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DON'T HIRE WITHOUT A BACKGROUND CHECK

Consider this scenario. Employer “X” has a trucking company. Employer “X” hires drivers but conducts no criminal or background search prior to hiring. Driver gets into a verbal altercation with a customer of Employer “X”. The verbal altercation leads to a physical altercation with the Driver beating up the customer. The customer ends up in the hospital and suffers physical injuries. After Employer “X” is sued by the customer, it comes to light that the Driver has a criminal record for assault and battery. Employer “X” is sued for, among other claims, negligent hiring.

What is negligent hiring? This theory holds employers responsible to third parties who are injured by employees when the employer has failed to carefully select competent and safe employees. In essence, the claim is that if the employer had conducted a thorough background check, including a criminal background check, the employer would have discovered information that the applicant had a propensity toward the type of conduct that resulted in the injury.

The Tort Reform Act of 1999 provides employers with a defense to negligent hiring claims if they conduct effective pre-hiring background checks. The statute, entitled “Employer Presumption Against Negligent Hiring” applies to negligent hiring claims against an employer based upon negligent acts taken by that employer’s employee. The statute creates a presumption that an employer exercised reasonable care in selecting an employee if the employer conducted a “background investigation” that “did not reveal any information that reasonably demonstrated the unsuitability of the prospective employee for the particular work to be performed for the employment in general.”

To obtain the benefit of this presumption, the employer must:

1. conduct a criminal background investigation on the prospective employee with the Florida Department of Law Enforcement;
2. make reasonable efforts to contact references and former employers of the prospective employee concerning the prospective employee’s suitability for employment;
3. require that the prospective employee complete a job application, which includes questions concerning whether the prospective employee has ever been convicted of a crime;
4. obtain, with authorization from the prospective employee, a check of the driver’s license record (if relevant to the work to be performed); and
5. interview the prospective employee.

Thus, all employers should conduct background checks that comply with requirement numbers 1-5 above.