

News and Legislation Relating to Employment and Background Checks

Federal News and Legislation:

Background Checks

- On July 28th, President Obama nominated Victoria Lipnic, a former Seyfarth Shaw LLP attorney and former assistant secretary of labor, to serve another term as a commissioner at the Equal Employment Opportunity Commission (EEOC). Lipnic has served as commissioner at the EEOC since December 2010, when she was confirmed by the Senate after receiving a recess appointment from President Obama in March 2010. In a statement following the president's nomination, Lipnic said, "I am humbled and honored that the president has elected to nominate me for a second term as an EEOC Commissioner. I hope that my nomination is confirmed by the Senate, so that I may continue to do the important work of protecting the civil rights of America's workers."
(<https://www.whitehouse.gov/the-press-office/2015/07/28/president-obama-announces-another-key-administration-post>.)
- On July 24th, a plaintiff filed a putative class action against Big Lots Stores, Inc. (Big Lots) for allegedly violating the Fair Credit Reporting Act (FCRA) by running background checks on current and prospective employees without their consent. According to the complaint, the plaintiff alleges that Big Lots failed to issue a "standalone" disclosure stating that the company will procure consumer reports on applicants from a third-party consumer reporting agency, which is required under the FCRA. Specifically, the plaintiff alleges that Big Lots "routinely and systematically violates the FCRA's basic protections by failing to provide required disclosures or to obtain written authorization prior to procuring background reports on applicants and employees." The plaintiff seeks to represent a class of prospective and current employees who applied to Big Lots and had background checks run on them in the past two years without the FCRA-required disclosure, in addition to a separate class for individuals who did not provide Big Lots with their written consent to conduct a background check on them. The plaintiff seeks statutory damages of \$100 to \$1,000 for each alleged FCRA violation.
(*Robrizine v. Big Lots Stores, Inc.*, No. 15CH11064, (Cir. Ct. of Cook County, Ill., July 24, 2015).)

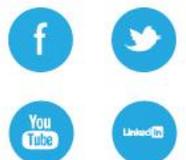
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- On July 23rd, Senator Brian Schatz (D-HI) introduced a bill, S. 1847, which would amend the FCRA. This bill is co-sponsored by Senator Elizabeth Warren (D-MA) and a number of other Democratic Senators. The bill would amend FCRA sections 616 and 617 to allow private litigants to seek injunctive relief for FCRA violations and also broaden the Federal Trade Commission's (FTC) enforcement authority to include negligent and willful FCRA violations. The bill also would amend FCRA section 611 to require consumer reporting agencies to provide documentation regarding a dispute that is received from a consumer to the relevant furnisher and requiring the Consumer Financial Protection Bureau (CFPB) to gather information on consumer disputes and issue regulations regarding what constitutes reasonable procedures to ensure maximum possible accuracy under FCRA section 607(b). The bill also would require consumer reporting agencies to register with the CFPB and for the CFPB to publish registries of each type of consumer reporting agency. The bill has been referred to the Senate Banking Committee.
(<http://www.gpo.gov/fdsys/pkg/BILLS-114s1847is/pdf/BILLS-114s1847is.pdf>.)
- On July 15th, Senator Sherrod Brown (D-OH) and several co-sponsors introduced a bill, S. 1773, which would amend the Bankruptcy Code to require creditors that have reported information about debts that have been discharged during bankruptcy to report, with certain limited exceptions, that the debt has been discharged and has a zero balance to any consumer reporting agency to whom they furnished that information. The bill has been referred to the Senate Judiciary Committee.
(<http://www.gpo.gov/fdsys/pkg/BILLS-114s1773is/pdf/BILLS-114s1773is.pdf>.)
- On July 13th, Representative Keith Ellison (D-MN) and several co-sponsors introduced a bill, HR 3035, which would amend FCRA section 623 to clarify that it is permissible to furnish utility and rental payment performance information, including rental payment information for units that receive subsidies from the Department of Housing and Urban Development, to consumer reporting agencies. The bill also would define the circumstances under which a utility can report payments as being late. The bill has been referred to the House Financial Services Committee.
(<http://www.gpo.gov/fdsys/pkg/BILLS-114hr3035ih/pdf/BILLS-114hr3035ih.pdf>.)
- On July 10th, the U.S. Equal Employment Opportunity Commission (EEOC) filed a lawsuit against Crothall Services Group, Inc. (Crothall), a nationwide provider of janitorial and facilities management services, for allegedly violating Title VII of the Civil Rights Act of 1964 by "fail[ing] to make and keep required records...that will disclose the impact that its

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criminal history assessments have on persons identifiable by race, sex or ethnic group.” According to the EEOC’s complaint, Crothall conducts criminal background checks and criminal history assessments on prospective employees and uses the information to make hiring decisions. However, according to the EEOC, Crothall does not create and maintain records indicating the impact that the background checks and assessments have in the company’s hiring decisions. According to Regional Attorney Debra Lawrence of EEOC’s Philadelphia District Office, “[f]ederal record-keeping requirements ensure that certain employers make and keep records that disclose the impact of their selection procedures,” adding that, “EEOC’s enforcement of the record-keeping requirements is important to the agency’s commitment to eliminating discriminatory barriers in the workplace.” (<http://www.eeoc.gov/eeoc/newsroom/release/7-10-15e.cfm>.)

State News and Legislation:

- On July 27th, Oregon Governor Kate Brown (D) signed HB 2250, relating to criminal records checks. Under the law, the Department of Human Services, the Oregon Health Authority (Authority), and the Employment Department (Department), for purposes of requesting a state or nationwide criminal record check, may require the fingerprints of a person:
 - Who is employed by or is applying for employment with either the Department or the Authority; or
 - Who provides or seeks to provide services to either the Department or the Authority as a contractor, subcontractor, vendor, or volunteer, among other individuals.

Additionally, the law requires that a “home health agency...conduct a criminal background check before hiring or contracting with an individual and before allowing an individual to volunteer to provide services on behalf of the home health agency, if the individual will have direct contact with a patient of the home health agency.” (<https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB2250/Enrolled>).

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