

News and Legislation Relating to Employment and Background Checks

Federal News and Legislation:

Background Checks

- On June 25th, in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project Inc.*, the Supreme Court upheld the permissibility of suits under the Fair Housing Act based upon a disparate impact theory of liability. In reaching that decision, Justice Kennedy, writing for a 5-4 court majority, discussed Court precedent permitting disparate impact cases under Title VII of the Civil Rights Act. The Court's decision surprised many observers because this case was the latest in a series of cases of this type that the Court had agreed to hear. The earlier cases that the court had accepted were settled before the Court was able to render an opinion. This led to speculation that the Court may have been looking for an opportunity to restrict disparate impact cases in a way that could also have had an impact on the ability to bring disparate impact cases in the context of employment under Title VII because of alleged disparate impact on the basis of criminal history or other information. It remains to be seen to what extent the Court's decision will result in an increase in disparate impact claims in housing or employment.
(*Texas Department of Housing & Community Affairs v. The Inclusive Communities Project, Inc.*, No. 13-1371 (U.S., June 25, 2015).)
- On June 25th, Home Depot USA, Inc. (Home Depot) urged a federal district court to dismiss a proposed class action alleging that the retailer violated the Fair Credit Reporting Act (FCRA) by failing to provide proper notice to prospective employees that background check reports would be procured. According to Home Depot, the plaintiff's lawsuit exceeds the two-year statute of limitations. According to the lead plaintiff, the company 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." Home Depot is seeking dismissal based on the grounds that the plaintiff's background check was conducted more than two years ago, and therefore outside the statute of limitations.
(*Harris v. Home Depot U.S.A., Inc.*, No. 3:15-cv-01058 (N.D. Cal., June 25, 2015).)
- On June 24th, Representative Donald Beyer (D-VA) introduced HR 2871, which would affect background checks for the selling of firearms "safely and responsibly." The bill, entitled the

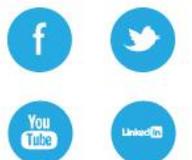
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“*Keeping Guns From Criminals Act*,” would “provide an incentive for firearm owners to sell their firearms safely and responsibly.” Regarding background checks, the bill would make it an affirmative defense to the sale of a firearm to a prohibited person if the “defendant can prove by a preponderance of the evidence that, at the time of the sale or other disposition of the firearm, the National Instant Criminal Background Check System...had indicated to any person that a sale or other disposition of a firearm to the recipient would not be unlawful, or that the recipient possessed a valid permit.”

(<http://www.gpo.gov/fdsys/pkg/BILLS-114hr2871ih/pdf/BILLS-114hr2871ih.pdf>).

- On June 9th, a plaintiff filed a putative class action lawsuit against Kohl’s Department Stores, Inc. (Kohl’s) for allegedly violating the FCRA by failing to properly notify prospective employees that it would procure credit reports on them as part of the hiring process. According to the complaint, Kohl’s conducted an improper background check on the plaintiff, which included obtaining the plaintiff’s credit reports, between October 2012 and June 2013. The plaintiff argues that Kohl’s employment application conceals the authorization for such background checks. Specifically, the complaint argues that “[b]ecause the purported disclosures are embedded within extraneous information and are not clear and unambiguous disclosures in stand-alone documents, they do not meet the requirements under the [FCRA].”
(*Coleman v. Kohl’s Department Stores, Inc.*, No. 3:15-cv-02588 (N.D. Cal., June 9, 2015).)

State News and Legislation:

- On June 18th, Texas Governor Greg Abbott (R) signed SB 206, which will affect background checks for caregivers of foster children. Under the law, the Department of Family and Protective Services (Department) “must complete the background and criminal history check and conduct a preliminary evaluation of the relative or other designated caregiver’s home before the child is placed with the relative or other designated caregiver.” Additionally, the “Department may impose an administrative penalty...for violating a minimum standard applicable to a facility or family home...that is determined by the Department to be a high-risk standard, including background check standards, safety hazard standards, and supervision standards.”
(<http://www.capitol.state.tx.us/tlodocs/84R/billtext/pdf/SB00206F.pdf>).

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