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BLOGS

Archives; Hiring & Firing; Privacy & Information Security; Workplace Policies

Background Checks or Blacklists?

Many employers experience frustration and challenges when trying to obtain meaningful background check information. The cost to replace a terminated employee is high, and can add up quickly for an employer in a high turnover industry such as retail. Employers are wise to develop strategies, tools and resources that help them to recruit qualified workers who will be loyal and trustworthy employees. Background checks are common, and most employers rely on outside vendors to do them. Background check vendors – companies that specialize in gathering and reporting on criminal convictions, credit histories, and social media information about job applicants – have become an industry.

These vendors are constantly developing new technology and methods to deliver what their customers need. This is no doubt what led to the database called Esteem, recently featured in a [New York Times article](#). Esteem is a so-called retail theft database that is designed to help retail employers steer clear of hiring shoplifters and thieves. Many retail companies have used Esteem to report and share information about employees who have allegedly admitted to theft from their employers. Subscribers agree to share information about employees who have signed admissions of theft, and in return, employers also receive theft reports generated from the database containing verified admissions. Many large retail employers, including Target, Home Depot and Family Dollar Stores have used the service.

But federal authorities have zeroed in on background-check data. Last summer, the Federal Trade Commission settled charges with a retail-theft database vendor, saying some records were inaccurate and that the vendor made it too difficult for consumers to dispute claims. They claim the vendor used practices that violate the [Fair Credit Reporting Act](#). Background checks also raise concerns related to discrimination. Last year, the Equal Employment Opportunity Commission (EEOC) issued [Enforcement Guidance](#) on the use of criminal history information in making hiring and other employment decisions. According to the Guidance, to be lawful under Title VII, an employment exclusion must be based on proven criminal conduct and must be job-related and consistent with business necessity. Databases that collect information about alleged theft admissions would not meet this requirement.

Private lawsuits have proliferated against the companies that operate retail-theft databases. Lawyers are trying to build class-action cases against the vendors that supply this information to employers. They argue that the system and process is unreliable and has caused many job applicants to be unfairly rejected by prospective employers. Lawyers also say that admission forms do not typically warn employees that their admission will go on their record. They refer to the databases as a secret blacklist.

What is the moral of my story, you ask? Your background check vendor is a key business partner. Do your due diligence before you sign up for the latest and greatest service. New and improved technology and tools are constantly emerging and the vendors selling these services are sophisticated and experienced. But that doesn't mean what they offer is right for your company. Be sure you ask the vendor detailed questions about how they gather, validate and share all background check information, and make sure they understand and comply with FCRA and related state laws.