

News and Legislation Relating to Employment and Background Checks

Federal News and Legislation:

Background Checks

- On February 20th, the Fourth Circuit affirmed a district court grant of summary judgment against the Equal Employment Opportunity Commission (EEOC) in its suit against Freeman, a nationwide event planning firm, alleging that its use of credit reports for hiring had a disparate impact on blacks and males. The Fourth Circuit found that the EEOC's expert witness produced so many "mistakes and omissions" that the testimony is "outside the range where experts might reasonably differ." Judge Agee filed a concurring opinion to express "concern with the EEOC's disappointing litigation conduct." Agee wrote, "it troubles me that the [EEOC] continues to proffer expert testimony from a witness whose work has been roundly rejected in our sister circuits for similar deficiencies to those we observe here. It is my hope that the [EEOC] will reconsider pursuing a course that does not serve it or the public interest well."
(*EEOC v. Freeman*, No. 13-2365 (4th Cir., Feb. 20, 2015).)
- On February 15th, the Federal Aviation Administration (FAA) published a notice of proposed rulemaking regarding the commercial use of drones. According to the FAA, the framework of proposed regulations aims to permit use of certain drones with restrictions, while maintaining the ability to expand on further use in the future. Specifically, drone operators would need to pass an FAA test of aeronautical knowledge and a Transportation Security Administration background check, but would not need a private pilot license.
(http://www.faa.gov/regulations_policies/rulemaking/recently_published/media/2120-AJ60_NPRM_2-15-2015_joint_signature.pdf)
- On February 10th, Senator Jon Tester (D-MT) introduced S. 434, the "Security Clearance Accountability, Reform, and Enhancement Act of 2015." According to Tester, the bill would strengthen the accountability of individuals involved in misconduct affecting background investigations and update guidelines for security clearances. Specifically, the bill would permit a federal agency to declare an employee "unfit for federal employment" if the agency determines that an employee has engaged in "misconduct affecting the

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integrity of a background investigation conducted by or for an agency with investigative authority to conduct background investigations.” Examples of misconduct identified in the bill include:

- Falsification of information relating to a background investigation; or
- Other serious misconduct that compromises the integrity of a background investigation.

According to the bill, once an employee is determined unfit for federal employment, “the individual shall not be appointed to or continue to occupy a position, as an employee with any agency, that requires its occupant to perform background check investigations.”

<http://www.gpo.gov/fdsys/pkg/BILLS-114s434is/pdf/BILLS-114s434is.pdf>

State News and Legislation:

- On February 26th, the Wyoming House of Representatives reported out SF 136, which would permit the Wyoming Department of Health to provide conditional licenses to emergency medical technicians and paramedics who have fulfilled all other requirements for employment, except the criminal background check. The bill states that applicants for the conditional license would be required to submit a sworn statement, “on a form prepared by the [Wyoming Department of Health], establishing all facts and circumstances which, if true, would fully qualify the applicant for licensure.”
<http://legisweb.state.wy.us/2015/Engross/SF0136.pdf>
- On February 17th, Virginia Governor Terry McAuliffe (D) signed HB 1662, which implements new rules for ridesharing companies regarding driver background checks. The new law sets rules for Transportation Network Companies (TNCs), such as Uber and Lyft, that operate in Virginia. Specifically, the law charges the state’s Department of Motor Vehicles (DMV) with overseeing the operations of TNCs, including their driver background check process. The law requires for TNCs to, among other things:
 - Ensure drivers are at least 21 years old;
 - Conduct a criminal background check on all drivers; and
 - Confirm the driver is insured and is registered with the DMV for TNC purposes.The law states that the background check must include a Multi-state/Multi-jurisdictional Criminal Records Database search, and a search of the Sex Offender and Crimes Against Minors Registry and the U.S. Department of Justice’s Sex Offender public website. The person conducting the background check must be accredited by the National Association

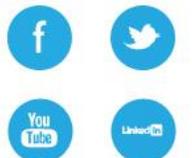
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of Professional Background Screeners or a comparable entity. A driver will be disqualified from working with the TNC if they are found on any sex offender registry or has been convicted of a “violent felony,” amongst other criteria.

<http://lis.virginia.gov/cgi-bin/legp604.exe?151+ful+HB1662ER+pdf>

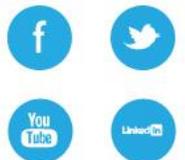
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