

How should we handle background checks during a merger or acquisition?

Q. We are acquiring another company and intend to hire hundreds of its employees. Can we rely solely on that company's background and criminal checks?

A. You should scrutinize those past checks, looking closely at the sources and how current the information is.

In negligent-hiring cases in Florida, liability often centers on the adequacy of the employer's pre-employment investigation into the new employee's background. You will have the primary responsibility of adequately and thoroughly performing your own pre-employment background and criminal checks. If a lawsuit emerges, the focus of the legal review will be on what you and your company did—not what the previous employer did.

For your company to take advantage of the statutory presumption of an employer's immunity from liability for negligent hiring under Section 768.096, Florida Statutes, you will need to be the employer that performs the following minimum investigatory tasks:

- Obtain a criminal background investigation on the prospective employee from the Florida Department of Law Enforcement.
- Make a reasonable effort to contact references and former employers concerning the suitability of the prospective employee for employment.
- Require prospective employees to complete a job application that includes questions about their convictions for crimes and whether they have ever been defendants in a civil action for an intentional tort.
- Obtain, with proper written authorization, a check of the driver's license record of the prospective employee if such a check is relevant to the work the employee will be performing and if the record can reasonably be obtained.
- Interview the prospective employee.