

**News and Legislation Relating to Employment and Background Checks****Federal News and Legislation:****Background Checks**

- On July 10<sup>th</sup>, *The Hill* reported that Office of Personnel Management (OPM) Director Katherine Archuleta resigned from her position as head of the agency. On July 9<sup>th</sup>, OPM updated its data breach notice on the agency's website, stating that "sensitive information...of 21.5 million individuals was stolen from the background investigation databases." According to the updated announcement, "hackers" obtained individuals' names, birth dates, Social Security numbers, mental health records, financial histories, among other information. According to OPM, for individuals who "underwent a background investigation through OPM in 2000 or afterwards...it is highly likely that [they] are impacted by the incident involving background investigations," adding that, even individuals who "underwent a background investigation prior to 2000...may be impacted, but it is less likely."

On June 29<sup>th</sup>, OPM announced that the E-QIP system, used to complete and submit background forms, will be temporarily suspended in order to update the system's security. The E-QIP system is expected to be offline for four to six weeks while the program's security is improved.

(*The Hill* Article: <http://thehill.com/policy/cybersecurity/247513-opm-director-resigns-over-hack>; OPM Breach Update: <https://www.opm.gov/news/releases/2015/07/opm-announces-steps-to-protect-federal-workers-and-others-from-cyber-threats/>; E-QIP System: <http://www.opm.gov/news/releases/2015/06/opm-notifies-agencies-of-temporary-suspension-of-e-qip-system/>.)

- On July 7<sup>th</sup>, a federal district court approved a proposed settlement in a putative class action brought by Chuck E. Cheese's job applicants alleging that the entertainment and restaurant chain Chuck E. Cheese's violated the Fair Credit Reporting Act (FCRA) by failing to properly notify prospective employees that it would procure credit reports on individuals as part of its background check process. Specifically, the complaint alleges that Chuck E. Cheese's "preauthorization form" for obtaining prospective employees' credit reports was included within the multipage employment application and contained extraneous information, a violation of the FCRA according to the plaintiff. Under the proposed settlement, the 28,500 class members would automatically be entitled to receive \$38 without having to submit a

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claim. Within the class, there is a group of 405 individuals who allege that adverse action was taken from the use of the improper background checks, and the settlement would entitle these individuals to approximately \$63. The judge who preliminarily approved the settlement stated that, “[g]iven the risks of litigation and the potential statutory damages, the amount offered in the settlement is fair and reasonable, and this factor weighs in favor of settlement.”

(*Ford et al v. CEC Entertainment, Inc.*, No. 3:14-cv-00677 (S.D. Cal., July 7, 2015).)

### **State News and Legislation:**

- On July 10<sup>th</sup>, plaintiffs appealed a decision by a California district court granting summary judgment to defendant First Student, Inc. (First Student) in an action alleging that First Student violated the state’s Investigative Consumer Reporting Agencies Act (ICRAA) by failing to obtain plaintiffs’ consent before conducting a background check. According to the district court, the state law which plaintiffs allege First Student violated, the ICRAA, is unconstitutionally vague due to overlap with California’s Consumer Credit Reporting Agencies Act. Plaintiffs are appealing the lower court’s decision, arguing that the two laws do not conflict with each other and even if two statutes overlap with each other, it does not make one unconstitutional. According to plaintiffs’ counsel, “[t]hese statutes certainly were created to be mutually exclusive.”  
(*Eileen Connor et al. v. First Student, Inc. et al.*, No. B256075 (Cal. Ct. App., July 10, 2015).)
- On July 6<sup>th</sup>, Washington Governor Jay Inslee (D) signed HB 1491, which will affect background checks for individuals working at early childhood education and assistance programs. The law requires that, by January 1, 2016, the state’s Department of Early Learning adopt rules “requiring early childhood education and assistance program employees who have access to children to submit to a fingerprint background check.” Under the law, the state’s Department of Early Learning and the Department of Health Services “shall share federal fingerprint-based background check results,” adding that, “[t]he purpose of this provision is to allow both departments to fulfill their joint background check responsibility of checking individuals who may have unsupervised access to vulnerable adults, children, or juveniles.” The law also states that neither department may share the federal background check results with any other state agency or person.  
(<http://lawfilesexxt.leg.wa.gov/biennium/201516/Pdf/Bills/House%20Passed%20Legislature/1491-S2.PL.pdf>).

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- On June 29<sup>th</sup>, the New Jersey state Senate passed S. 524 which would “prohibit[] employers from obtaining, requiring, or discriminating on the basis of credit reports.” According to the bill, employers would be prohibited from requiring credit checks on prospective employees, and known violations could result in employers facing fines ranging from \$2,000 to \$5,000. However, the bill makes an exception for certain professions, including law enforcement positions, security jobs, or jobs involving the management of personal belongings or financial information. Additionally, employers can request credit information if employees demonstrate suspicious financial activity. According to bill’s sponsor, Senator Nia H. Gill (D), “[u]sing credit checks to screen applicants for employment is unacceptable and unfairly punishes those who have found themselves in difficult financial positions for any number of reasons, be it a layoff, a divorce or a family crisis.”  
([http://www.njleg.state.nj.us/2014/Bills/S1000/524\\_U1.PDF](http://www.njleg.state.nj.us/2014/Bills/S1000/524_U1.PDF).)

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