

NEGLIGENT HIRING & NEGLIGENT RETENTION



The Noble Group

Safety Culture Development Specialists

In 2023 rapid response is the new organizational baseline.

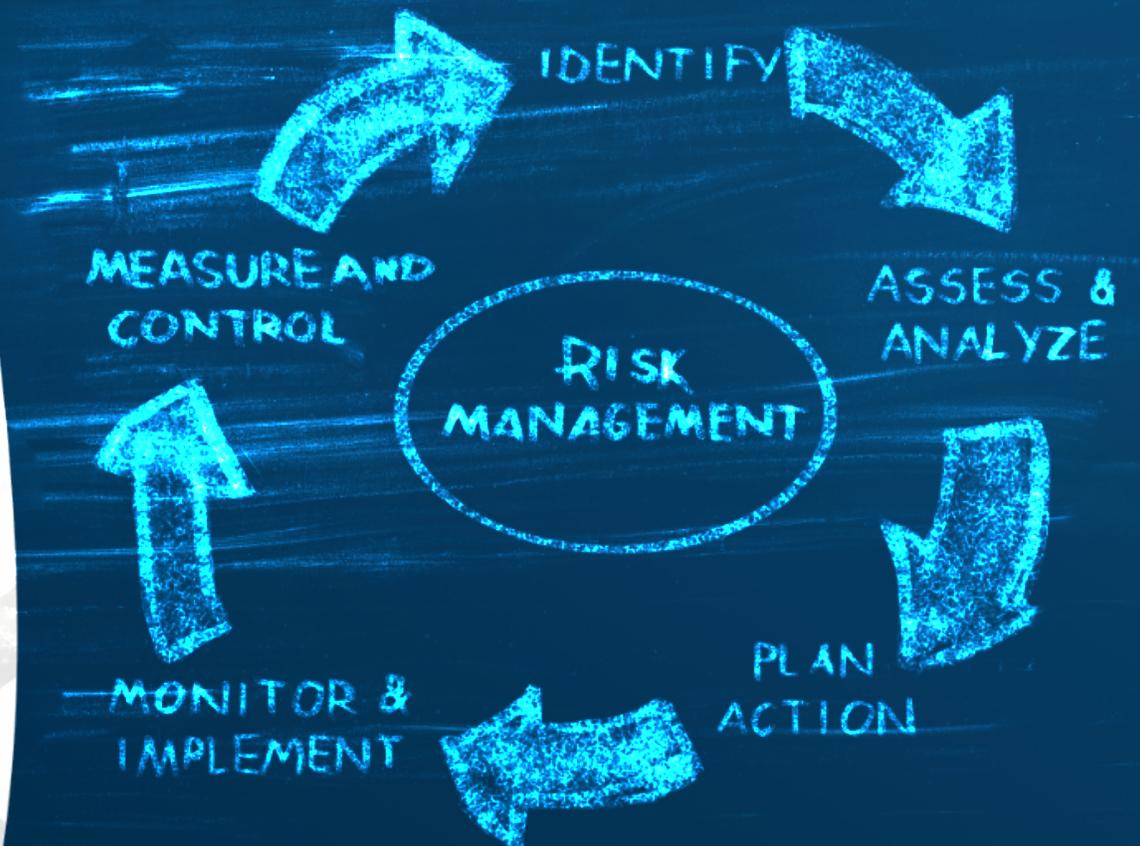
Uncertainty is expected and risk complexity is compounding.

As threats materialize on multiple fronts, organizations must reduce the critical time from insight to action.

Leaders need precise risk intelligence to dodge obstacles as they appear.

To prepare, executives must try to predict the future. How and where threats appear, as well as where they overlap, will have far-reaching implications for businesses.

One such emerging threat to today's organizations is that of **NEGLIGENT HIRING** and/or **NEGLIGENT RETENTION**.



What is Negligent Hiring?

Negligent hiring is an increasing legal trend involving a claim made by an injured party against an employer. It is based on the theory that the employer knew or should have known about the employee's background which, if known, indicates a dangerous or untrustworthy character. Pre-employment background checks, employee drug testing, and employment physical exams are some of the ways negligent hiring claims can be avoided.

Roughly half of the states legally recognize that an employer is responsible for, and can be held accountable for, checking the background and references of any job applicant before placing that applicant in a position of high public contact. Employers have been found liable for negligent hiring or retention of dangerous or incompetent employees in most states, including, among others, Alaska, California, Florida, Georgia, Illinois, Kansas, Maryland, New Mexico, and New York. Some of the the types of businesses employees most at risk to do harm due to failure to make informed hiring decisions include real estate agents (who have keys or know pass-lock combinations), rental apartment personnel, condominium personnel, delivery persons, service and maintenance persons, nursing and convalescent home workers, home health care aides and utility personnel.

The Difference Between “Hiring” and “Retention”

“Negligent retention” can be charged when an employer knew, or should have known, that an employee was unqualified to be in the job position he/she held when the action in question occurred. The negligence issue arises when an agency can be shown to have allowed a behavior to continue, even when the supervisor or administrator knew it was negligent. This does not mean an employer must monitor every aspect of an employee's behavior; rather, it means that administrators and supervisors must be aware that specific actions must be taken to guard against and lay the foundation for a defense against negligent retention lawsuits. Appropriate policies, training, progressive discipline and the involvement of dedicated human-resource personnel are critical to an agency's ability to defend against negligent-retention lawsuits. Courts usually examine a number of factors when determining whether negligent retention of an employee has occurred. The court will typically examine what the employer knew or should have known about the employee's job performance. Evidence of early intervention to correct poor performance or misconduct is important. Channels of communication between employees and supervisors must be clear, and employee performance evaluations must be regularly conducted in order to identify employees with performance problems. When it is clear that a pattern of incompetence and misconduct has not been corrected through training and constructive guidance, then the issue of negligent retention arises if the employer fails to remove the employee from his/her position.

NET TAKE AWAY

Hiring and retention of qualified and committed employees are extremely demanding in today's world. Human Resource personnel experience this challenge and difficulty daily. Due diligence to avoid negligent hiring and negligent retention compound this risk.

In order to avoid liability, a thorough background check is the best defense against a negligent hiring lawsuit. In recent years, the number of negligent hiring lawsuits being filed against employers is increasing

<https://markel.hrcare.com/article.aspx/176/NegligentHiring>

Similarly, post-hire behavior awareness allows an opportunity to significantly reduce the risk of negligent retention.

The Noble Group works with businesses in all industries to expedite the hiring process by providing quality and timely background checks on applicants as well as post-hire awareness of employee behavior reducing your risk of a lawsuit for negligence.

It has never been more important to truly "know" your employees.