



For your information

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FTC Takes Aim at Employment Background Screening

Employers often rely on data brokers and consumer reporting agencies to provide background reports on job applicants. Following on the heels of its first enforcement action to address the sale of Internet and social media data for employment screening, the Federal Trade Commission (FTC) recently announced a \$2.6 million settlement with an employment background screening company for alleged violations of the Fair Credit Reporting Act (FCRA). In light of the FTC's recently stepped-up enforcement activity, employers that use information provided by background screening companies in making hiring or other employment-related decisions should review their policies and practices, as well as those of their screeners, for compliance with the FCRA's requirements.

Background

Background screening companies provide employers with information from multiple sources, including credit reports, employment history, criminal records, and social media. Companies that function as consumer reporting agencies and employers that use their reports in making hiring and other employment decisions must comply with the FCRA, which is enforced by the FTC and the Consumer Financial Protection Bureau.

The FCRA generally protects the privacy and accuracy of information bearing on an individual's credit, character, reputation, personal characteristics, or lifestyle that is used or is expected to be used in determining an individual's eligibility for employment. Among other things, the law requires consumer reporting agencies to take reasonable steps to ensure the accuracy of the information they report, notify consumers that information about them was being reported to current or prospective employers, and allow consumers to access their own information and dispute any inaccuracies.

U.S. v. HireRight Solutions, Inc.

HireRight Solutions, Inc. (formerly known as USIS Commercial Services, Inc.) provides background screening reports on applicants and employees to thousands of employers in the U.S. The reports, which employers use in making hiring and other employment-related decisions, contain public-record information, including criminal histories. The FTC [alleged](#) that HireRight Solutions is a "consumer

reporting agency” and that its background screening reports are “consumer reports” within the meaning of the FCRA.

Specifically, the FTC charged that HireRight Solutions violated the FCRA by failing to:

- Provide written notice to individuals that public-record information about them was being furnished to employers
- Provide consumers with information in their files
- Ensure the accuracy of its reports, particularly criminal offense information
- Conduct, or promptly conduct, reinvestigations of disputed items in a consumer’s file after being notified of a dispute
- Notify consumers of the results of its reinvestigations.

To settle these charges, HireRight Solutions [agreed](#) to pay \$2.6 million, the second-largest civil penalty the FTC has obtained under the FCRA. Notably, the settlement occurred soon after the FTC settled its first enforcement action addressing the sale of Internet and social media data for employment screening. (See our August 27, 2012 [For Your Information](#).) These two actions signal that the FTC is committed to applying the FCRA in the employment context, and strong enforcement of the FCRA is a top priority for the FTC. Thus, companies that conduct background screening and employers that use their reports in making employment decisions should ensure that they fully comply with FCRA requirements.

Employers should be mindful that other federal and state agencies also are paying increased attention to background screening. The Equal Employment Opportunity Commission’s (EEOC’s) Draft Strategic [Enforcement Plan](#) for 2012-2016 makes “*Eliminating Systemic Barriers in Recruitment and Hiring*” a top priority, targeting the use of screening tools (such as pre-employment tests, background screens, and date-of-birth screens in online applications) that adversely impact particular groups. For example, in recently issued enforcement guidance on the use of arrest and conviction records in employment decisions, the EEOC linked criminal record exclusions to race and color discrimination in the workplace. (See our May 11, 2012 [For Your Information](#).) Similarly, Massachusetts recently issued regulations clarifying how employers may obtain and use criminal background information in hiring and other employment decisions. (See our August 10, 2012 [For Your Information](#).)

Conclusion

In light of the FTC’s recently stepped-up enforcement activity and the EEOC’s expected focus on the use of background screens, employers may want to take a closer look at their screening practices and at how the vendors they employ investigate current and prospective employees.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.
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