

CONDUCTING BACKGROUND CHECKS FOR PROSPECTIVE EMPLOYEES

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The good news is that your funeral home's caseload has been on a steady rise. The bad news is that your staff is overworked and you need to add another funeral director/embalmer to the staff. You ask around at a district meeting and learn that an experienced funeral director has relocated to your area because his wife took a job here. You contact him and an interview is set up. The meeting goes well and you are impressed by his experience, personality and poise. You offer him a job as a funeral director/embalmer and he accepts.

What you do not know is that he was terminated from his prior funeral home position for punching a manager during an argument. Additionally, he had two misdemeanor convictions for resisting arrest and misdemeanor assault. If during the course of his employment, he assaults a fellow employee or a family member being served by the funeral home, your potential liability may skyrocket. The primary claim against you will be negligent hiring of a person you should have known posed a threat to your staff and your clientele.

What should you have done? You could have taken several steps. First, you could have offered the job conditioned upon a satisfactory review of his references and a background check. In the alternative, you could have informed him that you need to do a background check first and, if that is satisfactory, you will get back to him. Had either of these steps been taken, you probably would have discovered that he was terminated from his prior job because of the assault and/or that he has two serious misdemeanor convictions. Either would have alerted you that there is a substantial risk in hiring him.

When you do a background check, you need to be mindful of applicable federal and Ohio laws. Below is an outline of the steps you need to take depending upon the extent of the background check and who conducts it.

Reference Checking

Always ask for references from previous employers and check those references. You should also confirm graduation from schools such as mortuary colleges and universities. If you do this yourself without hiring a third party company to do a background check, you do not need the prospect's permission.

While some former employers may be reluctant to provide references out of fear of being sued, Section 4113.71 of the Ohio Revised Code provides fairly extensive immunity to a former employer providing a reference. A former employer may only be sued if it is shown that

they knew the information they relayed about the employee was false and that it was provided with the deliberate intent to mislead the prospective employer in bad faith and for malicious purposes. Since this law was passed over 20 years ago, more Ohio employees are willing to alert prospective employers of problems they may have had with their past employees.

Credit and/or Criminal Records Check

When hiring someone who will be handling funds, going into consumers' homes, or operating vehicles as part of his or her employment duties, it is always advisable to obtain a credit and/or criminal records check. In Ohio, you may do this on your own without the prospect's permission. However, in most cases you will not be able to do a thorough credit or criminal background check without using a third party agency.

Whenever an employer uses a third party agency or business to do a credit or criminal background check on a prospective employee, that action falls under the Fair Credit Reporting Act (FCRA), a federal law overseen by the FTC. Under the FCRA, the following steps must be taken in order for an employer to use a credit agency or other business to obtain a credit and/or criminal records check on a prospective employee:

- The prospect must give written consent to the credit and criminal records check. The consent form must explain the areas that will be reviewed including credit standing, criminal records, general reputation, character and life style. That consent must be on a stand-alone document and may not be a part of the employment application. A sample form entitled "[Notice and Authorization for Employment Credit Check](#)" is on the OFDA website and can be used by funeral homes to obtain the required consent. If a prospect refuses consent, that consent may be used as grounds for not hiring the prospect.
- If an employer finds out information in a credit/criminal report that will influence the employer not to hire the prospect, the employer must explain that to the prospect and must give the prospect a copy of the report along with an FTC publication entitled "Summary of Your Rights Under the Fair Credit Reporting Act". The prospect must also be given an opportunity to review the report and inform the employer if it is incorrect.
- With regard to criminal background checks in Ohio, an employer may only ask about conviction records that have not been sealed unless the question has a direct and substantial relationship to the job. In other words, employers should not ask about arrest records, but should only inquire about convictions.

- If the employer decides not to hire the prospect based on a credit or criminal records report, the FCRA requires the employer to send the prospect an “Adverse Action Notice” that explains that the prospect is not being hired because of information in the report, the name, address and phone number of the company that provided the report, that the reporting company did not make the decision not to hire, and that the prospect has the right to dispute with the reporting company the accuracy of the report and be given a free copy of the report from the reporting company within sixty (60) days.
- An employer must retain the employment application and other documents for one year from when the decision not to hire was made. When disposing of the documents after one year, the employer must dispose of all such documents in a secure manner. This would include shredding the documents so that they may not be reviewed by anyone.

As can be seen from the list of steps funeral homes must take to do credit and criminal background checks, it is a fairly detailed process with a number of requirements. Nevertheless, it is the prudent course of action since hiring the wrong employee may be one of the costly mistakes a funeral home could make.

OFDA members with questions regarding this article may contact Scott Gilligan at 513-871-6332.