Fair Credit Reporting Act Expanding Further into Employment Decisions

January 29, 2013 -Let's say that you are an employer and you are interviewing people to fill an open position. You decide that you want to do a background check on a candidate, but you are not really interested in checking out his credit. In fact, you're really just concerned that you're not hiring someone who will be dangerous to you or your other employees. So you buy a report, find out that the candidate was a serial killer in a prior life, and get out of hiring him by telling him that you think he's "overqualified" for the position. "Wow!" you think. "I just dodged a bullet!" Well, maybe not. Under the terms of some recent FTC decisions, you may have left yourself open to legal action for violating the FCRA.

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The Federal Trade Commission has been involved in a number of FCRA enforcement actions over the past year that don't have much to do with consumer credit. Instead, they have focused on information gathering and sharing.

Recently, the FTC entered into a consent decree with a mobile company by the name of Filiquarian Publishing. The company had developed a mobile application to conduct background checks on just about anyone. The company specifically stated that the information it provided shouldn't be relied on by employers. And the information that the company provided was for criminal background checks; not credit information.

But the FTC determined that Filiquarian was actually assembling and distributing consumer reports which are covered by the FCRA. Additionally, they stated that the company had a reasonable expectation that employers were relying on the company's information in hiring decisions. The consent decree which the FTC entered into stipulated these points.

The result of the consent decree is that employers who conduct any form of background check on employees should

probably conclude that they are subject to FCRA requirements. While these types of checks are perfectly legalâ€¦ and in many cases, advisableâ€¦ there are rules that employers have to follow to be FCRA compliant.

Most employers are aware of these requirements or they hire an outside vendor to insure that they are compliant. The lesson here is that employers need make sure that any service that they hire to conduct background checks is compliant with the FCRA. And they need to make sure that their own policies regarding the use of these checks are FCRA compliant. Not doing so could expose both the business and the business owners to substantial fines and potential civil action.

byJim Malmberg
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