy Elements

Employee unfit for hire

Employer knew or should have known of  
unfitness

Employer could foresee risk of danger  
because of unfitness that related to the  
harm that occurred

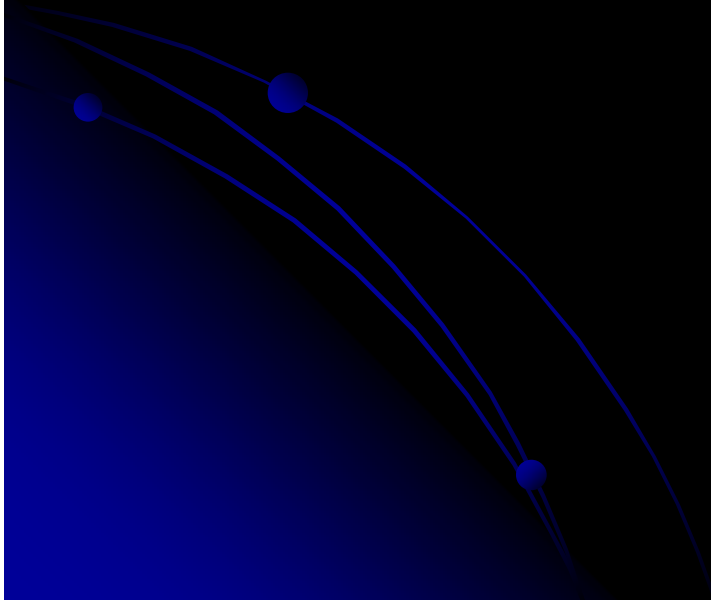
# How Real is My Risk

Woman sued after being sexually assaulted by maintenance man in her apartment

Customer sued after cab driver beat him for refusing to pay

Security company liable for its guard's participation in robbery of gold he was guarding

# In Search of Dr. Jekyll



# Pre-Employment Screening

Manual Searches

Database Searches

Drug Testing



# Manual Searches

County Courthouse Criminal Records

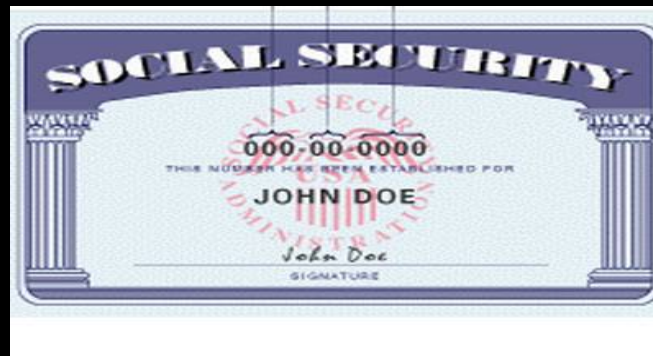
Employment Verification

Educational Verification

Civil Court Searches



# Database Searches



Social Security Trace

Employment Credit  
Report

National Criminal  
Database

National Sex Offender  
Registry

State Databases

Federal Court Database

Motor Vehicle Records

# Drug Testing

In 2007, 77% of all drug users (18+ years old) were employed.

87% of full-time users work for companies with under 500 employees.

Drug users are 66 percent more likely to be absent and 77 percent more likely to be discharged in under 3 years.

# Drug Testing Options

Urine - 5, 8, 9, 10  
panel. Alcohol?



Oral Fluids

Hair Follicle

Instant Tests



# Common Questions ...

Is the “poppy seed muffin” defense legit?

What do I do with Dilute Specimen results?

What happens if worker in methadone treatment program?

What about a legal marijuana prescription?

# Common Questions ...

Do I have to inform an applicant of a criminal check?

Must I use a separate disclosure form or is the employment application enough?

- Can/should my managers be screened more closely?

Must I provide a copy of the report to an applicant I decide not to hire?

# Drug Testing Limitations

State law varies – Oregon no limits on private sector

Public sector employees – Constitutional limitation, with exceptions

Americans With Disabilities Act - silent

# Effective Use of Screening

## Keep it legal

- FCRA
  - Consent obtained on separate Disclosure Form
  - Notice of Rights if adverse action taken
- Job-related for criminal & credit
- DOT and other special requirements
- Consistency is key

Keep it relevant to decision being made

# Other Employer Due Diligence

## Social network sites

- LinkedIn
- Facebook
- Twitter

Google search of candidate's name



# At The End of The Day ...

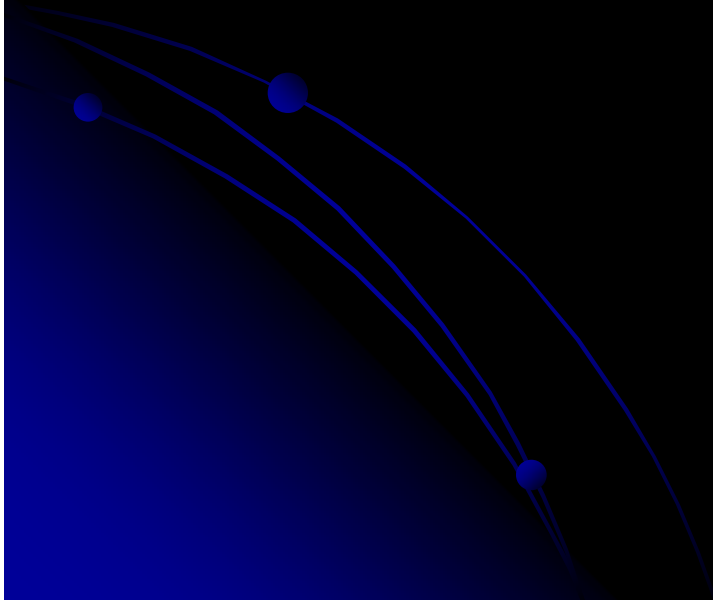
Was effort made to contact all former employers and were gaps explored?

Was employee asked about criminal background and was check done, if relevant?

Was driving history obtained, if relevant?

Was employee interviewed?

The Transformation Has Begun ...  
Now What?



**You're  
Fired!**



[buzzpal.wordpress.com](http://buzzpal.wordpress.com)

# Works Best When ...

## Employment-At-Will

### Misconduct is Serious and Provable

- Unlawful conduct, e.g., harassment
- Dangerous conduct, e.g., weapon at work
- Serious harm to company, e.g., discloses secret formula on blog

### Company Culture is Consistent

### Investment in Employee is Minimal

# Incremental Steps in Other Cases

Makes it easier for jury to agree if it sees your process – documentation = the silent witness

Meets unstated 'fairness' obligation

Makes unlawful reasons less likely

- Harassment or discrimination
- Retaliation

Sometimes corrects problems

# Discipline Checklist

Investigated appropriately – Cat's Paw

Employee aware of rule/standard (do you have signed handbook acknowledgment)

Significance of rule & history of enforcement

Review of 'comparables' conducted

Prior warnings or discipline

# Discipline Checklist

Does punishment fit crime (fairness)

Due process respected

Special considerations – loss of benefits

Do other rules apply – public sector or union contract

Can your documentation withstand the blame game

# Let's Practice

## Absenteeism or Tardiness

What are your (written) guidelines

Can you prove knowledge of guideline

How have you approached issue in past

Mitigating factors or legitimate excuses

Best Practice – Follow Policy and document deviations (keep them limited!)

# Let's Practice

## Inadequate Performance

Is standard known and reasonable

Can you prove employee knew of it

Can you prove inadequacy and degree

How will you handle the blame game

Why discipline versus coaching

# Let's Practice

## Poor Fit or Bad Attitude

Is there a policy or standard to compare to

How will you prove your conclusion

Is there room for disagreement among potential witnesses or with jurors

Is this the right step or is coaching a better choice

How will you handle blame game

# Rolling it Out

## Preparation is key

- Know you are making the right decision
- Prepare talking points, termination letter, and final paycheck
- Witness
- Plan to deal with returning property and getting employee off site
- Communication to others

Remember respect

Consider release and have it ready

# Questions?

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Thank You!

