

News and Legislation Relating to Employment and Background Checks

Federal News and Legislation:

Background Checks

- On August 25th, the Consumer Financial Protection Bureau (CFPB) released its monthly consumer complaint “snapshot,” which focused on credit reporting complaints. According to the CFPB, consumer credit reporting complaints “sharply increased compared to the prior month and the prior year.” In the report, the CFPB states that the majority of consumer complaints involved problems with incorrect information on their credit report. Specifically, the report highlights credit reporting complaints from the Los Angeles, California metro area. Findings of the report revealed that the most common credit reporting complaints include:
 - Inaccurate information on a consumer’s credit report;
 - Rigorous identity authentication questions that prevent consumers from accessing their credit reports; and
 - Problems disputing errors with credit reporting companies.

CFPB Director Richard Cordray said in a statement that, as the CFPB “see[s] a rise in the number of consumers complaining about this issue, the [CFPB] will continue to work to ensure that credit reports are fair, accurate, and readily available to all consumers.”

[\(http://www.consumerfinance.gov/newsroom/cfpb-monthly-complaint-snapshot-spotlights-credit-reporting-complaints/\)](http://www.consumerfinance.gov/newsroom/cfpb-monthly-complaint-snapshot-spotlights-credit-reporting-complaints/).

- On August 24th, American Trucking Associations (ATA) President and CEO Bill Graves sent a letter to congressional lawmakers expressing the ATA’s support for HR 1467/S.806, the *Drug Free Commercial Driver Act of 2015*. Specifically, Graves relayed ATA’s support for hair testing prospective drivers for drug use. According to Graves, “[h]air testing is an effective tool for identifying drug users due to its long detection window and because it is difficult for donors to beat the test,” adding that, “[m]any Fortune 500 companies like General Motors, Kraft Foods, Shell Oil, and British Petroleum (BP) use hair testing to identify drug users before they enter their operations.”

<http://www.trucking.org/ata%20docs/What%20We%20Do/Image%20and%20Outreach%20Programs/Misc%20Documents/Senate%20Comm%20House%20TI%20Hair%20Testing%20Aug.pdf>).

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- On August 19th, a federal district court denied Wells Fargo Bank, N.A.'s (Wells Fargo) motion for summary judgment in a putative class action alleging violations of the Fair Credit Reporting Act (FCRA) by not properly informing the plaintiff that the bank would procure a background check on him and by coding the plaintiff as "ineligible" before providing him with a pre-adverse action notice, a copy of the background check report, and a summary of his rights. According to the federal district court, the plaintiff has standing to sue under the FCRA provision that the background check disclosure form be in a document that solely consists of the disclosure and that a triable issue exists as to whether Wells Fargo coding the plaintiff as "ineligible" constitutes an adverse action under the FCRA that required notice to the prospective employee prior to the action.
(*Manuel v. Wells Fargo Bank, N.A.*, No. 3:14cv238 (E.D. Va., Aug. 19, 2015)).
- On August 17th, the Federal Trade Commission (FTC) announced that Commissioner Joshua Wright will resign. Wright has served as an FTC commissioner since January 2013. According to the FTC, Wright's last day will be August 24, 2015. Wright was appointed by President Obama to replace J. Thomas Rosch. The FTC announcement states that Wright will return to George Mason University School of Law as a Professor of Law. FTC Chairwoman Edith Ramirez said in a statement that the "agency has benefited greatly from his perspective as a lawyer and economist in connection with the matters that have come before us," adding that, "[w]e are going to miss him and wish him well on his return to academic life."
(https://www.ftc.gov/news-events/press-releases/2015/08/ftc-commissioner-joshua-d-wright-resign?utm_source=govdelivery).

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