



Benefits Outweigh Risks In Criminal Background Checks

Publication

5.07.12

In April 2012, the National Consumer Law Center (NCLC) published a report titled "Broken Records: How Errors By Criminal Background Checking Companies Harm Workers and Businesses." The report urges the U.S. Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) to use their rulemaking authority under the Fair Credit Reporting Act (FCRA) to further regulate employers and criminal background check companies.

The report highlights several potential issues with background checks; however, many of the NCLC's recommendations are not based on empirical data, but rather a few case studies that support the goals of the organization.

Unfortunately, the report takes aim not only at companies that provide criminal background checks, but at all employers who lawfully use background checks to protect themselves from negligent hiring claims and potential workplace violence.

The report focuses on the potential inaccuracies found in criminal background reports, including false positives, mismatched reports, sealed or expunged information in reports and reports that contain inaccurate or misleading information. Even the NCLC admits that "actual accuracy rates are not possible to obtain" because many employees will not inform a prospective employer of an error.

Employers can, and should, take certain steps to minimize the potentially negative effects of criminal background checks on applicants. To avoid liability under Title VII, employers should consider the nature and gravity of the offense(s); the time that has passed since the conviction and/or completion of the sentence; and the nature of the job held or sought.

Other proactive measures may include considering employment or character references and evidence of rehabilitation. Criminal background checks can also be used after an offer has been extended to a successful candidate. This has the effect of reducing the number of applicants who are adversely affected by a criminal background check policy.

Employers should not be forced to delay the hiring process for qualified applicants without a criminal history, or to face unnecessary and expensive federal compliance audits, especially without more reliable data demonstrating a significant number of inaccuracies.

This article appeared in [Employment Law360's Expert Analysis](#) section on May 7, 2012.

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