



Background Check – Take 2

Our last newsletter – “Checking the Background of Your Temporary and Direct Hire Placements” – 3/2009 – stirred a tremendous response from our clients and staffing firms insured through other sources.

Performing background checks is not a new concept to the Staffing Industry. **What is new** is the extent to which a staffing firm is responsible, what is expected and what may be disclosed to the client. The staffing firm’s responsibility is further exacerbated by the ease in which this information may be obtained in today’s computerized world. Since a client can readily obtain information about a placed employee or one of your temporary employees after a loss – staffing firms are sued because clients argue that the information would have altered or influenced their hiring decision and the legal responsibility of that omitted information will fall on the staffing firm.

Client agreements (verbal or written) usually require background checks. However, if not, it is implied, because staffing firms are considered experts in the hiring of employees. In fact, many firms advertise that they perform background checks. Clients do not always read the fine print to determine under what circumstances you perform these background checks. To avoid litigation you must clearly inform clients of your screening policy.

World Wide Specialty Programs has been tracking claims incurred by staffing firms due to background checks. Utilizing our claims data, we have developed a detailed checklist outlining procedures that can help you prevent losses associated with improper or missing background checks. Given the current depressed economy, claims are far more prolific. The number of claims generally increases in poor economic times but coupled with the courts interpretation of staffing firms being experts the following procedures and proper insurance coverage will help to keep you safe.

World Wide recommends:

- Have all clients acknowledge in writing whether or not they require background checks and to what extent. A checkbox and initial makes it easy for them.
- If checks are required, be sure proper procedures are in place – who does what, how and when.
- If short notice is received for an opening and the candidate’s background has not been checked, notify the client that it is pending. Advise the candidate of the pending check and any adverse information will jeopardize his employment. Have him sign acknowledgment of this.
- When you do not perform checks advise your client in writing. Have them acknowledge that they understand you do not check the backgrounds of the employee you are providing.
- When you perform background check you must be able to prove it to your client and the court.

Has your firm confirmed driver’s licenses or driving records?
Have you checked the placement’s credentials, work history, or references?
Have you conducted a criminal background check?
Does the applicant have credit issues?

Times change. With change comes progress, greater responsibility and accountability. While these procedures might not keep you free from loss, they will help to limit your liability should a claim arise.

The following are claims examples, which would have been mitigated with a proper background check.

Blue-collar temp employee involved in altercation with client employee – hit with steel bar. Client WC carrier subrogated – \$30K in WC costs. Staffing firm’s policy paid. Client employee sued – negligence on part of staffing firm, failure to check background. Temp employee had been incarcerated in another state for attempted murder.
Demand: \$350,000
Payment: \$150,000

Temp staffing employee started fire. Was convicted arsonist! No background check. Lawsuit for property and contents of warehouse. There is the potential for a multi million-dollar settlement.

Temp staffing employee sabotaged client’s computer and phone systems, gained unlawful access to network and confidential information. Data sold to competitor. Temp did not have the educational background he noted on resume, which was required by the client to have.

Two temp employees sent to work in a major national retail department store. They embezzled over \$200K. Background check, after the loss, revealed criminal records for both individuals.

But, mistakes happen. After all, an error, an oversight or a missed step in processing is human and can and does happen. Those mistakes are costly. And make no mistake – you are responsible. That is why you buy insurance.

In these tough economic times, it is only natural to seek to reduce costs that include your insurance premiums. Yet many assume their E&O policy will protect them in the event of a missed background check. **Do not assume your E&O policy will protect you – not all policies do!** In fact, some carriers **require** a background check to have been performed in order for the policy to respond.

Read the fine print to be sure you are not purchasing a policy with this caveat. While you may have saved money initially with that lower-priced policy, the end result could be much more expensive. You may have exchanged premium savings for thousands in future defense and judgment expenses.

Coming soon – more on background checks from [World Wide’s](#) Risk Control Group perspective.