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Ten Things You Should Know to Limit Liability When it Comes To the Use of Credit Reports In The Hiring Process

One of the most problematic, and at times the most useful consumer reports acquired during the hiring/promotion process is the employee/applicant's credit report. Its "misuse" have led companies towards heavy fines and penalties as class defendants before FCRA. Here is a checklist for streamlining your HR processes for hiring and promotions, and limiting your liability during screening, by rigorously incorporating policies for accessing and using credit reports.

How to Limit Liability and Avoid Becoming FCRA Defendant When Using Consumer Reports

#1 to #7 — Disclosure and Consent of Your Employees

Yes, disclosing your intention for acquiring credit reports for the employee/applicant and taking their consent thereof is that important.

Hence, even before you get a credit report, you are bound to do the following:

1. Inform the candidate or existing employee that you might use the information supplied by the consumer report for making decision about hiring/employment/promotion.
2. Gain written permission from the applicant/employee before proceeding

Additionally, a reputable background screening company will require that the credit report you seek is in compliance with FCRA.

What You Should Do

Review Existing Practices:

1. Review existing screening processes and practices (both offline and online) for new hires and existing employees.

2. Review existing disclosure/consent forms for compliance. Your notice cannot be part of the employment application. It must be a separate, one page, stand-alone form that clearly states that you are seeking permission to obtain their credit report (or consumer report) for employment purposes.

Obtaining Consent:

3. Obtaining consent should be an individual, stand-alone step in the process. Avoid including any other material (such as liability waivers) or consents. Any additional information in the notice (such as a brief description for the nature of these reports) can be added as long as it does not detract the employee/candidate from the notice itself.
4. In case you also have an online application process in place, the consent/disclosure form should be displayed on a separate page i.e. on a single screen devoid of any other content.
5. Never seek a verbal consent. A “written” (physical or electronic) is required by FCRA.
6. If your policy dictates period background checks for all your employees throughout the course of their employment with you, you should mention it clearly in the consent and disclosure form.
7. Verify compliance by checking existing state laws regarding background checks for the state(s) where you are either operating or from where you are soliciting employees. Some states have additional restrictions (apart from FCRA) for the types of consumer information you can request and gain access to.

In case your HR processes and practices have not remained abreast of the latest FCRA regulations, consult a reputable screening company. Professional advice can significantly reduce downtime and identify problems.

(#8 to #10) — Backup of Information

According to law, the applicant has a right to file a lawsuit in case a violation is found: within five years after the date when the violation occurred or within two years when the plaintiff found the violation.

What You Should Do

Backup

8. Maintain backup of all disclosure/consent forms for at least 5 years.

Adverse Finding and Action

In case of an adverse finding, one that will directly affect your decision for the employee e.g. application, termination, denial of promotion, or any other relevant action you are obligated to send pre-adverse notice and give due time for applicant/employee to verify the information.

What You Should Do

Take Adverse Action

9. Provide the individual with a pre-adverse action notice, a copy of their consumer report, and the latest “Summary of Rights.” The reasonable waiting time before issuing an Adverse Action Notice is 5 days.

10. The Adverse action notice must contain all information required under the FCRA.

You can automate the process of issuing notices and maintaining records by creating forms in advance, reviewing, and streamlining the processes so that a clear systematic process is available.

In Conclusion

Reviewing your existing HR policies, creating new ones, and ensuring compliance is an extensive process. However, it also is a one-time investment that can minimize your liability for years to come. Developing a strong partnership with a third-party background screening company can ensure that your screening process remains up-to date.