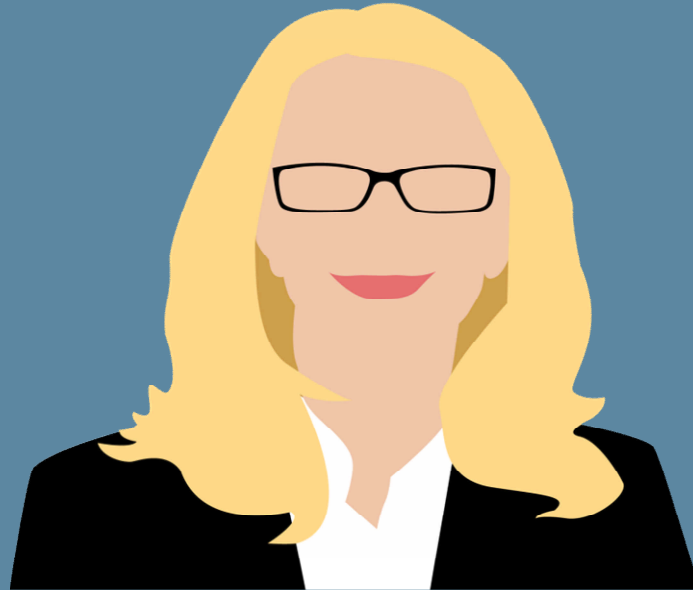


Legal Lunch with Laura



Laura L. Rubenstein, Esq.

Offit Kurman, P.A.

410.209.6433

lrubenstein@offitkurman.com

2014 Lunch Dates

March 18, 2014

May 20, 2014

July 22, 2014

September 16, 2014

October 21, 2014

December 16, 2014

*Webinars are held on the third Tuesday of every other month from 12:00 – 1:00 p.m.

Don't Risk It: Using Background Checks to Hire the Right Talent

Presentation by
Laura L. Rubenstein, Esq.
James Randisi

Jim Randisi



RANDISI & ASSOCIATES PROVIDES:

QUALITY SERVICE

We provide a full range of employment and volunteer screening services, including drug testing, skills analysis, background checks, and much more.

EXPERIENCE & EFFICIENCY

Our 15-years in the employment screening business has provided us with experiences and knowledge that you won't find anywhere else – knowledge that allows us to provide you with the quality service we're known for. We are an authority in the employment screening services industry. We know what you need and how to get it to you quickly and efficiently.

Employment Screening - - Why Do It?

- Associate with better, safer, competent people.
- Avoid association with people who have dangerous behavior in past.
- Increase quality of workforce.
- Defend against the tort of negligent hiring.

Various Background Tests

- Credit
- Criminal Background check
- Employment history
- Education
- References (Professional and Personal)
- Driving Records
- Drug/Alcohol Test

Danger signals on the application

- Applicant fails to sign application and/or consent for screening.
- Applicant leaves criminal questions blank.
- Applicant fails to explain gaps in employment history
- Applicant fails to give sufficient information to identify a past employer.
- Applicant fails to explain reason(s) he left past jobs
- Explanations for gaps or reasons for leaving jobs do not make sense.
- Excessive cross-outs and changes.
- Applicant failed to indicate or cannot recall the name of a former supervisor
- Prior employers won't return our calls for verification.

Criminal Background Checks

- Where are they found?
- Are there different types of convictions?
- Can arrest records be used?
- Databases
 - Is there a super-duper database on the web with criminal convictions by person?
 - Should they be the sole source of your search?
 - Is the FBI finger print database accurate?
- What is the structure of a criminal conviction search?
 - How many years of residential addresses?
 - Use of supplemental address reports?

Criminology Terms

- **Nolle Pros**

Nolle prosequi is a Latin term meaning "we shall no longer prosecute."

- **Stet Docket**

The stet docket is an inactive docket maintained by the state's attorney's office

Web Resource –<http://definitions.uslegal.com/>

What about expunged criminal records?

- Maryland law prohibits an employer from asking applicants or employees about expunged criminal charges and from discharging or refusing to hire an individual based on an expunged record.
- Violating this statute can result in a fine of \$1,000, imprisonment for up to 1 year, or both.

EEOC Guidance on Using Criminal Backgrounds

In 2012 the EEOC issued updated guidance on the possible discriminatory effects of using criminal background checks for employment purposes.

- *EEOC v. BMW Manufacturing*
- *EEOC v. Dollar General*

EEOC v. Freeman

- Employer prevailed against EEOC's allegation that criminal background checks discriminated against African American males.
- EEOC's experts were discredited.
- MD federal judge found Freeman had no policy that caused an adverse impact on African American males.

Employment References

- Eliminates unexplained employment gaps.
- Indicates where to search for criminal records.
- Hire based on verified facts – was the person really a manager or an assistant manager?
- Allows you to demonstrate due diligence.
- You may receive valuable “good” information.
- Determine skills, education, pay and position are accurate on job application.
- May indicate “issues” if a prior employer won’t respond.
- Provides you with protection in case previous employer did not reveal factual information about particularly egregious behavior while in the prior employer’s workforce. May trigger the tort of negligent referral.

Drug/Alcohol Testing

- Policy distributed and signed.
- What are available specimens?
- When is most effective time for drug or alcohol test?
- Is there a positive ROI for drug testing?
 - What does SHRM say?
 - Quest Diagnostics Drug Testing Calculator.
- Employee performance and drug testing are separate.
 - Don't use drug testing to manage poor performance.
 - Does a zero tolerance policy make economic sense?
- Positive 6 months ago - can person re-apply?
- Current illegal drug use is never acceptable

What are some free steps?

- Clear Statement on Application that information is truthful and any omission or material misstatement can result in immediate removal from the hiring process or result in termination of employment.
- Display prominent signs that background checks and drug testing are conducted.
- Insist that your vendors screen their employees particularly if they have access to your premises, employees, clients.

The Fair Credit Reporting Act

- The FCRA limits the use of the credit report to certain employment purposes including hiring, promotion, reassignment or retention.
- A CRA may not release a credit report for employment decisions without consent.

The Job Applicant Fairness Act

- Took effective October 2011
- Prohibits Maryland employers from using a credit report to determine: (1) whether to hire a job applicant; (2) whether to terminate an employee; or (3) the rate of pay or other conditions of employment for an employee.
- Permits credit reports for bona fide reasons related to the position.

The Federal Bankruptcy Act

Sections 525(a) and (b) of the Bankruptcy Code prohibit governmental units and private employers from: (i) denying employment to an applicant, (ii) terminating an employee, or (iii) discriminating against any person who has filed for bankruptcy.

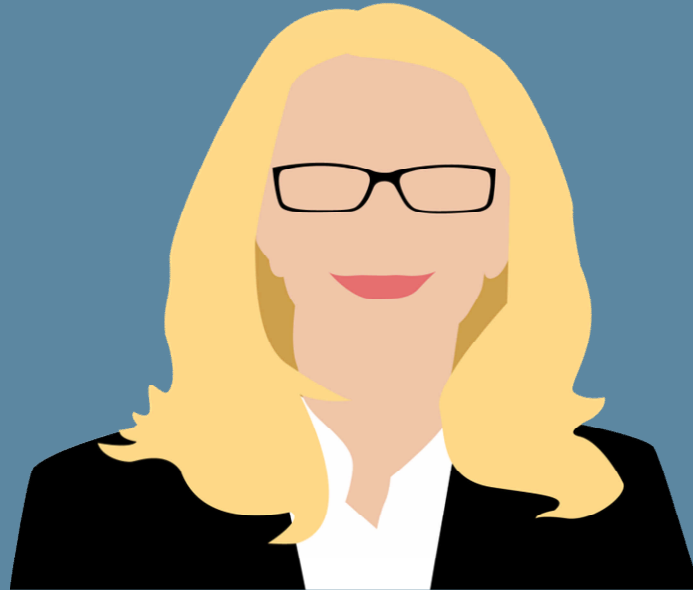
Employer Liability

- Negligent referral
- Negligent hiring
- Negligent supervision
- Negligent retention
- Employment discrimination

Questions?



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