

News and Legislation Relating to Employment and Background Checks

Federal News and Legislation:

Background Checks

- On October 8th, a plaintiff moved for class certification in a lawsuit against Amazon.com LLC (Amazon) for alleged violations of the Fair Credit Reporting Act (FCRA) over the company's background screening procedures. Plaintiff alleges that Amazon made an adverse employment decision without providing the plaintiff with a copy of the background screening report obtained by Amazon, which the plaintiff contends showed an inaccurate cocaine conviction. Additionally, the plaintiff alleges that Amazon and the background check provider failed to afford him the opportunity to review the background check report prior to an adverse employment decision.
(*Williams v. Amazon.com, Inc. et al*, No. 1:15-cv-07256 (N.D. Ill., Oct. 8, 2015)).
- On October 7th, the Senate Homeland Security and Government Affairs Committee reported out S. 2021, the *Fair Chance Act*, which would “prohibit federal agencies and federal contractors from requesting that an applicant for employment disclose criminal history record information before the applicant has received a conditional offer.” Specifically, the bill states that “an employee of an agency may not request, in oral or written form...including through the USA Jobs Internet Web site or any other electronic means, that an applicant for an appointment to a position in the civil service disclose criminal history record information regarding the applicant before the appointing authority extends a conditional offer to the applicant.” The bill identifies exceptions to the limitation, including for a position:
 - That requires a determination of eligibility; or
 - As a federal law enforcement officer.<http://www.gpo.gov/fdsys/pkg/BILLS-114s2021is/pdf/BILLS-114s2021is.pdf>).
- On October 5th, Spokeo, Inc. (Spokeo) filed a brief with the U.S. Supreme Court urging it to overturn the Ninth Circuit's decision to revive the plaintiff's putative class action against Spokeo for alleged violations of the FCRA by publishing inaccurate information about the plaintiff. According to Spokeo, the plaintiff has not alleged any concrete harm. Spokeo argues that the plaintiff is wrong in its assertion that Congress enacted the FCRA to prevent harm that may result from the dissemination of alleged inaccurate credit reports. Specifically, Spokeo states that “[t]he choice here is between respondent's standard requiring

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- only the violation of a ‘personal’ statutory right, without palpable harm to the plaintiff; and requiring palpable harm,” contending that, “[o]nly the latter approach accords with history, separation-of-power principles and precedent.” Oral arguments in the case are scheduled for November 2nd.
(*Spokeo, Inc. v. Thomas Robins et al.*, No. 13-1339 (S. Ct., Oct. 5, 2015).
- On October 1st, a federal district court ruled that Genesis Healthcare LLC (Genesis) complied with the FCRA with respect to the disclosure and authorization requirement as well as the pre-adverse action requirement in conducting a background check on the defendant. Genesis also asserted, albeit unsuccessfully, a 603(y) defense but the court stated that “the text of the exclusion is limited by the term ‘investigation’ and background checks are not ‘investigations’ but are required, by written policy, as an employment condition.” The court cites to the FTC’s recent opinion letter of September 2015 related to section 603(y) of the FCRA.
(*Doris Ramos v. Genesis Healthcare LLC et al.*, No. 2:15-cv-00052 (E.D. Penn., Oct. 1, 2015).

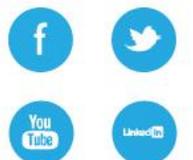
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