



Background Checks: There's An App For That

Insights

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But Are You Using It Correctly?

In January of this year, the Federal Trade Commission (FTC) issued a warning to three companies that sell mobile applications (apps) which provide background reports, including criminal record reports. The issues are whether those apps and reports are covered by the Fair Credit Reporting Act (FCRA), and whether the providers and their customers – that would be you – are complying with the FCRA's requirements.

The FTC letters were addressed to three providers of mobile apps (Everify, Inc., InfoPay, Inc., and Intelligator, Inc.). The apps include the Police Records app, the Criminal Pages app, and others.

Although the FTC said in the January letters that it had not determined whether any violation of the FCRA had occurred "at this time," the agency encouraged the providers to "review your mobile applications and your policies and procedures for compliance with the FCRA," and that those applications "may be in violation of the FCRA."

The Basics

The FCRA imposes various duties on consumer reporting agencies, entities that sell background reports for certain purposes (including employment purposes or other statutory purposes). Among other duties, the FCRA requires that such agencies take reasonable steps to ensure the maximum possible accuracy of the information in such reports (which are known as consumer reports).

The FCRA also imposes several requirements on employers who use consumer reports. Those employer requirements include a disclosure-and-authorization requirement, a pre-adverse-action notice requirement, and a post-adverse-action notice requirement. The statute provides financial penalties for violations. These requirements don't apply to those employers who do their own background checks directly, but they do apply when you use a third party – a consumer reporting agency – to compile the information.

In the letters to the providers of such apps, the FTC wrote:

If you have reason to believe that your background reports are being used for employment or other FCRA purposes, you and your customers who are using your reports for such purposes must

comply with the FCRA. This is true even if you have a disclaimer on your website indicating that your reports should not be used for employment or other FCRA purposes. We would evaluate many factors to determine if you had a reason to believe that a product is used for employment or other FCRA purposes, such as advertising placement and customer lists.

The Bottom Line

Exercise caution to ensure that any reports or other information used by you or your managers in making employment decisions are properly obtained and properly used in accordance with any applicable federal or state laws, including both the FCRA and any applicable equal employment opportunity laws.

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Service Focus

FCRA and Background Screening