

Screening Your Contingent Workforce: What HR Professionals Should Know

By Nick Fishman



Have you heard the one about the contractor who used their position to defraud a company's clients? This may sound like the opening of a joke, but if you're an HR professional it's no laughing matter—especially when it's revealed the contractor had a prior criminal record and no one knew.

Such an incident is especially distressing if the company employs advanced selection methods and performs thorough employment background checks on their permanent workforce. Assuming that a temporary staffing agency conducted an effective background check—or worse, *hoping* they did—is a luxury that HR departments no longer have.

This is a visceral example of a problem HR has struggled with for years: important hiring processes are not being applied to the contingent workforce. When this segment of the workforce was small in number, this reality didn't matter much. But over the years the contingent workforce has become so important that a hands-off attitude does not make sense. Many HR executives hesitate from managing the contingent workforce because they fear contractors might be legally deemed permanent employees. However, the story above illustrates how they're setting themselves up for far more damaging risks.

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Thankfully, HR professionals who traditionally shied away from screening contractors are now taking a more responsible approach in managing this growing segment of the workforce.

Managing Contractor Risk: The Tide is Turning

A spring 2010 survey by employment screening provider EmployeeScreenIQ shows that 92 percent of companies perform employment background checks on their employees. Historically, background checks did not include contingent staff, and even a few years ago that idea was considered a novel concept. Today, the tide is turning: more than two-thirds of the organizations surveyed said they are making sure that contractors get screened.

It's difficult to make a case that background checks are important for regular workers but not contingent workers. Checking a contingent worker's background is not the same as declaring them a regular employee; it's a sign that employers are prudent in managing risk.

What's most important is that employers apply the same screening processes to temporary workers as they do for permanent employees. Veterans of the employment screening industry know that the term "background check" is a generic catch-all phrase with many meanings. Many types of criminal record searches are available, including county, federal district, state-wide and national databases. Even county searches can vary between individual providers. Some utilize off-site, online technology to tie in with courts as opposed to the time-tested method of on-site research. Some only search for felonies, while others will search for both felonies and misdemeanors.

The chief pitfall for HR departments is when they hire contingent workers through an agency and assume that agency is performing a thorough background check. It's not enough to assume the agency is conducting background checks, nor take their word that they are *effectively* screening individuals. If an organization chooses not to perform the checks itself, then it needs to spell out exactly what kind of background screening process is required. It's not a bad idea to request the agency use the same firm as your organization, to ensure that quality is consistent between contingent and permanent employees.

"HR needs to fully understand the mechanics of background checks and get on the same page as their contractors," says Jason Morris, president and chief operating officer of EmployeeScreenIQ. "Companies need to be confident they are truly protecting their organization, and this can only be accomplished by agreeing on specific screening procedures in a contract, and/or by asking contingent staffing agencies to use the same screening provider."

"It's also important to communicate what defines a suitable candidate for your organization and what does not," Morris adds. "Don't assume that their screening criteria and hiring standards are comparable to yours."

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Agency Discrimination: Another Looming Risk

Ensuring agencies conduct proper background checks is a key step in reducing risk; however, another danger looms. Attorney Jon Hyman of Kohrman, Jackson & Krantz cites a recent case where an agency used discriminatory code words to secretly identify the race and gender of applicants. For instance, "hockey player" stood for a white male and "chocolate cupcake" meant a young African American woman.

While the agency was clearly wrong, Hyman notes in his law blog that “employers are often jointly held responsible with temporary agencies for acts of discrimination. In dealing with temporary agencies, businesses should be careful not to perpetuate discrimination fostered by the agency.”

Now while the example above dealt with racial discrimination, it’s important to note that the EEOC has been particularly active in enforcing another perceived discriminatory hiring practice: discrimination against those with criminal records or poor credit. Let’s say your contractor has a strict policy of not hiring felons or people with bad credit; without proper indemnification, one could allege a co-employment relationship between you and your contractor, leaving you vulnerable to litigation.

Businesses need to build indemnification clauses into staffing agreements with temporary agencies, so that if they are sued for an agency’s discriminatory act, they’ll be defended financially and held harmless. In broader terms, this illustrates that companies can’t act as if they are free of responsibility for contingent workers. Discrimination is an issue with both regular and contingent employees, meaning that HR departments need to make sure they are EEOC-compliant for both categories of people.

HR Needs to Reclaim Ownership

One reason why HR pros may let background checks for contractors slip past is that they don't have ownership over that part of the workforce. The hiring of contingent workers has long been a source of uncontrolled spending in organizations. Any manager could bring in a contractor or temp and often did so without any central oversight. Many companies didn't even know what they were spending on contingent workers.

Many thought this problem was addressed by deploying Vendor Management Systems and handing the entire contingent hiring process to the procurement function. Procurement may know how to purchase most goods and services, but they still haven’t fully figured out how to purchase human capital properly—so while they have created significant front-end savings for organizations by treating the service as commodity, issues often are abound when it comes to actual service, quality of work and liability. Unfortunately, employment is not just a simple purchasing decision. While the two functions can certainly work together, HR has established standard hiring practices and procurement needs to follow them if the workforce is going to be managed consistently.

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"Human resources needs to take responsibility for an entire workforce population," says Robert Schepens, CPC, president of Champion Personnel System and The Great Workplace.com. "While supply chain management systems and the human resources functions can certainly work together, HR has or should establish standard hiring practices and supply chain needs if the workforce is going to be managed consistently."

"Treating the entire body of 'participants'—employees, contractors, interim workers and vendors—in a consistent manner will help any organization achieve their overall purpose and goals for their own customers," Schepens adds. "Treating the contingent workforce any differently than the direct workforce has proven to be counter-productive, risky, and to negatively impact productivity and profitability."

Bringing it all Together

The hiring world has changed drastically from a place where the contingent workforce could be ignored to where it needs to be actively managed. HR professionals' concerns about the quality of background checks and preventing discrimination should be equally strong for contingent workers as it is for regular employees.

Additionally, companies can no longer heap the responsibility for discrimination lawsuits onto contingent staffing agencies. Both parties need to ask questions until everyone is on the same page and agree to all details before a contract is signed.

For this to happen, HR needs to take ownership of the entire workforce. Executives need to move past the historic fears of applying talent management processes to the contingent workforce. HR professionals need to be judicious in how they manage contractors, but the benefits of acting decisively dramatically outweigh the risks of simply hoping for the best.

Checklist for Screening Contract Workers

- Conduct background checks on *all* contracted/temporary workers.
- Be sure to apply the same screening criteria and selection standards to temporary workers as you do for permanent employees.
- Have HR own responsibility for the entire workforce. If ownership of the workforce is divided between HR and procurement, you cannot effectively manage the total employee population and therefore cannot ensure consistent hiring processes.

If you use a third party agency:

- Verify that your hiring agency conducts background checks and spell out exactly the proper screening criteria.
- Be sure to communicate what defines a suitable candidate for your organization and what does not.
- Consider asking your hiring agency to use the same screening firm as your organization, to ensure that quality is consistent between contingent and permanent employees.
- Agree on specific screening procedures in the contract with your hiring agency.
- Build indemnification clauses into your staffing agreements.

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