

In response to recent legislation as well as an expansion of content, we have added a number of new state restrictions to the State Rules Register. This Alert provides an overview of the added materials.

Applicant Paying for Portion of Background Check

This topic was expanded into two separate restrictions:

1. **Cost of record or portion of background check cannot be paid by subject/applicant.** This restriction affects Users in DC, IA, LA, KS, MN, and VT
2. **Cost of medical examination for background screening cannot be paid by subject/applicant.** This restriction affects Users in CA, LA, OK, and VT

Social Media - Restriction Pending in NJ

Maryland was the first state to prohibit employers from requiring that applicant/employees provide user names, passwords, etc. to access social media sites. California, Illinois, and Michigan have also passed laws.

It appears that New Jersey may be the next state. Bill A2878 (2012) was passed by both state legislative bodies and is awaiting signature of the governor. The bill is scheduled to take effect on the first day of the fourth month following enactment.

Frankly social media does provide a more candid view of an applicant than the resume and formal interview. Properly used, it can be extremely helpful. The challenge, if social media is provided by a CRA, is whether the information is accurate. Technologies have come a long way to sort through the information available on the internet to be able to tie specific sites to the specific consumer. So if you are interested in providing this service, inquire of the CRA's processes to insure accuracy. While there is a chance of a fake Facebook page created to embarrass someone, those instances are extremely rare and might be obvious because they are "over the top". As with any information, use it wisely and with caution. Lastly, all information must be used within EEOC Guidelines.

New York and Use of Social Security Numbers by Landlords

New York has amended its laws effective December 12, 2012 regarding the use of Social Security Numbers (and any number derived therefrom, which probably includes any redacted Social Security Number). The restriction is found in the General Business Code §399-ddd. The statute is a general prohibition against requiring consumers to disclose their Social Security Numbers. The statute then goes on to list 17 exceptions which will allow the disclosure of social security numbers. The amendment does not affect employment background screening because there are exemptions for general employment purposes and obtaining criminal records. Tenant screening might be affected. The exception for criminal records is still applicable, but there is no general exception for residential use. Landlords often collect eviction records and credit reports, but no exception is listed for those searches.

We advise those requesting tenant screening to use exception 1 in the statute which is the "consent of the consumer". The consent can be very simple. A copy of this article and a recommended Consent Form is available on the web page. Where the Resource Tabs are listed, go down the page and look for the 2nd bullet under Forms section.

Rhode Island and Matching Criteria

Per R.I. Gen. Laws §6-13.1-29, a CRA may not match credit information by Social Security Number alone. This is not new - this restriction has been displayed in the State Rules Register since our inception. But lately there has been some discussion regarding this Rhode Island restriction. First, the statute does not prohibit matching by social security number. It only prohibits using the social security number as the sole factor in matching information to the consumer. Second, this restriction applies only to credit reports that provide information on a consumer's credit worthiness, credit standing and credit capacity.

The restriction does not apply to other types of reports; however, very rarely would information in other reports be matched by social security number alone.

Vermont and Use of Credit Reports

A number of new restrictions were added to Vermont, mostly concerned with consumer consent and use of credit reports. Below is a new User Restriction on use of credit reports.

An employer shall not refuse to hire, recruit, discharge or otherwise discriminate on the basis of an individual's credit report or credit history. Nor may an employer inquire about an applicant's or employee's credit unless:

1. The report is required by state/federal law/regulation.
2. Individual will have access to confidential financial information of a commercial value obtained by specific authorization by the customer or client - normally handled by managers and those employees who must know the information to perform their job.
3. Financial institutions and credit unions.
4. Law enforcement.
5. Emergency medical personnel.
6. Firefighters.
7. Those with the financial fiduciary responsibilities regarding making payments, collecting debts, transferring money or entering into contracts.
8. Will have access to payroll information.
9. Where credit information is a "valid and reliable predictor of employee performance".

Employer shall keep credit information confidential and destroyed when person is not hired or leaves employment. The statute is 21 V.S.A. §495.

Reminder Alert - Indiana

The recent changes to Indiana law have been inserted in the State Rules Register. These include: restrictions on users and restrictions on what a CRA can report. The restrictions on the CRA are most likely pre-empted by §625 of the FCRA which provided a cutoff of state restrictions as to the contents of consumer reports to statutes in effect on September 30, 1996. The Indiana statute, IC 24-4-18-6 is effective July 1, 2013.

The law also restricts records the courts may release and appears to allow each court to adopt its own rules as to what records are available. Clearly the law attempts to make convictions for low level offenses called infractions, less available to employers, landlords, etc. In addition, a new provision is created to allow qualifying defendants to convert a Class D felony to a Class A misdemeanor. Upon the conversion, reference to the prior felony charge is not allowed. This provision would arguably relate to accurately reporting a record; so the CRA should follow this provision. Further, convictions of infractions are available for five (5) years only.

Anyone with a restricted record for a conviction for an infraction may state that they have no such conviction. IC 34-28-5-16(g). The law elsewhere, IC 35-38-8-7(b), prohibits inquiries about sealed records and it is strange that these provisions do not parallel each other.

Best Wishes,
Larry Henry