

# SMITH ANDERSON

## **NEGLIGENT HIRING: A CHECKLIST**

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Some courts are beginning to expand the employer's duty to provide a safe work environment by imposing on the employer a duty to inquire about whether the applicant would be a safe and suitable employee.

The extent of the duty depends upon the position sought -- a position involving safety-sensitive duties or contact with the public may impose a greater duty.

Absent a specific statutory requirement for a particular position, N.C. law does not require that a background check be conducted.

Employers who voluntarily adopt certain selection procedures (e.g., background checks) but fail to follow them in a particular situation may be liable for negligence.

Resume fraud/employment history gaps

Do not accept resumes in lieu of applications

Require employment history to identify gaps in employment (periods of unemployment)

Specifically ask whether applicant has ever been fired or asked to resign

Verify employment and document all verification attempts and results

Ensure that all screening criteria comply with discrimination (including ADA), drug/alcohol testing, polygraph, Fair Credit Reporting Act and use of arrest/conviction records law.