

LATERAL HIRING: WHAT YOU DON'T KNOW CAN HURT YOU

In a highly competitive lateral market, about half of law firm hires don't make it past the first five years and retention rates continue to disappoint. Retaining key hires can be a complex issue and chief among the considerations is being sure the due diligence is done before making an offer. A quick scan of any legal publication illustrates how, time and time again, the reputation of a firm is damaged by a lack of proper due diligence.

The scenario is all too familiar: going through an arduous hiring process, only to discover, one week too late, that your new lateral is the subject of an internal investigation for criminal activity or improper workplace conduct.

Conducting proper [due diligence on a lateral hire](#) need not be burdensome and overwhelming, or costly, to get you the necessary information to make the best decision. Not placing the right priority on a pre-hire investigative risk assessment, and hiring the wrong person, can lead to allegations of malpractice and severely damage a firm's reputation.

The systematic and comprehensive implementation of a background investigation, prior to hiring, comes with challenges. [Laws aimed at preventing employment discrimination](#) may prohibit inquiring about criminal convictions and arrests during the hiring process. In addition, pre-existing non-disclosure and confidentiality agreements related to relevant past behaviors may not be accessible to assist in the decision-making process.

Deftly navigating these challenges is critical. Here are a few things that can help law firms make an informed decision when making a lateral hire:

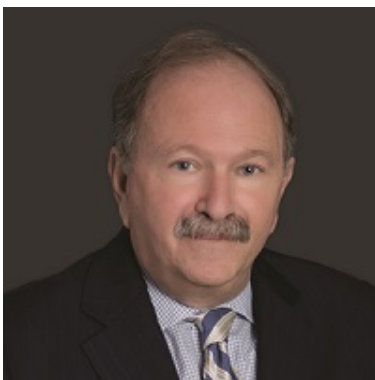
1. **Use information that is publicly available.** Valuable information can be found by searching through public records. These include both commercial and government records at the federal, state, and local level.
2. **Analyze past conduct.** Take a closer look at behaviors that raise red flags or identify potential wrongdoing, even if it was not reported to employers or public authorities.
3. **Do a social media review.** Someone's online conduct via social media channels can sometimes greatly diverge, and in potentially troubling ways, from what they say and do in professional settings. It's important to review these communication channels.

4. **Cast the net wide.** Beyond the public record and past employers, also look at vendor relationships, industry insiders, litigation adversaries, former employees, and former business partners. If you have an existing relationship with anyone who has crossed paths with the candidate in the past, speaking with that person can also be a valuable resource. This step is particularly important if the other due diligence you have performed has raised any type of red flag.
5. **Conduct a robust interview.** Having a face-to-face interaction with a potential hire is crucial. Prepare your questions in advance, and don't be afraid to probe – you may not want to make the interviewee uncomfortable, but you should ask questions that will get you the answers you need, to make the right hiring decision.

Key here, as well, is working with a due diligence expert who has deep and broad experience and a network of contacts. These experts work without being so intrusive as to create a climate of distrust with the potential hire. This illustrates that the culture of compliance at the firm is simply a natural part of the hiring process, rather than a hostile inquiry.

The U.S. Department of Justice's Office of Attorney Recruitment and Management employs the FBI to conduct "a full-field background investigation to ensure that each attorney hired is suitable for appointment," as part of its own lateral hiring process. Obviously, law firms cannot be expected to, and understandably would not want to, employ the full investigatory weight of an outside organization like the FBI. However, they can also no longer afford to bear the detrimental consequences of not doing extensive background investigations of their lateral hires.

An independent due diligence firm will dig deeper than a typical in-house investigation, collecting additional intelligence, as well as relevant reputational information mined from industry sources, business contacts and through targeted, discreet interviews, which provide insight into an individual's character and financial fitness. Of course, all of this is tailored to the individual circumstances. With these procedures in place, a law firm can feel secure in the knowledge that they have taken appropriate steps to vet new lateral hires.



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