

News and Legislation Relating to Employment and Background Checks

Federal News and Legislation:

Background Checks

- On May 12th, a federal district court dismissed a putative class action lawsuit against Bank of America (BoA) that accused the bank of violating the Fair Credit Reporting Act (FCRA) by obtaining consumer reports on its employees as part of its background checks without their consent. According to the plaintiffs, the bank's background screening vendor, First Advantage Enterprise Screening Corp. (First Advantage), automatically obtained a prospective employees' consumer report when the individuals electronically signed a consent form that outlined the bank's employment policies, regardless of whether the form authorizing a criminal background check was signed. BoA, in its motion for summary judgment, argued that the employees authorized the procurement of their credit report after electronically signing a "clear and conspicuous" form entitled, "Electronic Authorization for Consumer Reports." The court agreed with BoA, finding that the evidence offered suggests that the plaintiffs authorized the bank to obtain a credit report on the employees and that the credit report was procured only after the employee signed the electronic authorization form.
(*Kym Newton et al. v. Bank of America NA et al.*, No. 2:14-cv-03714 (C.D. Cal., May 12, 2015).)
- On May 5th, a federal district court denied DolGenCorp LLC's (Dollar General) attempt to access the U.S. Equal Employment Opportunity Commission's (EEOC) policies regarding its own use of criminal background checks in employment decisions. The EEOC filed the suit against Dollar General in 2013, alleging that the company's use of criminal background checks for prospective employees is discriminatory because it has a disparate impact on African-American applicants. During the litigation, Dollar General filed a motion to compel the EEOC to produce its policies regarding the use of background checks in making employment decisions. The EEOC argued that such document requests were irrelevant. The court agreed with the EEOC, ruling that the EEOC need not produce its background check policies for its own employees because Dollar General had not shown that "the functions performed by its employees are in any way comparable to those undertaken by the EEOC's employees."

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

(*EEOC v. DolGenCorp, LLC d/b/a Dollar General*, No. 13-CV-4307 (N.D. Ill. May 5, 2015).)

State News and Legislation:

- On May 5th, the Kansas state Senate voted 96-25 to override Governor Sam Brownback's (R) veto of SB 117, which will affect background checks for ride-sharing companies. Under the bill, before ride-sharing companies permit an individual to act as a driver, the company must "obtain a local and national criminal background check on the individual, conducted by the Kansas Bureau of Investigation." The background check must include:
 - Fingerprint analysis, utilizing the records of the Kansas Bureau of Investigation and the Federal Bureau of Investigation; and
 - A state and national criminal history records check which conforms to applicable federal standards.

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.

On the same day, Reuters reported that "Uber...ceased operations in Kansas after the state legislature decided to override [Governor Brownback's] veto."

(Bill:

http://www.kslegislature.org/li/b2015_16/asures/documents/sb117_enrolled.pdf.)

(Reuters Article: <http://www.reuters.com/article/2015/05/06/us-uber-kansas-idUSKBN0NR01720150506>.)

- On May 5th, Indiana Governor Mike Pence (R) signed HB 1278, which will affect driver background checks for ride-sharing companies. According to the law, a driver for a transportation network company (TNC), otherwise known as a ride-sharing company, is considered an independent contractor of the TNC. The law directs TNCs to conduct, or hire a third party to conduct, a local and national criminal background check for any prospective drivers, including a search of the national sex offender registry. The law also requires ride-sharing companies to review the prospective driver's driving history report. The law prohibits drivers from being employed if the individual, among other things:

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



- 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.

The law also requires that by July 15, 2015, a TNC driver must maintain primary motor vehicle insurance and the TNC is required to ensure that a "personal vehicle used to provide...rides must comply with all applicable laws and regulations concerning vehicle equipment." The law will go into effect on July 1, 2015.

(<http://iga.in.gov/static-documents/f/0/0/b/f00b6697/HB1278.05.ENRH.pdf>.)

- On April 29th, Montana Governor Steve Bullock (D) signed HB 472, which will affect background checks for prospective employees and volunteers of the Office of the Child and Family Ombudsman. According to the law, "a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities" may seek access to an individuals' "records,... correspondence, evaluations, videotapes, and interviews, unless... disclosure of the records is determined to be detrimental to the child or harmful to another person who is the subject of information contained in the records."

(<http://leg.mt.gov/bills/2015/billpdf/HB0472.pdf>.)

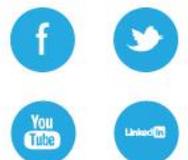
Corporate Headquarters
CARCO Group, Inc.
5000 Corporate Court, Suite 203
Holtsville, NY 11742
Main Telephone Number: 631-862-9300
CARCO Toll-Free Number: 800-969-2272
Fax (Inspection Services Division): 631-862-0380
Fax (Research Division): 631-584-7094
FAX 631/584-0095

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