

News and Legislation Relating to Employment and Background Checks

Federal News and Legislation:

Background Checks

- On December 9th, a federal district court judge ordered the United States Equal Employment Opportunity Commission (EEOC) to disclose its own background check policies to BMW Manufacturing Co. LLC (BMW), reversing a previous U.S. magistrate judge's order on the issue. The EEOC filed the lawsuit alleging that BMW's use of criminal background checks for hiring has a disparate impact on black job applicants, a violation of Title VII of the Civil Rights Act of 1964. BMW argued that the EEOC's background check policies impacted its defense in the case and, thus, requested the agency's policies. The EEOC argued that its background check policies were not relevant to the dispute. BMW "is entitled to discovery on this issue as it relates to [its] defenses," the federal district court's order said. Consequently, "[t]he court finds that the magistrate judge's order should be set aside." Notably, while the federal district court compelled the EEOC to disclose its background check policies, the judge emphasized that he had not made a determination that the policies will be admissible, and that the EEOC's policies may, in fact, prove not to be relevant.
(United States Equal Employment Opportunity Commission v. BMW Manufacturing Co. LLC, No. 7:13-cv-01583 (D.S.C, Dec. 9, 2014).)

Employment & Labor Practices

- On December 9th, Michaels Stores, Inc. (Michaels) was charged in a proposed class action lawsuit alleging violations of the Fair Credit Reporting Act (FCRA) and the state's consumer protection laws by "failing to obtain the proper authorization to conduct background checks" for prospective employees. The complaint alleges that Michaels' notice that the company will obtain background checks is included at the end of the online job application "in a series of paragraphs which appear on the same web page as numerous other pieces of extraneous information." Plaintiffs allege that under the FCRA, companies must provide "a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes." "Defendant's conduct unambiguously violates the FCRA. First, it is evident that a stand-alone disclosure cannot

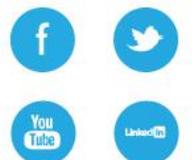
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be part of a larger job application, but must be an entirely separate document,” the complaint states. It goes on to state, “[s]econd, it is evident that a stand-alone disclosure cannot contain anything other than the disclosure and an authorization for a consumer report to be procured.”

(*Graham v. Michaels Stores, Inc.*, No. 2:14-cv-07563 (D.N.J., Dec. 9, 2014).)

- On December 4th, Whole Foods Market Group, Inc. (Whole Foods) was named in a putative class action lawsuit alleging the company used consumer reports while screening prospective workers in a way that violates the FCRA. According to the complaint, Whole Foods did not provide employees with a separate document informing the employee that the company may obtain a consumer report about them. Additionally, the complaint argues Whole Foods “unlawfully inserted liability release provisions into forms purporting to grant [Whole Foods] authority to obtain and use consumer report information for employment purposes.” The plaintiff seeks a jury trial, statutory damages, and a declaration from the court that Whole Foods had acted “willfully or [in] reckless disregard of Plaintiffs rights and its obligations under the FCRA.” (*Speer v. Whole Foods Market Group, Inc.*, No. 8:14-cv-03035 (M.D. Fla., Dec. 4, 2014).)

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