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In 2006 and 2008, *Corporate Counsel* magazine named Allen Matkins a "Go-To" law firm for **labor and employment.**

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It's Only a Matter of Degree – Companies Find Trouble in Publicizing the Educational Backgrounds of Officers

Many companies disclose the educational achievements of their directors, officers and key employees. These disclosures can be found on company websites, in company press releases and in filings made with the Securities and Exchange Commission and other regulators. Recently, several companies have had to confront embarrassing allegations that they had misstated the educational attainments of their key personnel.

One publicly traded company, for example, had disclosed in the prospectus for its initial public offering that its president "holds a B.A. in Biology and Chemistry from the University of Colorado, an M.S. in Engineering from Loyola, and an M.B.A. from Pepperdine University". Less than a year later, that company was forced to issue a press release announcing the resignation of its president stating: "that despite his several years of attendance and course work at the University of Colorado and Loyola Marymount University, he did not receive a B.A. degree from the University of Colorado or a M.S. degree from Loyola Marymount University, as he had previously represented." In another case, a company recently announced that following an investigation it had determined that its president and chief executive officer had not obtained "either a Bachelor's Degree or Masters of Business Administration." Although the company did not terminate the officer in question, it did impose substantial penalties, including a payment of \$100,000 to the company and an agreement to forego his annual bonus (which had averaged nearly \$700,000 during the

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Allen Matkins Leck Gamble Mallory & Natsis LLP is a California law firm with over 230 attorneys practicing out of seven offices in Orange County, Los Angeles, Century City, Del Mar Heights, San Diego, San Francisco and Walnut Creek. The firm's broad based areas of focus include employment and labor law, corporate, real estate, construction, real estate finance, business litigation, taxation, land use, bankruptcy and creditors' rights, intellectual property and environmental. [more...](#)

last three years). These are not isolated examples. In the last several months, the academic credentials of officers of several other publicly traded companies have been challenged.

At a minimum, questions about academic degrees can be distracting and potentially costly to investigate. If allegations of résumé padding are sustained, companies face embarrassment and potentially more. Reportedly, many of these allegations are being made by an entity that investigates educational claims and then shorts the employer's stock when it finds discrepancies.

Companies can take steps to protect themselves from résumé fraud by, among other things, conducting background checks on their officers and directors. If a company acquires another company and its executives, it should consider running background checks on the acquired executives. Otherwise, it may be inheriting a disclosure time bomb. Companies should also review their Code of Ethics policies with a view to specifying that misrepresentation of a credential is a breach of the code.

Finally, companies may wish to define "cause" in employment arrangements to include misstatements of educational or employment background.

Companies that conduct background checks on applicants and/or employees must comply with the separate, but overlapping notice and disclosure requirements of the federal Fair Credit Reporting Act (FCRA) and the California Investigative Consumer Reporting Agencies Act (ICRA). As a general rule, these laws require that an employer secure an applicant or employee's prior written authorization before it procures a background report, except when the report is sought based on suspicion of employee misconduct or wrongdoing. A company investigating alleged harassment in the workplace, for example, is not obliged to secure the alleged harasser's authorization for the company to perform a background check. The FCRA and ICRA also generally mandate that a copy of any background report obtained be provided to the applicant

or employee and that the applicant be given notice in the event that adverse action is intended to be based, in whole or in part, on information revealed in the report.

While navigating these rules is not always simple, any burden associated is far outweighed by the benefits gained. Not only do comprehensive background checks help expose résumé fraud, even more, if conducted properly, they serve to reduce the number of bad hires and the company's exposure to liability created by such hires.

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