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BLOGS

Archives; Hiring & Firing

Beware of Stock Vendor Background Check Forms

If you are like many employers, you use an online job application or are considering switching to an online process. Online applications have many benefits, and there are numerous vendors prepared to help you set up an online site, populate it with forms, and set up applicant tracking and background check processes. Employers should be wary, though, of adopting stock background check forms provided by vendors. However well-intentioned, vendors do not always provide stock forms that comply with the federal Fair Credit Reporting Act (FCRA) or other applicable laws.

A recent proposed class action against Whole Foods Market Group, Inc. highlights the risks of blindly relying on vendor forms or not carefully checking forms that you create. Earlier this month, a former Whole Foods employee filed a federal lawsuit in Florida, alleging that the company violated FCRA, the federal background check law, by using non-compliant background check consent forms in its online application process.

Under FCRA, an employer that intends to conduct a background check must first provide the applicant with an advance disclosure notice and consent form. This form must be in writing and contain designated information in a stand-alone format, separate from the employment application. An employer must also use the form to obtain the individuals written consent to the background check. The disclosure and consent form may not, however, contain any extraneous information, such as disclaimers, releases of liability, or other acknowledgements.

The recent suit against Whole Foods alleges that the company impermissibly used a background check disclosure form that contained extraneous release of liability language in violation of FCRA. The named plaintiff, Colin Speer, seeks to represent a nationwide class of Whole Foods employees or job applicants who were given the incorrect form in the last five years. The case is *Colin Speer v. Whole Foods Group Market Inc.*, case number 8:14-cv-03035, pending in the U.S. District Court for the Central District of Florida.

This is not the first time Whole Foods has faced FCRA violation claims. In February 2014, a similar lawsuit was filed against the company in California. The Whole Foods lawsuits are part of a growing trend of class action lawsuits alleging FCRA violations against large national employers. In the last month, Dollar General and Publix Super Markets Inc. have settled FCRA-related class actions, each for millions of dollars. In addition, Home Depot, Uber, Disney, Dominos Pizza, CVS, and K-Mart, among others, have all been hit with FCRA-related background screening lawsuits in recent years. As further evidence of this trend, just last month, the Federal Trade Commission (responsible for enforcement of the FCRA) issued a document called "Background Checks: Tips for Job Applicants and Employers."

Employers should be mindful of this trend and take preventive steps to ensure their application process is compliant with FCRA and other laws. If you conduct background checks, make sure the forms that you use are FCRA compliant and that you have considered any unique state or local laws.