

News and Legislation Relating to Employment and Background Checks

Federal News and Legislation:

Background Checks

- On November 11th, Hirease, LLC (Hirease), a background screening company, asked a federal judge to be dropped from a putative class action by drivers who were denied employment by Uber, Inc. (Uber) based on allegedly unlawful background checks. According to the plaintiffs, Uber and Hirease violated the Fair Credit Reporting Act (FCRA) for failure to provide a clear and conspicuous disclosure (Uber and Hirease) and failure to follow the pre-adverse action process (Uber). However, Hirease argues that the FCRA requires the hiring company, not the background screener, to make the proper disclosure and to provide potential employees with their results. In a statement, Hirease stated that, “the disclosure requirement in section 1681b(b)(2) belongs solely with the end-user, that is, the entity procuring the consumer report- not the [consumer reporting agency.]”
(*Joseph Cuccinello et al. v. Uber Inc. et. al.*, No. 2:15-cv-06604 (U.S. District Court for the District of New Jersey).
- On November 2nd, the White House announced several measures aimed at helping formerly-incarcerated individuals obtain employment by, among other ways, “banning the box in federal employment.” According to the White House “fact sheet,” the announced measures will help “Americans who’ve paid their debt to society rehabilitate and reintegrate back into their communities.” According to the fact sheet, the Administration is “encouraged that Congress is considering bipartisan legislation that would ‘ban the box’ for federal hiring and hiring by federal contractors,” adding that “[i]n the meantime, the President is directing the Office of Personnel Management (OPM) to take action where it can by modifying its rules to delay inquiries into criminal history until later in the hiring process.”
(<https://www.whitehouse.gov/the-press-office/2015/11/02/fact-sheet-president-obama-announces-new-actions-promote-rehabilitation>).
- On November 2nd, a plaintiff filed a class action against discount retail chain Big Lots Stores, Inc. (Big Lots) for alleged violations of the Fair Credit Reporting Act (FCRA) over its background check procedures. According to the complaint, the plaintiff alleges that Big Lots “systemically” violated the FCRA’s standalone background check disclosure requirement. According to the plaintiff, Big Lots’ disclosure form contained extraneous information, a

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violation of the FCRA. The extraneous information, according to the plaintiff, included a provision stating how the applicant “understands that all employment decisions are based on legitimate non-discriminatory reasons.” Specifically, the plaintiff states that the “[d]efendant repeatedly and routinely uses the same unlawful document with all of its employees on whom it procured consumer reports or otherwise failed to provide them with the required stand-alone disclosure.”

(*Aaron Abel v. Big Lots Stores, Inc.*, No. 151100286 (Philadelphia County Crt. of Common Pleas, Nov. 4, 2015)).

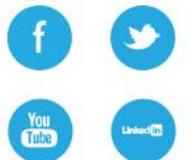
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