

Compliance Due Diligence Checks - The Reference Interview

A compliance evaluation is becoming a more common component of the employee selection and hiring process. Many companies now specifically include background checks (or due diligence in compliance parlance) when hiring senior managers or others who will hold high levels of authority for a company. Many practitioners feel that a reference is not of value because prospective candidates will only list references who they believe will provide glowing recommendations of character. This leads to a pro forma reference check. However, in an article in the January-February issue of the Harvard Business Review, entitled, “*Gilt Groupe’s CEO on Building a Team of A Players*” author Kevin Ryan explodes this misconception by detailing how he views the entire hiring process and specifically checking references.

In the hiring of personnel, Ryan details the three steps his company takes: (1) Resume review; (2) In-Person interview; and (3) Reference checks. Ryan believes that resumes are good for establishing “basic qualifications for the job, but not for much else.” He believes that the primary problem with in-person interviews is that they are skewed in favor of “persons who are well spoken [or] present well.” For Ryan, the key check is through references and he says that “References are really the only way to learn these things?”

Ryan recognizes that many people believe that reference checks are not of great value because companies cannot or will not give out much more information than confirming dates of employment. However, he also believes that “the way around it is to dig up people who will speak candidly.” He also recognizes that if you only speak to the references listed on a resume or other application, you may not receive the most robust appraisal. Ryan responds that the answer is to put in the work to check out references properly. Ryan believes this is one of the key strengths of search firms and that companies should emulate this practice when it comes to reference checks.

He notes that anyone who has worked in an industry for any significant length of time will have made many connections. Invariably some of these connections will be acquainted with you or those in your current, and former, company. Ryan gave the following example: A longtime friend who was employed at another company called and said that he had been asked by his hiring partner to find out “the real story” on a hiring candidate by asking Ryan his candid opinion of the candidate. Ryan’s response was “Don’t hire him.” Lest you think that such refreshing honesty no longer exists when informal employment references are provided, you are mistaken. In my past corporate position, I was charged in performing compliance due diligence on senior executives and I spent time doing what Ryan suggested, calling acquaintances that I knew and asking such direct questions. More than 75% of the time, I got direct responses.

Ryan believes that you must invest your company in the hiring process to get the right people for your company. The same is true in compliance. You do not want people with a propensity for engaging in corrupt acts working for, or leading, your company. As far back as Opinion Release

04-02 the Department of Justice (DOJ) realized this was an important part of an overall compliance program when it approved a proposed compliance program which had the following requirement:

Clearly articulated procedures which ensure that discretionary authority is not delegated to persons who the company knows have a propensity to engage in illegal or improper activities.

So give the reference check some respect, for if you respect it, it can be a valuable and useful tool for you and your compliance program.

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