

News and Legislation Relating to Employment and Background Checks

Federal News and Legislation:

Background Checks

- On January 14th, a California federal judge granted Home Depot USA Inc. (Home Depot) summary judgment in the proposed class action accusing the company of violating the Fair Credit Reporting Act (FCRA). According to the plaintiff, Home Depot violated the FCRA by failing to provide proper notice to prospective employees that background check reports would be procured. The plaintiff also alleges that Home Depot included “extraneous information” in the disclosure of its background check and, therefore, violated the FCRA’s provision that “the disclosure is made in a document that consists solely of the disclosure.” In its motion for summary judgement, Home Depot argued that the plaintiff signed the disclosure and authorization form for the background check. Home Depot also argued that the plaintiff’s allegations exceed the two year statute of limitations. The judge granted summary judgment to Home Depot on the FCRA claims, agreeing that the plaintiff filed the lawsuit too late. However, the judge preserved the plaintiff’s claim that the company also violated California’s Unfair Competition Law, which has a longer statute of limitations. (*Harris v. Home Depot USA Inc., case number 3:15-cv-01058, in the U.S. District Court for the Northern District of California*).

State News and Legislation:

Background Checks

- On December 30th, Pennsylvania’s lowest appellate court unanimously ruled that the Older Adult Protective Services Act’s (OAPSA) lifetime employment ban for those convicted of certain crimes is unconstitutional. According to the court, OAPSA violates the due process rights of law-abiding citizens who have prior convictions. The court also asserted that a lifetime ban on employment is not “substantially related” to the “stated objective” of OAPSA, which “is to protect an

Corporate Headquarters
CARCO Group, Inc.
5000 Corporate Court, Suite 203
Holtsville, NY 11742
Main Telephone Number: 631-862-9300
CARCO Toll-Free Number: 800-969-2272
Fax (Inspection Services Division): 631-862-0380
Fax (Research Division): 631-584-7094
FAX 631/584-0095

Fayetteville Office
CARCO Group, Inc.
1030 Lillington Hwy
Spring Lake, NC 28390
910-497-0081
877-867-2359
Fax: 910-497-0162
sales@carcogroup.com

Palm Beach Gardens Office
4440 PGA Blvd. Suite 306
Palm Beach Gardens, FL 33410
561-249-7300
877-347-7711
Fax: 800-663-0874
sales@carcogroup.com

Tulsa Office
4500 S 129TH EAST AVE, SUITE 127
Tulsa, OK 74134-5801
918-640-6863
800-848-3397
Fax: 918-591-2854
sales@carcogroup.com

Tustin Office
17821 E 17th Street, Suite 160
Tustin, CA 92780
714-547-6541
CA License # 24087
sales@carcogroup.com



www.carcogroup.com

older adult at risk.” Judge Mary Hannah Leavitt of the Commonwealth Court wrote that the law “makes no provision for any other factor, such as the nature of the crime, the facts surrounding the conviction, the time elapsed since the conviction, evidence of the individual’s rehabilitation, and the nature and requirements of the job. The employee’s criminal history is the single and overriding factor that a potential employer may consider.” The case was brought by five ex-offenders whose crimes included writing a bad check, drug possession, and disorderly conduct occurring between 15 and 34 years ago. The court’s decision is being praised by advocates in the movement to provide more opportunities for housing and employment to ex-offenders.

http://www.huffingtonpost.com/entry/felons-prisoners-right-to-work_56843d71e4b06fa68881d590)

- On January 13th, *The Wall Street Journal* published an article entitled, “Uber Eases Screening Rules,” about the company’s recent decision to modify its driver background check requirements in California. According to Chief Security Officer Joe Sullivan, Uber, Inc. (Uber) will no longer reject applicants in California with certain nonviolent or nonsexual offenses. Uber will also inform all applicants when they are denied employment because of criminal convictions about steps they can take under Proposition 47, a law that gives non-violent offenders the means to reduce their convictions from felonies to misdemeanors. Uber has previously come under fire for its driver screening practices and is currently involved in litigation. According to the suits brought by the district attorneys of Los Angeles and San Francisco, there are “systematic failures” in Uber’s background check practices that have allegedly permitted registered sex offenders and convicted murderers to be hired by the company as drivers. However, Uber maintains that their background check procedures are equal to or better than those used by taxi companies.

http://www.wsj.com/article_email/uber-eases-screening-rules-in-california-1452668401-1MyQjAxMTE2NjE3MzUxNDMwWj)

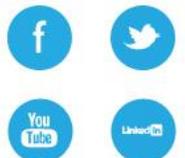
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