

Avoid employee fraud litigation by employing thorough background checks

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By verifying documents during hiring, employers could save themselves costly litigation against employees who submit fraudulent credentials to secure jobs and promotions.



Image source: Getty Images

Since the enactment of the National Qualifications Framework Amendment Act 12 of 2019 (NQFA) in 2019, employers have had to significantly bolster their qualification and screening processes during hiring. The key changes to the NQFA include criminal sanctions for persons who misrepresent their qualifications. The NQFA also obliges employers to authenticate qualification(s) presented to them by prospective employees. Read more about the amendments to the NQFA [here](#).

Although this represents a victory for employers who battle with applicants and employees who have misrepresented their qualifications, it is important to ensure that employers conduct proper validation and authentication processes to avoid unnecessary legal battles.

Umgeni Water v Naidoo and Another illustrates why employers should properly check qualifications and screen their employees. In this case, Naidoo was employed by Umgeni Water, which is responsible for bulk water distribution. He claimed to have a BSc degree in Chemical Engineering, but this was not validated by the employer when he started his job in 2008.



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When Naidoo applied for a Process Technician position in 2016, Umgeni Water referred the qualifications of all applicants for verification. Naidoo's qualifications did not withstand scrutiny - there was no record of his receiving a BSc. When called to provide evidence of his degree, he was unable to do so, and later he resigned, citing an illness which he said was life-threatening.

Umgeni Water instituted civil proceedings, seeking the repayment of all salaries paid to Naidoo based on his fraudulent misrepresentations. The employer said that millions of people in KwaZulu-Natal depended on it for the safe supply of water. This necessitated employing qualified employees who inter alia perform calculations to determine which chemicals, and in what quantity, should be added to the water. Any errors could have serious consequences for the general populace.

The High Court considered whether the contract entered into between Umgeni Water and the employee was void or merely voidable. It held that the contract was voidable at the instance of the employer. If the employer had known that the employee did not have the required university degree, it would not have appointed him to any position. The Court found in favour of Umgeni Water and issued a judgment against Naidoo to repay R2,203,565.04, which would be executed against his provident fund. It reasoned that the employer was able to prove the alleged fraud, and Naidoo offered no evidence that a restitution order would be unjust.

Though brazen, these facts are not unique and are similar to the circumstances in [Passenger Rail Agency South Africa v Mthimkhulu](#) when a former executive employee was ordered by the High Court to pay damages of R5,771,854.39 in 2019 to his former employer for fraudulently misrepresenting qualifications. The employer pursued a criminal case against the former employee. In January 2023, the Johannesburg Specialised Commercial Crimes Court found him guilty of fraud for submitting fraudulent qualifications to his employer and forging an offer of employment to induce a salary increase.



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The cases cited above centre on fraudulent qualifications, but there is another risk: forged or fraudulent work permits and identity documents proffered by applicants and employees.

In June 2022, the Department of Home Affairs (DHA) Counter Corruption Branch, working with the Hawks, revealed that corrupt officials at the DHA had provided work permits and identity documents fraudulently. In some instances, these invalid documents were provided to applicants who believed they were issued lawfully. As a result, foreign nationals may possess fraudulent qualifications or work permits without any knowledge of wrongdoing. This finding is particularly concerning for employers in view of the hefty penalties for non-compliance with labour and immigrations laws on the employment of foreign nationals.

In weeding out corruption, employers' pursuit of employees who submit fraudulent documents to secure employment or enhanced benefits by instituting civil litigation, freezing pension benefits, and initiating criminal cases is laudable. However, employers would save time and money by incorporating a verification process into hiring and certain promotions' processes. Employers should not take documents at face value, rather be safe and authenticate.

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