

# Employers Beware Negligent Hiring Litigation Claims

By Robert Capwell, RIMS-CRMP

## Negligent Hiring

Negligent hiring is a legal theory under tort law that holds an employer liable for harm caused by an employee if the employer failed to exercise reasonable care in assessing the employee's fitness for the job before hiring them. This concept arises when the employer's lack of due diligence in the hiring process results in hiring someone who is unfit or poses a foreseeable risk of harm to others.

## Key Aspects of Negligent Hiring

1. **Foreseeable Risk:** The employer knew or should have known that the employee's background, history, or qualifications made them unsuitable for the job and potentially dangerous to others.
2. **Failure of Due Diligence:** The employer did not take reasonable steps, such as conducting background checks, verifying references, or ensuring proper qualifications and skills.
3. **Connection to Harm:** The employee's unfitness or dangerous tendencies directly contributed to harm or injury suffered by another person.

Negligent hiring differs from other employer liability theories, such as negligent retention or vicarious liability, as it specifically focuses on the hiring process rather than the employer's ongoing supervision or control over the employee.

A negligent hiring civil court case occurs when an employer is sued for failing to properly vet an employee who later causes harm to others due to their actions or behavior. This type of claim typically arises when the employer's lack of due diligence during the hiring process results in hiring someone unfit for the role, leading to harm or injury to a third party.

## Elements of a Negligent Hiring Claim

To succeed in a negligent hiring case, the plaintiff (the person filing the lawsuit) must generally prove the following elements:

1. **Duty of Care:** The employer had a duty to exercise reasonable care when hiring employees, especially for roles that could pose risks to others.

2. **Breach of Duty:** The employer failed to conduct a reasonable background check or screening that would have revealed the employee's unfitness for the job (e.g., criminal history, lack of qualifications, history of violence).
3. **Causation:** The employer's breach of duty directly led to the harm. The plaintiff must show that the employer's failure to vet the employee was a key factor in the incident.
4. **Harm or Damages:** The plaintiff suffered actual harm (e.g., physical, emotional, or financial) as a result of the employee's actions.

## Common Scenarios of Negligent Hiring

Negligent hiring claims often arise in situations such as:

- Hiring a delivery driver without checking their driving record, and the driver causes a serious accident.
- Employing a caregiver without verifying their background, who then abuses or neglects the person they are caring for.
- Hiring a security guard with a history of violence, who later assaults someone.

## Employer Responsibilities

Employers can reduce the risk of negligent hiring claims by:

- Conducting thorough background checks, including criminal history, driving records, and references.
- Verifying credentials and professional qualifications.
- Ensuring the employee has the necessary skills, training, and temperament for the role.
- Taking special care when hiring for positions that involve interaction with vulnerable populations or access to sensitive information.

## Legal Outcomes

If the plaintiff proves their case, the employer may be held liable for damages, which could include medical expenses, lost wages, pain and suffering, and other losses resulting from the incident.

Negligent hiring cases emphasize the importance of thorough hiring practices to protect both the public and the employer.

## What is a negligent hiring expert witness?

Negligent hiring and retention experts are witnesses who can testify about employer's duty of care, foreseeability of employee conduct, reasonable investigation, retraining, reassignment, and discharge, among other issues.

## Robert Capwell – Negligent Hiring Expert

[Robert Capwell](#) is a nationally recognized negligent hiring litigation expert leveraging more than three decades of employment screening experience. He is the founder and principal consultant of Capwell Consulting Group LLC, which provides litigation support and expert testimony in the areas of negligent hiring cases.

## About Us

[Capwell Consulting Group](#) is a nationally recognized litigation support and risk mitigation consulting firm specializing in highly regulated industries. Our firm provides industry-leading guidance, research, reporting, and expert witness testimony for legal proceedings involving background screening, HR and employee management, and medical device quality and regulatory compliance matters. With over 35 years of industry knowledge and leadership, Capwell Consulting Group is a trusted advisor to employers, attorneys, and consumers around the globe.