

**EMPLOYEE SCREENING PRACTICES
AND
THE TEMPORARY HELP INDUSTRY**

by

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Introduction

The downsizing of the American workplace is putting pressure on personnel managers to employ more temporary workers than ever before. Historically, workers were hired on a permanent basis with an expectation of lifetime employment as long as the company continued to prosper. The current trend, however, is toward reducing the permanent workforce and using temporary workers as needed.² The use of temporary workers is on the rise and growing at double-digit rates.³ One recent count listed the temporary work force in America at 1.3 million workers.⁴

The increase in temporary workers is occurring not only in number but also in types of jobs they hold. Historically, temporary workers were largely employed in clerical and light industrial types of work.⁵ Currently, temporary workers are used in legal services,⁶ food services,⁷ information technologies,⁸ and medical fields including registered nurses⁹ and physicians.¹⁰ Temporary workers are even being hired as managers.¹¹

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² Ellingson, Gruys & Sackett, *Factors Related to the Satisfaction and Performance of Temporary Employees*, 83 J. APPL. PSYCH. 913-921 (Dec. 1998).

³ Berman & Sanders, *Time to Go?*, 163 FORBES I, 83-85 (Jan. 11, 1999); Jefferson & Bohl, *CBR Minisurvey: Part-time and Temporary Employees Demand Better Pay and More Benefits*, 30 COMPENSATION & BENEFITS REV. 6, 20-24 (Nov/Dec 1998); Laird & Williams, *Employment Growth in the Temporary Help Supply Industry*, 17 J. LAB. RESEARCH 662 (Fall 1996).

⁴ Cohany, *Workers in Alternative Employment Arrangements: A Second Look*, 121 MONTHLY LAB. REV. 3-21 (Nov. 1998).

⁵ Cohany at 4.

⁶ Gust, *Contract Market Booming*, 16 LEGAL ASSISTANT TODAY 33 (Nov/Dec 1998).

⁷ Buzalka, *Temps Help FSD's Bridge the Labor Gap*, 34 FOOD MANAGEMENT 20-21 (Feb. 1999).

⁸ Cole-Gomolski, *Do Temps Pose a Risk for IT?*, 32 COMPUTERWORLD 37-41 (Nov. 9, 1998); Sanders, *Pick a Pro*, 15 OFFICE SYSTEMS 23-26 (Nov. 1998); Wild, *Dealing in Specialty Goods*, 46 SUCCESS 68-69 (1999).

⁹ Sanders at 23

¹⁰ Sanders at 23; Haugh, *Docs on Demand*, 73 HOSPITALS & HEALTH NETWORKS 20 (Feb, 1999).

¹¹ Melchionno, *The Changing Temporary Workforce: Managerial, Professional and Technical Workers in the Personnel Supply Services Industry*, 43 OCCUPATIONAL OUTLOOK Q. 24-32 (1999); Thompson, *Using Interim Management in the Industry*, 102 NATIONAL UNDERWRITER 20 (Nov. 9, 1998); Wheeler, *Hitting the Ground Running . . . Interim Financial Managers*, 77 MANAGEMENT ACCOUNTING 52-53 (Jan. 1999).

Consequently, it appears that the traditional view of a temporary worker as merely being a clerical-type worker is changing.

The increase in the use of temporary workers in number, location and type of work should not be surprising. Although most temporary workers would prefer to be employed on a permanent basis,¹² they remain as productive as permanent workers. Several studies have failed to show a difference between temporary workers and permanent workers with regard to performance, commitment, attitude, motivation and satisfaction.¹³ These authors have been unable to find any study that argues temporary workers are less capable in any work-related dimension than are permanent workers.

Although temporary services companies offer a large number of employees from which an organization may choose, having a large applicant pool is no guarantee that the proper person will be placed on the job. Assuring the quality of temporary workers is just as necessary as assuring the quality of an organization's permanent employees. If a worker is hired on a permanent basis, the hiring organization would normally screen the worker as deemed necessary. Technically, temporary employees do not work for the using organization; instead, they are employees of the temporary agency. Therefore, it falls to the temporary agency to perform the appropriate screening of the temporary workers.

While temporary workers and permanent workers may be expected to be equally capable, any worker can pose a risk to an employer. Arguably, when an organization uses temporary workers, the organization may assume the workers have been properly screened and placed. If the temporary company's screening is insufficient, the assumption becomes invalid and the newly hired temporary workers may pose risks.

Placing the right person involves two issues: (1) *competence* and (2) *latent problems*. Issues of competence deal with job-related qualifications and the worker's ability to perform the job requirements. Highly capable workers are more easily trained, perform better, and offer more flexibility. Capability is influenced by such factors as a worker's education, experience and motivation.

Perhaps more important than screening for a worker's competence is the investigation into the worker's background to identify risk factors for potential future problems with the worker. Latency issues involve being able to predict whether the worker might demonstrate behavioral problems on the job. Behavioral problems can run the spectrum from occasional tardiness to illegal activities such as theft or rape.

Legal Implications

Employers have a legal obligation to provide a safe environment for employees and customers. As the cases presented in this section of the article will demonstrate, employees who place incompetent or dangerous workers on the job run substantial legal risk. If an employer brings an employee who is incompetent or dangerous into the work environment and that employee presents a threat to other employees or customers, the employer may be liable for negligent hiring. While state law defines negligent hiring, the general legal definition of negligent

¹² Cohany at 6.

hiring is "[t]he failure of an employer to exercise reasonable care in selecting an applicant in light of the risk created by the position to be filled."¹⁴ In other words, most courts will examine two questions when deciding whether an employer has negligently hired a worker: (1) whether the employer knew or reasonably should have known that the employee was unfit for the job for which he was employed, and (2) whether the employee's placement at that job created an unreasonable risk of harm to others.¹⁵

For example, in *Oakley v. Flor-Shin, Inc.*, a floor cleaning company was found liable for negligent hiring when it hired a man with an extensive criminal record of burglary, theft, bail-jumping and criminal attempt to commit rape.¹⁶ The floor-cleaning worker was assigned to work in a store in which he and a female employee of the store were the only two people in the building. The floor-cleaning worker sexually assaulted the female employee, and she sued the floor cleaning company for negligent hiring. The court opined that the floor cleaning company should have known about the worker's criminal history because the company's regional manager was the man's brother-in-law.¹⁷ Further, the floor cleaning company knew the man would be locked inside the store with a single store employee.¹⁸ In brief, the employer should have known about the worker's extensive criminal history, and the employer should have foreseen that placing a worker with his history in a locked store with a lone employee posed an unreasonable risk of harm to that store employee.

While the *Oakley* case presents the negligent hiring law as it pertains to the Commonwealth of Kentucky, the court cited other similar cases from other jurisdictions including *Ponticas v. K.M.S. Inv.*, a Minnesota case involving a tenant who was raped by the manager of her apartment complex.¹⁹ The manager had a criminal history that included convictions for burglary, theft and armed robbery.²⁰ The employer did a credit check on the manager, but did not do any criminal background check.²¹ The court noted that since the tenant encountered the apartment manager "as a direct result of his employment as apartment manager," and the apartment owner/employer received a benefit from the manager's employment and his contact with tenants, then the employer owed to the tenants "the duty of exercising reasonable care in hiring a resident manager."²² The court further concluded that the employer's failure to make a single inquiry into the manager's criminal background served as valid evidence that "the duty of exercising reasonable care" had been breached.²³ In conclusion, the court noted that liability for negligent hiring is "predicated on the negligence of an employer in placing a person with known propensities, or propensities which should have been discovered by reasonable investigation, in an employment

¹³ Ellingson at 919; Wah, *Value Your Contingent Workforce*, 88 MANAGEMENT REV. 6 (Jan. 1999).

¹⁴ Bates, *Understanding the Liability of Negligent Hiring*, SECURITY MANAGEMENT 7A-10A (1999).

¹⁵ *Oakley v. Flor-Shin, Inc.*, 964 S.W.2d 438, 442 (Ct. App. Ky. 1998). See also *Stalbosky v. Belew*, 205 F.3d 890, 894 (2000)

¹⁶ *Oakley* at 442.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Ponticas v. K.M.S. Investments, et al.*, 331 N.W.2d 907 (Sup. Ct. Minn. 1983).

²⁰ *Id.* at 909.

²¹ *Id.*

²² *Id.* at 911.

²³ *Id.* at 915.

position in which, because of the circumstances of the employment, it should have been foreseeable that the hired individual posed a threat of injury to others."²⁴

In Virginia, a church hired an employee who had recently been convicted of aggravated sexual assault on a young girl.²⁵ The employee's probation mandated that he not be allowed to come into contact with children; however, his job at the church encouraged such contact.²⁶ Subsequently the employee repeatedly raped a young girl at the church and other locations.²⁷ The court declared that the church's failure to make inquiry into the employee's criminal background and subsequent failure to adequately supervise him when he would easily have contact with children was gross misconduct.²⁸

In most cases, job applicants will generally avoid revealing information that will hurt their chances of getting the job. For example, in the *Ponticas* case, the apartment manager admitted that when he applied for the manager position, and the application asked if he had been convicted of a crime, he described his convictions as "traffic tickets."²⁹

Job applicants often hide potentially threatening information. Therefore, finding the information necessary for an adequate screening can be challenging. To date, the burden of finding this screening information has fallen to the placing organization -- the temporary agency. The assertions presented by the employers in the cases we have reviewed lead us to believe that some organizations may assume they can bypass the threat of litigation for negligent hiring or tort liability for actions of employees by using temporary workers who are screened by the temporary agency.

While it has been accepted that temporary service companies have the duty to perform the background checks on workers when they are needed, a new question is arising. The negligent hiring cases cited herein have indicated the courts' belief that employers have a duty to exercise reasonable care in hiring employees, and that the duty increases as the level of potential contact with various invitees increases. Mindful of this duty to exercise reasonable care for the protection of one's invitees, it would seem that employers have a similar obligation to make sure the temporary agencies from whom they are seeking workers are exercising this "reasonable care." Arguably, an organization's failure to ensure that the temporary agency supplying all or part of its workforce is diligently screening its workers could eventually transfer liability for negligent hiring directly to the organization. If a company uses the services of a temporary employee, are there circumstances under which the organization can still be held liable for the actions of the temporary employee even though the burden of screening belonged to the temporary agency?

²⁴ *Id.* at 911.

²⁵ *J. v. Victory Tabernacle Baptist Church, et al.*, 372 S.E.2d 391 (Sup. Ct. Va. 1988).

²⁶ *Id.* at 392.

²⁷ *Id.*

²⁸ *Id.* at 393.

²⁹ *Ponticas* at 910.

The courts have not uniformly and definitively addressed this question. It is important to note, however, that several recent federal and state court cases address this question, as do certain provisions of standard agent-principal laws. These state court cases and agency-principal laws are presented herein.

In addition to the risks associated with negligent hiring, agency-principal laws also influence the potential liability in this area. If an organization uses the services of a temporary employee provided by the temporary agency, is the employer liable for the tortious acts of the temporary worker? Agency-principal law provides two theories under which an employer might be held liable for the acts of temporary employees:

Vicarious Liability: a principal (employer) can be liable for the unauthorized torts of an agent (employee -- temporary or permanent) if the agent was acting within the scope of employment, and the acts were of the same general natures as those authorized by the principal, the agent was authorized to be where he was at the time of the act, and/or the agent was serving the principal's interests at the time he undertook the action.

Respondeat Superior: a principal may be liable for the unauthorized intentional or negligent torts of the agent if the agent was acting within the scope of his employment. The theory behind this doctrine is that the principal sits in the best position to protect the general public from the actions of his agents and compensate those who are injured. The doctrine of *respondeat superior* also makes employers liable for actions of their employees that can be attributed to negligent hiring or inadequate supervision.

What this means for employers who hire temporary workers is this: if an employer hires a temporary worker, the employer is likely counting on the temporary agency to properly screen its employees before sending the temps to an employer company. If the employer, however, manifests enough control over the temporary worker's working conditions and job performance, the temporary worker will likely qualify as an agent of the employer. If the temporary worker, as an agent, commits a tortious act within the scope of his or her employment with the employer, the courts appear poised to hold the employer liable for the acts of its agents, even if they are temporary employees. Clearly, the temporary agency will be held liable, especially in cases of negligent hiring. Nevertheless, the courts in several jurisdictions appear to be moving in the direction of recognizing that temporary workers have an agency relationship with both the temporary agency that initially employed them and the company that uses their services under arrangements with the agencies. The following cases clarify this point.

The U. S. District Court for the District of Kansas addressed this issue of an organization's liability for the actions of a temporary employee in *St. Francis Regional Medical Center, Inc. v. Critical Care, Inc., et al.*³⁰ St. Francis was a hospital that used temporary nurses supplied by Critical Care, Inc. (CCI).³¹ A former patient sued the hospital for negligence, and the hospital settled because administrators perceived the care provided by the temporary nurse constituted malpractice and was a significant factor in the patient's injury.³² After the settlement, the hospital sought indemnification from CCI, the temporary nurse's employer.³³ In denying the hospital's claim that CCI had an

³⁰ 997 F. Supp. 1413 (U.S. Dist. Ct. Ks 1997).

³¹ *Id.* at 1420.

³² *Id.* at 1422.

³³ *Id.* at 1420.

implied obligation of indemnity, the court observed that the temporary nurse was an "employee of both CCI and St. Francis."³⁴ In a footnote, the court declared:

While it is uncontroverted that CCI was to act at the employer for the purposes of discharging administrative functions, such as payroll deductions, it is equally clear that St. Francis had day-to-day control over [the temporary nurse] while she was assigned to the hospital. While St. Francis could not discharge [the temporary nurse] from CCI's employment, it could discharge her from its employment for unsatisfactory performance.³⁵

Consequently, while the court did not make a finding that the hospital will indeed be liable for the actions of the temporary employee (since the hospital had already settled), the court appeared poised to find the hospital, at a minimum, partially liable for the temporary nurse's alleged malpractice.

The Supreme Court of Utah attempted to address this issue in *Kunz v. Beneficial Temporaries*.³⁶ While this case revolved around whether a temporary agency can be held vicariously liable for the torts of a temporary employee who is working for another organization, the court addressed the issue of whether the organization could be held liable for the torts committed by a temporary employee. Referencing the Restatement (Second) of Agency §227 (1958), the courts stated:

In the loaned employee context, where a general employer loans one of its employees to another employer, a new, albeit temporary, employment relationship is formed. The employer of the loaned employee, or special employer, is liable to a third party for torts committed by the loaned employee within the scope of his or her employment with the special employer.³⁷

The courts have used this borrowed servant doctrine in assessing employer liability for acts of temporary workers. In deciding when to hold an organization liable for the torts of a temporary worker, the courts have tended to look at two circumstances: (1) who had right of control, and (2) whose business was advanced by the worker's activities.

For example, the Appellate Court of Illinois acknowledged that an employee of one employer may be loaned to another employer and the worker becomes the employee of the employer to whom he or she is loaned.³⁸ The court noted that "[w]hen such a transfer of employment occurs depends on whether the borrowing employer has the right to control the employee with respect to the work performed."³⁹ In other words, the more control an organization possesses over a temporary employee (i.e., nature of work, level of supervision, etc.), the more likely it is that the temporary worker will be classified as an employee for liability purposes. As the court noted, the "dominant factor is the right to control the manner in which the

³⁴ *Id.* at 1428.

³⁵ *Id.* at 1428, Note 17.

³⁶ 921 P.2d 456 (Utah 1996).

³⁷ *Id.* at 460.

³⁸ *Haight v. Aldridge Electric Company*, 575 N.E.2d 243, 252 (Ill. App. Ct. 1991).

³⁹ *Id.*

work is to be done . . . [the] fact that an employee does not receive his wages from the borrowing employer will not defeat the finding of a loaned employer situation."⁴⁰ . The Supreme Court of Michigan declared,

A person who avails himself of the use, temporarily, of the services of a servant regularly employed by another person may be liable as master for the acts of such servant during the temporary service. The test is whether in the particular service which he is engaged or requested to perform he continues liable to the direction and control of his original master or becomes subject to that of the person to whom he is lent or hired, or who requests his services. It is not so much the actual exercise of control which is regarded, as the right to exercise such control. To escape liability the original master must resign full control of the servant for the time being, it not being sufficient that the servant is partially under the control of a third person. Subject to these rules the original master is not liable for injuries resulting from acts of the servant while under the control of a third person.⁴¹

Instead of looking at the right to control an employee, some courts examine whose business is advanced by the activities of the borrowed employee. For example, in *Progressive Construction and Engineering v. Indiana and Michigan Electric Company, Inc.*, the court stated that a jury could find the temporary employer solely liable for the negligence of its temporary employee because the temporary worker was driving a vehicle in furtherance of the temporary employer's business.⁴²

In addition to attributing liability to an organization for the acts of a temporary worker under agency law and the borrowed servant doctrine, some courts have found employers liable under the doctrine of premises liability. The Ohio Court of Appeals addressed this issue to some degree in 1995 in *Venger v. Davis*.⁴³ In this case, Victoria Venger, the plaintiff, was a patient at St. Thomas Medical Center (the employer) and Thomas Davis was a temporary employee working at St. Thomas. The plaintiff was assaulted by the temporary worker, and she immediately reported the assault to a nurse's aide, who assured the plaintiff that she would make an official report of the incident.⁴⁴ No protective measures were taken to protect the plaintiff from the temp, and the plaintiff was assaulted again.⁴⁵ The plaintiff filed suit against the employer, St. Thomas Medical Center, among others.⁴⁶ St. Thomas argued that it could not be held liable for the actions of a temporary employee. The Ohio Court of Appeals disagreed noting that while St. Thomas may not be liable under the doctrine of *respondeat superior*, the medical center could be held liable within the context of premises liability. The court cited the case of *Howard v. Rogers*,⁴⁷ in which the Ohio Supreme Court "held that an occupier of premises may be subject to liability for harm caused to a

⁴⁰ Id; See also *A. J. Johnson Paving Company v. The Industrial Commission, et al.*, 412 N.E.2d 477, 481 (1980).

⁴¹ *Janik v. Ford Motor Co.*, 147 N.W. 510, 512 (1914), quoting 26 *Cyclopedia of Law & Procedure*, p. 1522. See also *May v. Harper Hospital*, 462 N.W.2d 754, 757 (Mich. App. 1990).

⁴² 533 N.E.2d 1279, 1285 (Ct. App. Ind. 1989).

⁴³ *Venger V. Davis*, 1995 Ohio App. LEXIS 1850 (1995).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ 19 Ohio.St.2d 42, 249 N.E.2d 804 (1969).

business invitee by the conduct of third persons, unless the occupier did not know, or in the exercise of ordinary care, could not have known that a danger was posed to the invitee."⁴⁸ The Court noted that a temporary worker would qualify as "third persons" under the 2 Restatement of Law.2d Torts (1965).⁴⁹ This case is consistent with the traditional theory of property law that when a landowner opens his premises to the public, he is asserting that his premises are safe. Consequently, a business owner who invites customers, clients, patients, and other third parties to enter his premises has an obligation to make sure the premises are reasonably safe. The "premises" would arguably include not only the land, building and fixtures on the property but also the persons occupying that property in the ordinary course of the owner's business. This obligation should not be mitigated when an employer uses the services of temporary employees who are supposedly screened by the temporary agencies from which they are hired.

Despite the range of cases addressing employer liability for the actions of a temporary worker, organizations should remember that even if a third party were to sue an employer for the actions of a temporary employee, and the employer were to successfully defend the suit, the employer is still forced to spend valuable time and money on attorney fees, pre-trial preparation, and discovery. Since the case law has imposed increasing liability on employers for the actions of temporary employees, employers may incur significant costs in defending themselves when temporary workers commit acts that put the employer at risk to third parties.

The bottom line is that organizations may face substantial risk from the actions of temporary employees even if these workers are actually employed by the temporary agency. Since this risk is substantial, it is in the organization's best interest to insure that any temporary workers it uses are properly screened. Failure to do so could be expensive.

Screening Temporary Workers

A temporary agency has many options available to screen its employees before sending them to other organizations. While some of these options are more expensive, most are fairly straightforward and cost-effective.

The Application Form

The first line of defense a temporary agency can use is the application form. The application form has great potential for providing both positive and negative information about a job applicant. The application form provides information on the work history of the temporary worker. This information is useful in knowing if the person has prior experience in the position to be filled. Moreover, many warning signs can be discovered by reviewing the form in detail. Looking for unexplained gaps in employment, declining salary history, unusual lengths of military service, or an obviously over-qualified applicant often detects prior inconsistencies and problems. The following items are typically asked on an application form:

Previous places and dates of employment: Previous job responsibilities give immediate insight into the qualifications of a person. A "trail" of previous jobs also offers insight into the work habits of the applicant as well

⁴⁸ *Id.* at 42.

as the stability of previous employment. Employees who have maintained a job over a long period of time demonstrate stability,⁵⁰ and are often successful in the workplace. Workers who hop from job to job on a regular basis may have problems with stability or adhering to company standards.⁵¹ Dates of employment provide information regarding situations the applicant may wish to hide. For example, long dates of unemployment may be explained by imprisonment.⁵² Although many firms have policies prohibiting the release of performance information on previous employees,⁵³ it is usually easy to obtain information regarding the specific dates of employment.

Educational Background: Knowing the educational background of an applicant provides critical information for jobs requiring special skills such as nursing, engineering or computer programming. The educational history of an employee also provides insight into character.

Refusal of Bond: Bonding companies will conduct investigations of workers before issuing a bond of any substantial amount. Refusal of bond is an indication that problems exist in the worker's background. These problems may be due to personal financial instability or to a past criminal record. A worker who has had a significant level of bond coverage in the past is valuable because it serves as an indication that a previous investigation has likely been completed for the issuance of that bond.

Criminal History: Information about prior criminal convictions can be obtained easily in many states. A negligent hiring case will likely be successful when it is established that the offending employee had a prior record of violent crime. Based on the trend in negligent hiring case law, the failure to obtain or attempt to obtain criminal history data is the single most common reason for employer liability.

The Research Question

This research investigates the practice of collecting and verifying information on the application form by temporary agencies. The questions being asked and the diligence used to verify information are the foci of this research. Industry standards do not exist, leaving only knowledge of industry practices to serve as a guide to the adequacy of a temporary agency's hiring standards.

Although screening job applicants is not terribly expensive, it does incur some costs to the temporary agency. Consequently, the agency has an economic incentive to minimize these costs to the detriment of the organizations that use their workers. Further compounding this problem are the varied requirements needed to meet the different levels of risk a worker poses. For example, an employee working under close supervision requires less trust than an unsupervised employee. An employee with fiduciary responsibilities requires more trust than an

⁴⁹ *Id.*

⁵⁰ Kleiman, Lawrence, *Human Resource Management: A Managerial Tool for Competitive Advantage*. P. 146 (2d ed., 2000).

⁵¹ *Id.*

⁵² *Id.*

⁵³ L. Gomez-Mejia, D. Balkin, & R. Cardy, *Managing Human Resources*, p. 187 (3d ed. 2001).

employee with limited access to the organization's assets. The assessment of an employee's risk is an integral component of the requirements for screening the worker's background.

Since screening should be proportional to the risk involved, we investigate whether or not temporary agencies actually conduct screening procedures in proportion to the risk their workers pose to their clients. The focus of this research attempts to answer this question. If temporary agencies are properly screening their job applicants, they should be determining the amount of risk posed by a particular placement and screen accordingly.

Hypotheses

This study attempts to determine if temporary companies provide differential screening of their employees based upon the risk those employees pose to client organizations. We find no literature that reports the pre-employment screening practices of the temporary help industry. Barring literature to guide the hypotheses, we base our hypotheses upon good industry practice.

The first set of hypotheses deals with the acquisition and verification of information concerning an applicant's previous work history. We asked the respondents if they (1) required this information be included on the job application, and (2) verified this information.

H1(a): A larger percentage of temporary agencies request information concerning prior work history for workers in the medical or security fields than in clerical or labor fields.

H1(b): Employees seeking to work in the fields of security or medicine will have their prior work history verified to a greater degree than those seeking to work in the clerical or general labor pools.

The rationale for these hypotheses is that medical and security fields of work expose the organization to more liability from an employee. Consequently, it is more important to collect and verify the work history of workers in these areas.

The next set of hypotheses deals with the acquisition and verification of information concerning an applicant's educational history. We asked the respondents if they (1) required this information be included on the job application, and (2) verified this information.

Educational background is needed for technical work such as in the medical field. It is less important for laborers, security workers and clerical workers. Therefore we hypothesize:

H2(a): A larger percentage of temporary agencies request information concerning education history for workers in the medical field than in other types of work.

H2(b): Employees seeking to work in the medical field will have their educational history verified to a greater degree than those seeking work in the security, clerical or general labor fields.

The next set of hypotheses deals with the acquisition and verification of information concerning an applicant's ability to be bonded. We asked the respondents if they (1) required this information be included on the job application, and (2) verified this information.

Being bonded is a sign of fiduciary trust imposed by the bonding agency. Certainly many types of temporary work do not require bonding, yet the granting or denial of bond is a major indication of one's integrity. Those positions that require integrity and trustworthiness should be filled by employees who have been bonded previously. Therefore:

H3(a): A larger percentage of temporary agencies request information concerning bonding history for workers in the medical or security fields than in clerical or labor fields.

H3(b): A larger percentage of temporary agencies verify information concerning bonding history for workers in the medical or security fields than in clerical or labor fields.

Finally, the most telling information of a job applicant is his or her criminal history. Applicants with criminal histories pose special liability to organizations. Placing an employee with a criminal history in a position of fiduciary trust or in an unsupervised position where they can injure another worker or a customer is dangerous. Therefore:

H4(a): A larger percentage of temporary agencies request information concerning criminal history for workers in the medical or security fields than in clerical or labor fields.

H4(b): A larger percentage of temporary agencies verify information concerning criminal history for workers in the medical or security fields than in clerical or labor fields.

Methods

Sample

We constructed a questionnaire asking respondents to report on the screening practices used on the initial application form when hiring temporary employees. Accompanying the questionnaire was a cover letter that explained the purpose of the research as being academic in nature. Respondents were guaranteed anonymity and were provided with the name, address, and phone number of the author if they had questions.

The cohort was comprised of a national listing of all temporary companies operating within the continental United States. An advocacy group that prefers to remain anonymous provided the listing of temporary companies. The sample was collected by using a stratified sample of companies based upon zip codes. This method ensured that a representative number of questionnaires would be mailed to different areas located within the country. Of 3,727 questionnaires mailed, 420 were returned as undeliverable. These 420 questionnaires were determined to be comprised largely of temporary service companies that had gone out of business. Of the 3,307 questionnaires not returned as undeliverable, 691 usable questionnaires were returned. This generated a response rate of 21% for the usable sample.

The questionnaire was two pages in length and solicited answers regarding a number of issues. One question asked if the firm offered temporary placement services. If the response to this question was, "no", the questionnaire was thrown out as unusable.

Measures

The questionnaire was prepared in four basic forms. One form asked questions regarding people to be placed in temporary medical positions. A second version of the form asked questions about people to be placed in light industrial positions. The third version of the form asked about people to be placed in clerical positions. A fourth version of the questionnaire asked about employees to be placed in security positions. These four forms were used to gather information about the practices of hiring workers with different qualifications. For example, workers hired into security positions such as night watchmen would likely be placed into jobs with more potential for theft

than would persons placed in clerical positions. Persons placed in medical positions would require higher qualifications if the job they were to work in required certification of skills such as a nurse. Equal numbers of the versions of the questionnaire were mailed to the cohort.

Variables

A number of questions asked for demographic information such as the formal name of the company, number of years in business and the number of employees.

The main portion of the questionnaire addressed the screening process for new hires. Respondents were asked the types of information they collected on the job application form. Further, the respondents were asked if they required or verified the information.

The specific questions asked in question 7 were:

- Previous places of employment
- Previous dates of employment
- Previous job responsibilities
- Educational background
- Issuance or refusal of bond
- Previous work performance
- Record of criminal convictions
- Previous disciplinary problems on the job.

Results

Demographic data:

<u>Variable</u>	<u>N</u>	<u>Mean</u>	<u>Std Deviation</u>	<u>Mode</u>
Age of Company	644	18.7 years	109.1	11-20 years
Workers placed	648	514	3467	51-100 people
Workers available	641	1737	12438	51-100 people

Question 7:

The central issues of concern with this research were addressed by question seven on the instrument. Question seven was a multi-part question asking a variety of issues about the pre-employment screening process. In

addition to asking if a number of pre-employment checks appeared on the job application form, the companies were also asked if the questions were required and if the information furnished was verified.

Previous places of employment:

The first question asked if the firms asked for previous places of employment. Of the 562 usable responses, 520 stated they required this information. This constitutes 92.9% of the respondents. However, only 365 respondents (53%) stated they “always require” this information. Of the sample, 291 firms stated they “always verify” this information (42%). Clearly this information is predominately asked within the industry but is not always required. The majority of companies reported that at times they do not verify the information.

Previous dates of employment:

This part of question seven asked about the requirement to check on previous dates of employment. Of the usable responses, 492 stated they require this information constituting 87.5% of the respondents. This result is only slightly less than the previous question regarding places of employment. Of the sample 344 firms reported they “always require” this information (61.2%). Further, only 231 respondents reported they verify this information (41.1%).

Hypothesis 1(a) states that temporary services companies will request information on previous places and dates of employment from medical and security employees to a greater extent than clerical and labor type workers. This information is easily obtained and constitutes minimal background checking.

The data did not support this hypothesis. With regard to the issue of checking previous places of employment, the data were cross-tabulated with the types of employment being sought after (clerical, security, medical, labor) and whether or not information regarding the applicant’s employment background were required to be given on the application form. The cross-tabulation indicated there is a significant difference in the requirement to provide this information and the type of job ($\chi^2 = 9.83$, $df = 4$, $p < 0.05$). Overall, 68% of the temporary firms required this information be provided on the application form. What is especially noteworthy of this finding is that the security positions are required to provide information at less than the expected rate whereas clerical, medical, and labor positions were required to provide this information at a greater than expected rate. Whereas all positions should be required to provide this information as a good business practice, security positions are especially sensitive to background checks, yet are least likely to be required to provide information.

The findings were different with regard to checking previous dates of employment. Here there was no difference in the percentage of requirements that information be provided as a function of type of job being applied for ($\chi^2 = 8.765$, $df = 4$, $p = n.s.$). Thus it made no difference whether one was applying for a job in security, medicine, labor, or clerical with regard to the requirement of providing this information. In general 67% of the temporary companies required this information be provided.

Educational Background:

The respondents were asked if they required information concerning the educational background of their employees on the application form. Of the 562 responses, 515 (91.6%) reported their application forms asked for this information. Although 515 respondents asked for the information, only 302 reported they always required this information. Further, only 90 respondents reported they always checked this information.

Hypothesis 2(a) states that temporary services companies will request educational information on a larger percentage of workers in the medical field than in other types of work. To test this hypothesis, a contingency table was constructed comparing whether or not educational background information was required to be provided as a function of the position the applicant was applying for. The contingency table showed a significant difference in the rates of compliance in the requirement to collect this type of information ($\chi^2 = 10.72$, $df = 4$, $p < 0.03$). Analysis of the data indicated the temporary companies were requiring this information at greater than expected rates for clerical help but at less than expected rates for medical and security personnel. Thus, hypothesis 2(a) was not supported by the data. In fact, the opposite of the expected results were observed in that the medical field applicants were required to provide educational background information at a lower rate (34%) than any other type of job.

Hypothesis 2(b) postulates that educational background information will be verified to a greater degree for medical personnel than for other types of work. The data indicated that 291 companies reported they always verify educational information provided by applicants. A contingency table was constructed comparing these rates with the type of employment being sought. The data supported hypothesis 2(b); that is applicants in the medical field had their educational background verified to a greater extent than those in non-medical fields ($\chi^2 = 19.18$, $df = 4$, $p < 0.001$). This finding is a bit misleading however, because the overall rates of compliance are quite low. The sample indicated that only 32% of all applicants had their educational backgrounds verified. The applicants for the medical field was significantly greater than this figure but only to a level of 44%; that is, the majority of applicants in the medical field did not have their educational credentials verified.

Previous Bonding Experience:

The respondents were asked if they included information regarding the bonding history of an applicant, that is, whether the applicant had been bonded or refused bond previously. A minority of the sample reported asking for this type of information on the employment questionnaire. Only 220 of the 562 respondents asked about bonding. Of the 220 who asked about bonding, 124 required the question to be answered and 73 reported they verified this information.

Hypothesis 3(a) states that a larger percentage of temporary agencies will request information concerning bonding history for workers in the medical or security fields than in clerical or labor fields. The basis for this hypothesis is that medical and security workers pose a greater risk to the organization for which they work than do clerical or unskilled labor. An employee's bonding history yields significant information about the reliability and integrity of the person.

To test this hypothesis, a contingency table was constructed comparing whether or not previous bonding information was required to be provided as a function of the position the applicant was applying for. The contingency table showed no significant difference in the rates of compliance in the requirement to collect this type of information ($\chi^2 = 0.902$, $df = 4$, $p = n.s$) as a function of the type of job being applied for. In other words, requiring this information was the same for all types of workers at a rate of 51%.

Hypothesis 3(b) states that a larger percentage of temporary agencies will verify information concerning bonding history for workers in the medical or security fields than in clerical or labor fields. Once the information is collected on the application form, it must be verified to be validated. To test this hypothesis, a contingency table was constructed comparing whether or not previous bonding information was verified as a function of the position the applicant was applying for. A total of 108 firms always required the information to be provided. Of these 108 firms, 34% of them reported they always verify this information. The contingency table showed a highly significant difference in the rates of compliance in the requirement to collect this type of information ($\chi^2 = 26.0$, $df = 4$, $p < 0.001$) as a function of the type of job being applied for. Analysis of the individual cells of the contingency table indicated the hypothesis was supported, that is, medical and security personnel had their previous bonding history checked to a much greater degree than did clerical workers or unskilled labor workers.

Record of previous criminal conviction:

One of the most important questions a firm can ask of a job applicant is information regarding previous criminal convictions. Such information is vital in determining where a worker can be placed and the conditions of future employment. Of the 561 usable responses, 309 firms reported they ask this information on the job application (55%). Of the 309 firms asking for this information, 215 reported they require the applicant to provide answers to the question.

It is well understood that some job applicants are not honest when answering questions on the application. Critical questions cannot, therefore, depend solely on the honesty of the applicant but must be verified. Only 138 firms reported they always check information on criminal records. Of the total respondents, 25% report they always check the records of new applicants.

Hypothesis 4(a) states that a larger percentage of temporary agencies will request information concerning the criminal history for workers in the medical or security fields than in clerical or labor fields. The basis for this hypothesis is that medical and security workers pose a greater risk to the organization for which they work than do clerical or unskilled labor. An employee's criminal history yields perhaps the most significant information about the reliability and integrity of the person.

To test this hypothesis, a contingency table was constructed comparing whether or not information regarding the applicant's previous criminal history was required to be provided as a function of the position the applicant was applying for. The contingency table showed no significant difference in the rates of compliance in the requirement to collect this type of information ($\chi^2 = 6.8$, $df = 4$, $p = n.s$) as a function of the type of job being applied for. In other words, requiring this information was the same for all types of workers at a rate of 60%.

Hypothesis 4(b) states that larger percentage of temporary agencies will verify information concerning the criminal history for workers in the medical or security fields than in clerical or labor fields. To test this hypothesis, a contingency table was constructed comparing whether or not the applicant's information regarding previous criminal conviction was verified as a function of the position the applicant was applying for. A total of 179 firms always required the information to be provided. Of these 179 firms, 45% of them reported they always verify this information. The contingency table showed a highly significant difference in the rates of compliance in the requirement to collect this type of information ($\chi^2 = 15.2$, $df = 4$, $p < 0.004$) as a function of the type of job being applied for. Analysis of the individual cells of the contingency table indicated the hypothesis was supported, that is, medical and security personnel had their criminal history checked to a much greater degree than did clerical workers or unskilled labor workers.

Discussion

The research project investigated the pre-employment screening procedures of employment applications relative to the level of security needed for a position. Different jobs pose different levels of risk. The higher the level of risk, the greater the need for pre-employment screening. While it is not necessary to collect and verify all possible types of information for every temporary worker, the amount of screening must be proportionate to the degree of risk presented by the position to be filled. The greater the risk, the more effort must be made to investigate a prospective employee's background. Four types of jobs were used in the study, each representing different levels of risk. The lowest level of risk was represented by the job categories of labor and clerical. Educational credentials were more important for the medical field. Past histories of criminal activity were important for the category of security.

The study hypothesized the temporary services industry would increase its screening efforts as necessary but found instead that its overall screening procedures were inconsistent with good practice. Thus, the findings of this study do not support the assumption that the industry uses appropriate screening measures. In fact, the industry did just the opposite of good practice in a number of cases. Thus we are left with the conclusion that the temporary services industry does not screen its employees based upon the level of risk the employee poses in a consistent manner.

Low levels of verification of pre-employment information further aggravate the conclusion above in general, regardless of the degree of need. The hypotheses tested in this study are based upon relative values - whether one type of job is checked more than another based upon the degree of risk. The hypotheses were not designed to test absolute levels of verification. Even if the hypotheses had been supported, legitimate concern would still exist even for those types of jobs needing verification. Put bluntly, most companies did a poor job of collecting and verifying pre-employment data.

The results of this study indicate firms needing appropriate pre-employment screening, must not assume the temporary company will automatically accomplish it. Firms with special personnel needs such as jobs in the area of security or fiduciary responsibility must insure that the temporary companies are explicitly told to verify pre-employment data or must do it themselves. What constitutes appropriate pre-employment verification? Each individual client will have different security needs; in fact, each job will have different needs. The level of risk can be determined by a number of factors.

Level of Access: The risk posed by a particular position depends on access. If employees are able to subject others to harm as a result of having unsupervised access to them or dangerous means, then risk exists. One should also be concerned with the amount of access the employee will have to resources that can result in malfeasance. For example, employees afforded access to drugs, expensive inventory holdings, or cash should have a greater degree of certainty regarding their behavior than an employee that is not allowed access to these types of resources. The organization should also weigh the risk associated with an employee's ability to gain unauthorized access to dangerous or sensitive resources. A person that has the ability to gain illegal access to these resources may present the same level of risk.

Time spent on the job: A second risk factor is the number of days a temporary employee will spend on the organization's site. Employees that spend a very short time on site represent less risk than those whose stay is longer. It takes time for a dishonest employee to assess the organization and spot illegal opportunities. Increased time on the job also affords more chances to engage in theft, embezzlement, or espionage. As a rule of thumb, temporary employees that are placed in an organization for more than three weeks should be screened as though they were permanent employees.

Likelihood to become permanent: Sometimes temporary employees are hired with the possibility of becoming permanent employees of the organization. These temp-to-perm arrangements may be a part of the formal contract or they may occur as a result of a mutual desire of the worker and the company. If a temporary worker is expected to become a permanent employee, then that person should be screened more thoroughly. It is a mistake to believe one can initially hire worker on a temporary basis to avoid thorough background checks until the permanency decision is made. Delaying a background check is dangerous and would be an extremely weak defense to a charge of negligence from an injured third party.

Permanency of work: Another factor determining the level of background checking needed is the permanency of the temporary's work. The greater the permanency, the greater is the risk to the organization. Work that lasts a very short time, such as cleaning or cooking, has less potential to damage the firm than work that lasts longer. Consider the case of a computer programmer. The code generated by a programmer may be used for decades. If a programmer is not qualified to create the logic necessary to accomplish the program's goals, the resulting inaccuracies may continue to harm the firm for a long time.

Amount of supervision: The amount of supervision an employee receives also determines that employee's level of risk. The less supervision, the greater is the risk. Even employees placed in highly vulnerable positions such as warehousing security or inventory control can do little harm if there is ample supervision to discourage illicit acts. Incompetent employees are more quickly spotted before they have a chance to do permanent harm. Employees that are unsupervised, especially in vulnerable jobs, should have especially thorough background screening.

Given the factors listed above, we recommend each job specification have a pre-employment verification section detailing the required information to be collected and verified. Temporary employment companies can be given these documents and should be required to verify the pre-employment information collected. If this information can be construed as part of the contract, then legal liability can be mitigated in the case of a tort.

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