

News and Legislation Relating to Employment and Background Checks

Federal News and Legislation:

Background Checks

- On January 29th, a proposed class action was filed against Wells Fargo Bank N.A. (Wells Fargo) for allegedly violating the Fair Credit Reporting Act (FCRA). According to the complaint, Wells Fargo rescinded the plaintiff's job offer based on the information provided in a background check containing inaccurate information provided by a consumer reporting agency. The plaintiff claims that prior to applying for a job at Wells Fargo, she worked at a Bank of America branch for two months until she was abruptly fired. Plaintiff then applied for a job at Wells Fargo and was extended an offer of employment. The plaintiff alleges the consumer reporting agency conducted her background check and reported to Wells Fargo that she had been fired from Bank of America for being suspected of committing internal fraud. However, plaintiff claims that she did not have the chance to dispute this information until nearly ten months after her offer was rescinded. According to the suit, "Defendants' violations of the FCRA caused [the plaintiff] to lose a valuable employment opportunity at Wells Fargo, and to negatively alter her career trajectory." (*Muir v. Early Warning Services, LLC et al*, case number 2:16-cv-00521, in the U.S. District Court for the District of New Jersey.)
- On February 3rd, House Oversight and Government Reform Committee Chairman Jason Chaffetz (R-UT) announced that he has subpoenaed the Office of Personnel Management (OPM) Acting Director Beth Cobert to provide documents related to the agency's 2015 data breach. In June 2015, OPM announced a massive data breach that compromised the background check applications of 21.5 million current, former, and prospective federal government employees. Cobert became the acting director of the agency in July 2015, after former director Katherine Archuleta stepped down in the face of mounting criticism over her response to the incident. According to Chaffetz, Cobert has failed to deliver information requested by the committee six months ago. This information includes the list of

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individuals whose usernames and Social Security numbers were exposed during the breach. In a statement, Chaffetz said, “OPM, under Ms. Cobert’s leadership, is not cooperating with the committee’s investigation. The documents we’ve repeatedly requested be provided to this committee are essential to fulfilling a commitment to ensure a hack of this nature never happens again.”(<http://dailycaller.com/2016/02/03/chaffetz-slaps-uncooperative-opm-head-with-subpoena/>)

- On February 5th, *Nextgov* reported that the Office of Personnel Management (OPM) has released a draft proposal outlining the requirements for contractors that conduct background checks for the agency. According to OPM spokesman Sam Schumach, the draft proposal is “intended to provide industry advanced notice of the pending solicitation as well as an opportunity to provide comments, feedback and recommendations that government can consider prior to finalizing the solicitation.” OPM’s background check system has come under intense criticism in the wake of the agency’s massive 2015 data breach. Under the proposal, contractors are required to encrypt data “at rest and in transit throughout contractor networks, and on host and client platforms.” Contractors are also required to develop policies to deal with cybersecurity incidents, as well as provide cybersecurity training to all employees prior to gaining access to the Information Technology (IT) systems at OPM. Contractors must report all security incidents “immediately upon becoming aware,” or within 30 minutes or less. Finally, the proposal requires contractors to use “personal identity verification cards” to access OPM’s IT systems, as well as gain approval from OPM’s Chief Information Officer before using commercial Cloud service providers. (<http://www.nextgov.com/cybersecurity/2016/02/contracting-docs-opm-tighten-it-security-background-investigation-companies/125741/?oref=ng-channelriver>)
- On February 9th, Senators Richard Burr (R-NC) and Barbara Boxer (D-CA) introduced S.2515, the “Military Child Care Protection Act of 2016.” The bill would require military child care facilities to implement the same level of background checks required by the Child Care and Development Block Grant Act of 2014. The bill would specifically prohibit people from working at these child

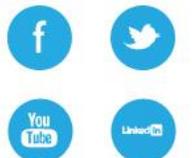
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care facilities if they have been convicted of murder, child abuse or neglect, crimes against children, spousal abuse, drug related offences committed within five years or less, sexual assault, or kidnapping. According to Senator Burr, "This is a common sense proposal. Parents deserve the peace of mind that they are leaving their children in good hands when they drop them off at a military child care facility. No parent should have to worry that they are leaving their child with a violent felon. I'm pleased Sen. Boxer is working with me on this bill, and I look forward to its next steps." (<http://www.burr.senate.gov/press/releases/sen-burr-takes-steps-to-better-protect-children-at-military-child-care-facilities>)

- On February 12th, Dave & Busters, Inc. (Dave & Busters) sought to move a proposed class action accusing the company of violating the Fair Credit Reporting Act (FCRA) from a state court to Florida federal court. According to the complaint, Dave & Buster's rescinded the plaintiff's offer of employment based on the outcome of a background check conducted by a consumer reporting agency. However, the plaintiff contends that Dave & Buster's violated the FCRA by failing to provide him with a copy of the report that was the basis of the adverse decision, as well as the opportunity to dispute the report's findings. Specifically, the complaint said, "This practice violates one of the most fundamental protections afforded to employees under the FRCA, and also runs counter to longstanding regulatory guidance." The proposed class seeks punitive and statutory damages, which the plaintiff said should be between \$100 and \$1000 per violation. (*Alvarez v. Dave & Buster's Inc., case number 6:16-cv-00252, in the U.S. District Court for the Middle District of Florida.*)

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