



# Guarding Against Bad Apples:

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## *How to Protect Your Organization from Criminal Acts of Others*



**KOPON AIRDO, LLC**  
ATTORNEYS AT LAW

Webinar  
September 7, 2011

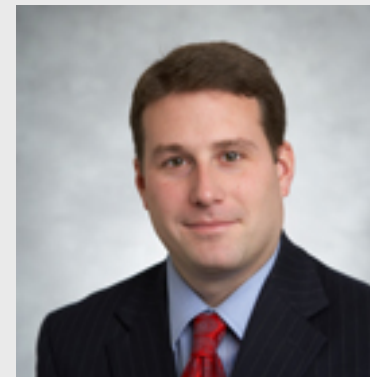
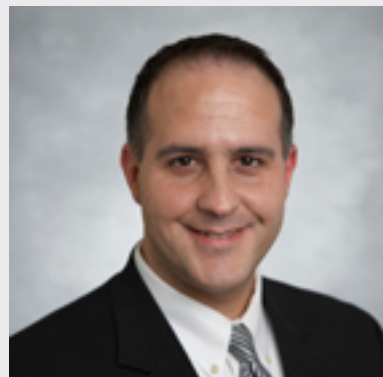




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# CRIMINAL ACTS

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# INTERESTED PARTIES

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- Employers in General
  - Manufacturing Plant
  - School
  - Nursing Home
  - Religious Order
- Insurers and Claims Professionals



# CRIMINAL ACTS OF EMPLOYEES/VOLUNTEERS

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- Generally, not responsible
- Exceptions:
  - Vicarious Liability
  - Direct Liability





# DIRECT LIABILITY

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- Negligent Hiring
- Negligent Training
- Negligent Supervision
- Negligent Retention



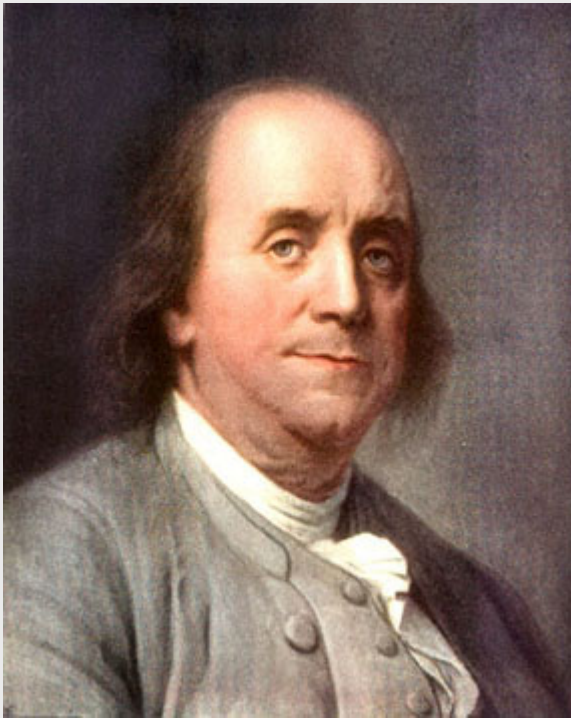


# NOTICE

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- Key component:
  - What did you know?  
Or
  - What should you have known?





An Ounce of  
Prevention is  
Worth a Pound  
of Cure





# RISK MANAGEMENT TOOLS

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- Pre-Employment Screening and Selection
  - Employment Applications and Interviews
  - Background Checks and References
  
- Post-Employment Checks and Balances
  - Staff and Volunteer Training and Supervision
  - Routine Reviews and Audits



# PRE-EMPLOYMENT SCREENING

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- Investigating the background of a potential employee through pre-employment screening can minimize the risk of negligent-hiring lawsuits.
  - Applications
  - Interviews
  - Background checks
  - References



# APPLICATION PROCESS

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- Complete Work and Educational History
- Personal History
- References
- Declaration
  - Self-Select Out Process
- Keep Record of All Written Applications and Materials





# APPLICATION PROCESS CON'T

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- Pre-employment and interview screening to verify employment references, personal references, and employment history, and academic history and degrees.
- Check for Red Flags
  - Gaps in employment
  - Incorrect or false information
  - Incomplete or vague information
  - Unable to provide supervisors as reference
  - Theme of problems with authority





# INTERVIEWS

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# INTERVIEW QUESTIONS

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- Opportunity to Meet Applicant Face-to-Face
- Take time to explore all areas necessary to make a sound decision
- Interview by Committee



# INTERVIEW QUESTIONS

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- Questions regarding problems with authority
- Questions about conflict resolution in the workplace
- Open-ended questions geared at evoking narrative responses
- Why applicant left his or her previous job
- Ever disciplined at previous jobs
- History of violence in the workplace
- History of any criminal activity



# INTERVIEW QUESTIONS

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- Red Flags:
  - Angry or defensive responses to questions
  - Evasive responses
  - Themes
    - Problems with authority
    - Negative comments about prior employers





# BACKGROUND CHECKS

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- Recommended for all Employers
- Sometimes required by Law
  - Schools
  - Persons working with children or the elderly
  - Nursing Homes
- Make position contingent upon a clear background check
- Specific legal obligations when conducting and using a background check to make employment decisions



# THE FAIR CREDIT REPORTING ACT

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# THE FAIR CREDIT REPORTING ACT

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- Sections 604, 606 and 615 of the Fair Credit Reporting Act (FCRA) spell out an employer's responsibilities when using consumer reports for employment purposes.
- There are legal consequences for employers who fail to obtain an applicant's permission before requesting a consumer report or who fail to provide pre-adverse action disclosures and adverse action notices to unsuccessful job applicants.
- Information received may be limited by release or service provider.
- Generally, all public records, including employment history, driving record, criminal record, and credit report
- <http://www.ftc.gov/os/statutes/031224fcra.pdf>



# REFERENCES

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- Professional Reference
  - Persons with knowledge of the applicant's work history
  - Supervisors
- Personal Reference
  - Persons with knowledge of the applicant, generally
- All References
  - Length of relationship
  - Nature of relationship
- Maintain Documentation
- Make employment contingent upon reference check



# REFERENCE RED FLAGS

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- General reluctance to serve as a reference
- Reference did not know the applicant well or for only a short period of time
- Refusal to answer certain questions
- Any unfavorable comments
- Evasive answers





# POST-EMPLOYMENT CHECKS AND BALANCES

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- Best Practices to Manage Risk after the Employee has been Hired
  - Staff and Volunteer Training
  - Supervision
    - Formal
      - Structured
      - Hierarchy
    - Informal
  - Routine Reviews and Audits
    - Keeps employees honest
    - Gives employees a voice



# WHY?

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- Tools Necessary not only to catch a criminal, but to prevent crime
  - Keeps Employer informed
  - Keeps Employees knowledgeable and on their toes
    - Spot warning signs, or “Red Flags”
    - Employee may find the opportunity to commit a crime less likely given the controls in place
      - Criminal may move on like a burglar bypassing a house with a dog





# STAFF AND VOLUNTEER TRAINING

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## ➤ Training Program

- Systematic
- Planned
- Documented
- Implementing a solid, clear training program in which everyone participates



## ➤ Training Tools

- Policies
- Handbooks
- Hands-On Instruction or Videos

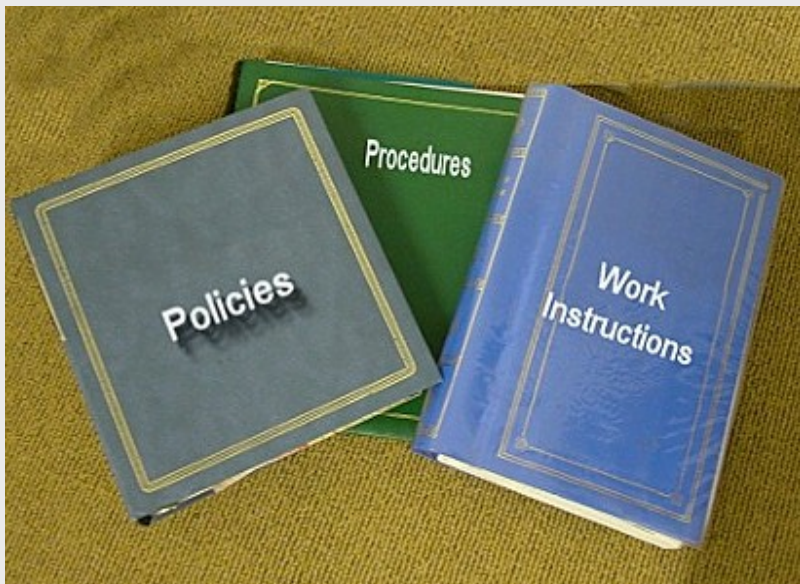






# POLICIES & HANDBOOKS

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- Employee policies and handbooks can be an excellent way to communicate the company's policies and expectations to employees.
- Creating thoughtful, tailored policies and following them
- Everyone being responsible to protect the organization



# POLICY SPECIFICS

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- Practical and Easy to Follow
- Tailor Policies to your organization
- Prohibited Behaviors
- Expected Behaviors
- Zero Tolerance
- Update and review frequently – at least annually



# POLICY PRACTICE TIPS

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## ➤ Policies

- Do not create Policies that you do not intend to or cannot follow.
- Policies create Standards for your organization that must be followed.
- If the Policies are not followed and strictly enforced, the organization can be held accountable.





# BOTTOM LINE

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- If an organization does not follow its Policies, it may be found NEGLIGENT.
- Organizations will be held to the standards set forth in their Policies
- Creating a Duty
- Because the standards exist, they are expected to be followed





# ACKNOWLEDGEMENT FORMS

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- Have all employee sign a written acknowledgment that includes disclaimer language verifying receipt of the handbook and/or policy.
- Retain a copy of the executed acknowledgement form to be retained in employee personnel files.





# SUPERVISION

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## ➤ Formal Supervision

- Hierarchy
  - Who supervises whom?
  - Who reports to whom?
  - Overlapping and redundant
    - Committees

## ➤ Informal Supervision

- Staggered
- Unpredictable
- Place responsibility upon every employee





# EVERYONE MUST BE ON GUARD

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- Everyone must be keeping watch for “red flags”
- Everyone has a duty to intervene
- Employees AND volunteers





# TRAINING EMPLOYEES TO SPOT WARNING SIGNS - ABUSER

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## ➤ Common “Red Flags”:

### ■ Abuser

- Employee often finds reasons to spend time alone with a minor
- Employee prefers the company of minors to peers
- Employee shows favoritism to certain minors
- Employee treats minors like adults
- Employee ignores policies related to interactions with minors
- Employee comments on or compliments minors' bodies
- Employee shows any form of unwanted affection towards a minor







# TRAINING EMPLOYEES TO SPOT WARNING SIGNS – VIOLENT AGGRESSOR

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## ➤ Common “Red Flags”:

### ■ Violent Aggressor

- Employee is easily agitated
- Yelling or screaming
- Unexplained mood changes
- Blames problems on co-workers or supervisor
- Holds a grudge against a co-worker or supervisor
- Makes threats
- Unfriendly with co-workers
- Drug or alcohol abuse





# TRAINING EMPLOYEES TO SPOT WARNING SIGNS - FRAUD

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## ➤ Common “Red Flags”:

- Thief [Con-man vs. Opportunistic Thief]
  - Employee often comes to work early or remains at work after hours
  - Comes in on weekends
  - Refusing to take vacation time
  - Significant new purchases
  - Gambling
  - Drug or alcohol abuse
  - Borrowing money from co-workers





# EMPLOYEE REVIEWS

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- Formal or Annual/Bi-Annual Reviews
- Informal Reviews





# FORMAL REVIEWS

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- Annual or Bi-Annual reviews
  - Two-way street
    - Be prepared to listen and learn
    - Not just critique
  - Engage in an open forum
    - What policies and procedures  
Are working
    - Which are not
    - Re-enforce importance of policies
  - Any concerns about other employees



# INFORMAL REVIEWS

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## ➤ Informal

- Periodic
- Unplanned
- Engage in an open forum
- Two-way street





# AUDITS

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- Geared toward the financial criminal
- Fraud Management Program
  - Inside and outside controls
- Numbers - Make certain no one person is in complete control over your organization's financials
  - Committees
    - Board of Directors
    - Officers/Management
    - Employees
- Anticipate rather than react
- Frequent and varied





# AUDITS CON'T

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- React to reasonable concerns or “red flags”
- Where there is smoke there is fire
- Follow through with reports of irregularities
- Follow through with your policies
- Reward integrity



# CONCLUSION

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- Risk Management Tools
  - Fix the roof while the sun is still shining
- Protection in the event of a claim
- Anticipate and prevent
- Screen criminals or persons likely to commit a crime before they ever walk through your doorway
- Discourage criminal activity once hired with an active and conscientious program of training, supervision, and review







# QUESTIONS?

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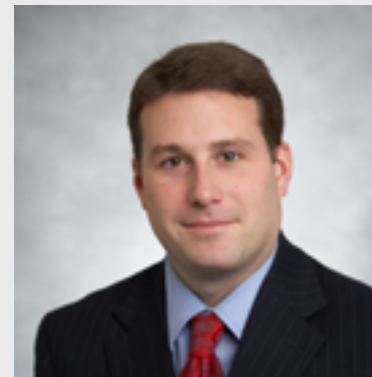




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