

Marine

News

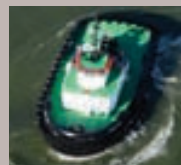
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Getting The Right Crew May Save You A Bundle



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In any significant maritime incident, the question of whether the crewmember responsible for causing the incident should have been doing that particular job is always raised. For example, if you fail to conduct a thorough background check on a master of a vessel and he turns out to be an alcoholic that has been barred from previous jobs for that tendency and an incident occurs while the captain has consumed alcoholic beverages while in command of the ship, you will have a very difficult time convincing a judge or jury that this captain is not responsible for the incident. Other examples where a background screen could save future liability includes crewmembers who fake their licenses or crewmembers who have had numerous prior maritime casualties. Proper screening of job applicants is an employer's first line of defense against hiring mistakes that could create liability for a vessel owner. The potential for litigation and the financial ramifications of a hiring mistake alone are enough to warrant a comprehensive evaluation of your hiring practices. As a result, vessel owners must develop a systematic and detailed program for the application process, interviews, and effective background and reference checks that should be conducted before hiring an employee.

Unfortunately, vessel owners are in the position of complying with a myriad of federal, state and local laws governing hiring practices and restricting background checks and investigations. Several federal statutes restrict an employer's ability to collect or disclose information regarding job applicants, including The Fair Credit Reporting Act, Title VII of the Civil Rights Act of 1964, The Americans With Disabilities Act and the Fair and Accurate Credit Transactions Act. Additionally, every state and many municipalities have their own employment laws that employers must comply with.

The first steps to developing an effective employment screening program involves assigning the task to the proper person, obtaining an application and all necessary written authorizations, and devoting sufficient time to the

process. An employer must show that it acted reasonably by gathering as much information as possible and making an adequate assessment of the information discovered.

Written authorizations should be obtained from applicants granting the employer the right to perform criminal and civil background checks, reference checks, credit checks, to verify prior employment and to confirm educational credentials. To maintain consistency, the employer should make one person responsible for managing the entire process, including applications, interviews and background checks. This individual should develop a comprehensive system of documentation for all applicants. Vessel owners must understand that the process will take time. Time spent on hiring the right employee will avoid future financial and temporal losses.

A written job application is essential to the hiring process because applications often provide more information about an applicant than all other sources combined. To ensure consistency, employers should prepare a standard employment application that can be modified to suit any available position. At minimum, a job application should require the names of previous employers, and dates of employment for the past ten (10) years, the names and telephone numbers of all direct supervisors, at least three personal references, prior job titles, salaries, dates of employment, training and educational history, and a request for prior criminal conviction records. The employer should make it company policy to insist on completion of a comprehensive application even if a resume has been submitted, since discrepancies between the two can alert the employer to a potential problem. Further, an employer should give careful scrutiny to an applicant's reasons for leaving prior employers and strong consideration should be given to poorly explained terminations from prior jobs. Once an application and authorizations are submitted, a background check can begin. For liability purposes, employers should limit the scope of any background investigations performed on prospective employees. Certain positions necessitate a more extensive background check. For example, screening performed on a senior-level executive entrusted with sensitive information and concerned with financial aspects of the company will merit a complete criminal and civil background investigation, credit history, exhaustive internet search, and extensive reference evaluation. Whereas, a deckhand may

only require a civil and criminal background check, a basic reference check and a drug screen. It is important to be consistent with a pre-employment screening process. Employers are discouraged from conducting background checks on certain candidates, while foregoing the process with other candidates seeking the same or similar positions. A comprehensive policy regarding reference checks will allow the employer to verify all information provided by the prospective employee on the application, as well as provide valuable insight on whether the employee will be a good fit for the company. It is the best practice to have the individual that actually interviewed the job applicant contact the references. Former employers are generally the best reference for obtaining information related to the applicant's employment related qualifications and capabilities. If an applicant says that he or she cannot identify or allow you to contact a former employer at the present, employers can condition the offer of employment on a favorable report from that prior employer. Employers should not contact an applicant's current employer without the applicant's express permission to avoid subjecting itself to claims of interference with the applicant's current employment. Employers are often stymied in their efforts to gain more information about potential employees by reluctance on the part of former employers to provide any information (aside from name and dates of employment) on the applicant for fear of future litigation. In most instances, depending upon the state you are operating in, employers are granted a "qualified privilege" to provide information to prospective employers. The basis for this qualified privilege is that the public interest is better served by encouraging accurate assessment of an employee's qualifications. The majority of states have enacted legislation to protect employers from liability for communicating information about the employee's ability, job performance, or other work

related information-unless the previous employer acts with malice (i.e. knowingly or with reckless disregard communicates false information).

In addition to background checks, most marine employers drug test their potential employees. Employers must consider the legal ramifications of administering drug tests to potential employees. Private employers may con-

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(DeMarcaey Continued from page 21)

duct tests to detect whether a job applicant is using illegal drugs without violating the Americans with Disabilities Act ("ADA"), because such tests are excluded from the ADA's definition of "medical examination." Although the administration of a drug test is not a per se violation of the ADA, an employer cannot conduct a meaningful drug test before making a conditional job offer, because neither the employer nor its agent can ask about prescription medication in the blood stream or medical impairments that may affect the drug test results. As such, the employer must wait until a conditional offer of employment has been extended before requiring a drug test. If the employer decides to conduct drug tests on potential employees, the employer should ensure that there is a written policy regarding the program. This written policy should detail the type of drugs for which it is testing and set forth the procedures taken when an applicant tests positive for the prohibited drugs. Finally, to prevent defamation lawsuits, employers should take steps to ensure that only those individuals within the company who need pre-screening information are able to access the test results. These individuals should be thoroughly versed on privacy issues and required to maintain strict confidentiality. Once the screening process is complete, it is important to dispose of the work product in a proper manner. The Fair and Accurate Credit Transactions Act ("FACT Act") affects personal information, including telephone numbers, address, social security number and medical information. While The FACT Act Disposal Rule does not mandate that companies retain or dispose of any particular consumer information after a certain length of time, it requires "any person who maintains or otherwise possesses consumer information for a business purpose" to properly dispose of consumer information in a manner that is both reasonable and appropriate to protect against unauthorized disclosure.

Ensuring that the FACT Act Disposal Rule requirements are met is the final step to achieving a comprehensive and effective pre-employment screening program. Although we all realize that time is of the essence in the maritime world, a little extra time spent scrutinizing candidates during the employee screening process may save you from a serious liability claim later. As Ben Franklin stated, "An ounce of prevention is worth a pound of cure."



**Washington State
Department of Transportation**

**2009 - 2010 VESSEL LEASE FOR
PORT TOWNSEND - KEYSTONE FERRY ROUTE
REQUEST FOR EXPRESSIONS OF INTEREST**

The Washington State Department of Transportation, Ferries Division, operator of Washington State Ferries (hereinafter called "WSF") is seeking expressions of interest for the following project:

A lease of one (1) auto ferry for service on the Port Townsend - Keystone ferry route in Puget Sound, Washington. The lease will be for an interim period of time while WSF contracts for the construction of new auto ferries to operate on that route. The requested lease is for eight (8) months, from August 2009 through March 2010, with a possible earlier commencement date depending on vessel availability. The vessel will be operated by WSF crews, approximately sixteen (16) hours per day, seven (7) days per week. The route service distance is approximately 4.3 nautical miles each way.

The vessel must have the following minimum characteristics:

- Minimum of 300 passengers and 50 vehicles;
- Double ended vehicle loading and offloading (no side loading capability);
- Minimum service speed of 11.5 to 12.0 knots @ 85% maximum continuous rating of engine output;
- USCG certified for Lakes, Bays, and Sounds with a current Certificate of Inspection;
- Minimum two compartment subdivision;
- Sea Keeping capability for operating in 4 to 6 feet sea conditions without water on deck;
- Capable of carrying vehicles of 80,000 to 100,000 lb weight;
- Clear vehicle deck height for tall vehicles - minimum 14 feet;
- Maneuvering stopping distance from full speed to full stop within two boat lengths;
- Double ended propulsion; no backing into or out of Keystone Terminal;
- Maximum draft 13.0 feet;
- Meets ADA accessibility requirements for passenger areas and restrooms; and
- Meets USCG 100% life raft capability.

Subject to the above requirements, interested vessel owners should send a description of their vessels as soon as possible to the address listed below. The responses are non-binding as to vessel availability.

Tim McGuigan

Director of Legal Services & Contracts

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2901 Third Ave., Ste. 500
Seattle, WA 98121-3014

Phone: 206.515.3601

Fax: 206.515.3605

E-mail: mcguigan@wsdot.wa.gov

WSF assumes no obligation of any kind for expenses incurred by a respondent to this Notice.