

IF ONLY I KNEW THEN WHAT I KNOW NOW

For more than half-a-century, Kansas courts have recognized legal actions for negligent hiring. Hiring qualified, competent, honest and trustworthy staff does *not* have to be like a poker game where the “luck of the draw” determines who wins and who loses. These strategies for human resources professionals can help you draw a winning hand every time a new employee is hired.

1. Job Application. Ask the applicant to authorize disclosure of written references from former employers, including evaluations conducted before the employee’s separation from employment, and whether employee was voluntarily or involuntarily released and the reasons for release. The employee also must have access to this information.

Ask the applicant to sign a release allowing access to criminal history record information. The employer is not liable for hiring decisions based on an applicant’s criminal history, provided the information obtained reasonably bears upon trustworthiness or the employer’s other employees or customers.

Ask the applicant to provide written authorization to procure a consumer credit report. The Fair Credit Reporting Act includes specific requirements for the procurement and use of credit reports. The information should not be used in violation of federal or state equal employment opportunity laws or regulations.

2. Applicant Interview. Ask the applicant to review the application with you line by line. Pay attention to omissions -- are they inadvertent or intentional? Are there mistakes, mis-statements, falsehoods? Are there automatic disqualifies such as prior criminal history or residency status that were not fully disclosed?

Ask questions to determine a “propensity” to engage in improper conduct, such as:

“What will a former supervisor tell me about you?”

“What will I learn from court records?”

“Tell me about your former supervisor.”

“What do you like to do when you are not working?”

Do not ask the applicant to submit to a lie detector test unless you are a governmental entity or political subdivision or you are authorized by the DEA to dispense controlled substances and the prospective employee with have direct access to those substances. This exemption does **not** extend to current employees, except under “ongoing investigation” circumstances.

3. Conducting Reference Checks. Obtain references from former employers as authorized in the application. Make your request in writing to preserve your good-faith qualified immunity. Court records and credit reports should be utilized in accordance with applicable law. The official State of Kansas Web site, www.accessKansas.org provides information about civil and criminal court records. The Kansas Department of Revenue, Division of Motor Vehicles maintains driver’s license and vehicle registration records. Employers may access these records.

You have more than one ace in your deck. A pre-employment background check

should reflect the specifics of the job sought. Use existing laws to your advantage. Follow the law in obtaining and utilizing applicant authorizations to obtain credit history, criminal history records. **Always** require a complete application; review it with the applicant; do reference checks; maintain documentation; be consistent; and if you deviate from general policies, prepare a file memo that states the rationale for the deviation.

If you play your cards right, your organization will be successful in recruiting and retaining qualified, competent and fit employees.