

News and Legislation Relating to Employment and Background Checks

Federal News and Legislation:

Background Checks

- On April 7th, plaintiffs filed a putative class action lawsuit against Amazon.com, Inc. (Amazon), alleging violations of the Fair Credit Reporting Act (FCRA) over the company's background check procedures. According to the complaint, the plaintiff was denied a position at Amazon after the company obtained a criminal background check on him and failed to provide him with the results of the background check. The plaintiff alleges that the background check, in fact, contained a felony conviction for cocaine possession "which did not belong to Plaintiff." The alleged failure to provide a copy of the background check violates the FCRA, according to the complaint. The plaintiff seeks to represent a nationwide class of individuals who had sought employment at Amazon within the past five years and did not receive a copy of their background check as required by the FCRA.
(*Gregory Williams v. Amazon.com, Inc. et al.*, No. 2:15-cv-00542 (W.D. Wash., Apr. 7, 2015).)

State News and Legislation:

- On April 13th, New Jersey Assembly members introduced A4354, which would require employees of a private entity with access to student information under contract with the state's Department of Education (DOE) to undergo a criminal background check. According to the bill's sponsors, the bill would help protect the privacy and personal data of students by applying existing standards related to criminal background checks for public school employees to determine whether a contractor employee could access student data. Under the bill, the DOE would not be required to enter into a contract with a private entity if the criminal history record check of the employees who would have access to student information contains a record of conviction for any disqualifying crime or offense.
(<http://www.assemblydems.com/Article.asp?ArticleID=9477>.)
- On April 9th, Arizona Governor Doug Ducey (R) signed HB 2135, which will affect background checks for ride-sharing companies. Specifically, the bill directs

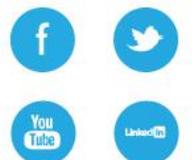
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transportation network companies, otherwise known as ride-sharing companies, to conduct, or hire a third party to conduct, a local and national criminal background check for any prospective drivers. The bill specifies that any pre-employment background check on a driver must include the following:

- A multijurisdictional criminal records locator;
- A validated commercial nationwide database; and
- A national sex offender registry database.

The bill also requires ride-sharing companies to review the prospective driver's driving history report. The bill prohibits drivers from being employed if the individual, among other things:

- Has three or more moving violations in the preceding three years;
- Is listed in a national sex offender registry database; or
- Does not possess a valid driver's license.

(<http://www.azleg.gov/legtext/52leg/1r/bills/hb2135s.pdf>.)

- On April 6th, Arkansas Governor Asa Hutchinson (R) signed HB 1650, which will affect background checks for "licensed personnel and classified employees of public schools." The bill amends current law on background checks for employees of educational institutions. According to the bill, "an educational entity that is initiating a criminal records check...shall subscribe to and initiate both the state and federal criminal records check on the Department of Arkansas State Police (DASP) online system." Additionally, the bill would require that, starting July 1, 2016, "all fingerprints shall be taken by an electronic fingerprinting method approved by the [DASP]." (<http://www.arkleg.state.ar.us/assembly/2015/2015R/Bills/HB1650.pdf>.)
- On April 6th, Idaho Governor Butch Otter (R) let HB 262 become law without his signature. The bill will affect driver background checks for ride-sharing companies. Specifically, the bill requires that the transportation network company (TNC), otherwise known as ride-sharing companies, conduct, or have a third party conduct, a local and national criminal background check for any prospective drivers. The background check for each prospective driver, according to the bill, shall include:
 - A multistate/multi-jurisdictional criminal records locator; and
 - A national sex offender registry database.

The bill also requires ride-sharing companies to review the prospective driver's driving history report. The bill prohibits drivers from being employed if the individual, among other things:

- Has more than three moving violations in the preceding three years;
- Is listed in a national sex offender registry database; or
- Does not possess a valid driver's license.

The bill specifically states that TNC drivers "shall not be required to register the vehicle such driver uses for TNC services as a commercial or for-hire vehicle or to obtain a commercial driver's license." Additionally, the bill prohibits any TNC driver from soliciting or accepting "street hails" or "cash payments," stating that drivers may only accept passengers and payment through the "TNC's digital network or software application."

(<http://www.legislature.idaho.gov/legislation/2015/H0262.pdf>.)

- On April 3rd, Virginia Governor Terry McAuliffe (D) signed an Executive Order (Order) affecting state hiring practices by removing questions regarding criminal history from employment applications. Specifically, the Order requires the state's Department of Human Resources Management to, among other things:
 - Amend the state employment application to "ban the box", removing those questions relating to convictions and criminal history;
 - Inform all hiring authorities within the executive branch that state employment decisions will not be based on the criminal history of an individual unless demonstrably job-related and consistent with business necessity, or state or federal law prohibits hiring an individual with certain convictions for a particular position; and
 - Provide guidance to ensure that any criminal history background check is only conducted after a candidate has (a) signed the appropriate waiver authorizing release, (b) been found otherwise eligible for the position, and (c) is being considered for a specific position.

The Order states that it applies to all agencies, boards and commissions within the executive branch, and "also encourages similar hiring practices among private employers operating within the Commonwealth and state government contractors."

(<https://governor.virginia.gov/newsroom/newsarticle?articleId=8131>.)

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- On April 2nd, Oklahoma Governor Mary Fallin (R) signed SB 115, which affects background checks for employees working at foster homes. The current law requires employers to request that the Oklahoma State Bureau of Investigation conduct a criminal history background check on any individuals seeking to provide health-related services at the foster care facility. The bill amends the current law by expanding the definition of “employer” to include “any facility approved and annually reviewed by the United States Department of Veterans Affairs as a medical foster home in which care is provided exclusively to three or fewer veterans.”
(http://webserver1.lsb.state.ok.us/cf_pdf/2015-16%20ENR/SB/SB115%20ENR.PDF.)
- On March 30th, Idaho Governor Butch Otter (R) signed HB 190, which “amends existing law to revise a fee for undergoing a criminal history check.” Specifically, the bill changes the amount that the state’s Department of Education may charge individuals for conducting a criminal history check from \$40 to a fee “necessary to cover the cost of undergoing” the criminal history check.
(<http://legislature.idaho.gov/legislation/2015/H0190.pdf>.)

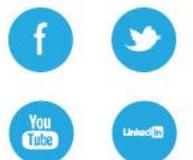
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