

# A CALIFORNIA UNICORN: COURT ISSUES FAVORABLE BACKGROUND CHECK RULING FOR EMPLOYER IN CLASS ACTION

Insights  
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Employers in California are frequently faced with class action lawsuits brought by current or former employees. Oftentimes, these actions are brought for alleged wage and hour violations, but we've seen an uptick in suits claiming violations of state and federal background check laws — even for minor technical errors. However, in an occurrence that may be as rare as a unicorn sighting, a California Court of Appeal recently delivered some good news for employers. The court affirmed a decision to dismiss a former employee's class action claiming that a convenience store chain's background check forms were defective. Notably, the court did not actually decide whether the forms were defective, and instead dismissed the case because the worker could not show he suffered an actual harm or injury. This potentially significant decision could curtail class actions that merely assert technical violations unaccompanied by any harm to consumers or employees. What do you need to know about the decision and its impact on employers?

## What Happened Here?

As part of the hiring process for Circle K Stores, Ernesto Limon received a set of disclosure forms and authorized Circle K to conduct a background check. Limon was hired by Circle K with no issue regarding his background check. However, after his employment ended, he sued Circle K in federal court for alleged violations of the Fair Credit Reporting Act (FCRA), the federal law governing background checks.

## Related People



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## Service Focus

### FCRA and Background Screening

The FCRA requires employers to provide a “clear and conspicuous disclosure” – which can’t be combined with other documents or contain extraneous information – before procuring a background check. Limon alleged that Circle K violated this provision. Nevertheless, the federal court dismissed his claims for lack of standing, holding that he failed to establish any actual harm as a result of Circle K’s alleged technical violations of the statute.

Limon re-filed his claims in state court, and the California trial court also dismissed the case on similar grounds. This decision was the first of its kind, as California state courts have historically (and frustratingly) permitted such claims to proceed based on statutory violations alone, even without the worker showing concrete harm or injury.

The state appellate court **affirmed** the trial court’s decision, holding that “an informational injury that causes no adverse effect is insufficient to confer standing upon a private litigant to sue” under California law. Considering the privacy goals of the FCRA, the court determined that holding Circle K liable for a violation that caused no injury would not align with the act’s purpose.

On January 25, the California Supreme Court rejected the plaintiff’s petition for review of the decision and his request to depublish it — which is another rare win for employers.

### **What Should Employers Do?**

This decision provides California employers with a helpful defense against similar claims. Notably, such lawsuits are usually brought on a class-wide basis on behalf of all individuals who went through the company’s background screening process (including those who were never actually hired) — and the penalties sought range from \$100 to \$1,000 for each individual.

It is important to have your background check disclosure and authorization forms reviewed by legal counsel for compliance, even forms that are supplied by your background check vendor. This is the most effective way to avoid similar claims. In California, you’ll also need to comply with the state’s Fair Chance Act, as well as applicable local ordinances, which regulate inquiries into job applicants’ criminal history.

Moreover, multistate employers should note that laws on background checks vary significantly from state to state, and many involve more steps than what is required under FCRA. Therefore, you should carefully review the rules in the locations where your employees are located and coordinate with your workplace law counsel to make sure you have appropriate steps in place to comply.

We will continue to monitor litigation stemming from this case and provide updates as warranted. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [FCRA and Background Screening Practice Group](#).