

Civil Rights and Consumer Protection Litigation Docket

Many workers are facing escalating barriers to employment as employers increasingly rely on criminal records information in employment hiring and firing decisions, often with little protections to ensure that the process is fair and based on accurate information. As a result, advocates are working to enforce the basic federal protections that regulate criminal background checks for employment through a variety of tools, including litigation. In the past few years, several major lawsuits have been filed alleging violations of the basic civil rights and consumer protection laws that apply to criminal background checks.

What follows is a docket of the latest and pending cases alleging violations under the federal laws that regulate criminal background checks for employment, including Title VII of the Civil Rights Act of 1964 and the Fair Credit Reporting Act (FCRA). In addition, this document reports on major state settlements against several large employers and a private screening firm issued by the New York Attorney General.

This docket will be updated regularly. For more information, or to contribute to this update, please contact [Madeline Neighly](#).

Current Title VII Litigation

EEOC v. Freeman, Case No. 8:09-cv-02573 (D. Md., filed Sept. 30, 2009). The EEOC is represented by Debra Lawrence, Acting Regional Attorney for the EEOC-Philadelphia District Office, and Ronald Phillips, Senior Trial Attorney for the EEOC-Baltimore Field Office. Defendant is represented by Donald Livingston and Paul Mirengoff of Akin Gump Strauss Hauer & Feld LLP.

On January 17, 2008, Katrina Vaughn, an African American woman, filed a charge of discrimination against Freeman, an event planning company, alleging race discrimination. Freeman had rejected Ms. Vaughn's application for employment because of her credit history. After the EEOC began investigating Ms. Vaughn's complaint, it expanded the investigation to encompass Freeman's use of criminal history in the hiring process.

On September 30, 2009, the EEOC filed suit against Freeman. The EEOC alleges that Defendant Freeman violates Title VII of the Civil Rights Act of 1964 because its use of "credit history and criminal history [is] neither job-related nor consistent with business necessity, as there are more appropriate, less discriminatory alternative selection procedures."

In response to Defendant's motion to dismiss all claims relating to hiring decision made more than 300 days before the initial EEOC charge was filed, Plaintiff filed in opposition claiming the "continuing violation doctrine," and argued that the court should use the date charging party filed her questionnaire (12/19/2007) rather than the date she filed her charge (1/17/2008). The court found that no court of appeals had addressed the issue of seeking relief for individuals subjected to discriminatory acts more than 300 days before the filing of an administrative charge that prompted the EEOC's investigation, and district courts are split. This court held that "the EEOC may not seek relief for individuals who were denied employment more than 300 days before the filing of the administrative charge prompting the EEOC's investigation." The court also held that the intake questionnaire cannot be considered a charge and thus uses the 1/17/2008 date to count back 300 days.

The court granted the parties' joint motion for additional stay of proceedings to permit continued mediation.

Mays v. Burlington Northern Santa Fe Railroad Co., Case No. 1:10-cv-00153 (N.D. Ill., filed Jan. 11, 2010). Plaintiff is represented by Steven Zeller and Kyle Davis of Dykema Gossett, PLLC. Defendant is represented by Steven Hartmann and Rachel Atterberry of Freeborn & Peters LLP.

Plaintiff is an African American man with a felony conviction. He began working for Rail Terminal Services (RTS) at a Burlington Northern Santa Fe (BNSF) Railway Company facility in April 2000. BNSF began implementing the e-RAILSAFE background checks in 2004 and "required its contractors, including RTS, to conduct periodic background checks on all employees working at BNSF facilities." Because his felony conviction was within seven years of the background check, he was denied access to the BNSF facility, resulting in his termination by RTS. This was before e-RAILSAFE had appeals (implemented after 2007 Congressional Hearing).

Plaintiff filed a charge with the EEOC on September 9, 2005. Nearly four years later, on March 10, 2009, the EEOC sent a right to sue letter to Plaintiff's previous address. He learned of this in October 2009 and requested a reissuance. His request was granted on October 19, 2009. He filed suit on January 11, 2010. After being assigned counsel, Plaintiff filed an amended complaint on September 1, 2010.

Case is currently in discovery.

Arroyo v. Accenture, Case No. 10-civ-3013 (S.D.N.Y., filed April 8, 2010). Plaintiffs are represented by Adam Klein, Samuel Miller, and Ossai Miazad of Outten & Golden LLP, and the Lawyers' Committee for Civil Rights Under Law. Defendant is represented by Peter Walker of Seyfarth Shaw LLP and James DeVita of Schoeman Updike Kaufman & Scharf.

Plaintiff is a Latino man who worked for Accenture, a global management consulting, technology service and outsourcing company, as a contract employee from November 2005 to April 2007. He had been placed by an employment agency to work as an analyst. In April 2007, Accenture offered him a permanent position subject to a background check. On April 17, 2007, Accenture withdrew the job offer and terminated Plaintiff from his position. At the time of the background check, Plaintiff had a 10-year-old conviction for vehicular homicide arising from a drinking and driving incident. He spent 2.5 years in prison and has no other convictions.

On November 6, 2007, Plaintiff filed a charge of discrimination with the EEOC. On January 8, 2010, the EEOC issued a right to sue letter to Plaintiff (it was received on January 13, 2010). The complaint was filed on April 8, 2010 and the answer was filed on May 25, 2010.

Case is currently in discovery for class certification.

Johnson et al. v. Locke, Case No. 10-cv-3105 (S.D.N.Y., filed April 13, 2010). Plaintiffs are represented by Adam Klein, Justin Schwarz, Samuel Miller, Lewis Steel, Ossai Miazad, Rachel Bien, and Melissa Pierre-Louis of Outten & Golden LLP, Judy Whiting and Paul Keefe of Community Service Society, Sharon Dietrich of Community Legal Services, Inc., Richard Bellman and Jackson Chin of LatinoJustice PRLDEF, Ray McClain of the Lawyers' Committee for Civil Rights Under Law, Anjana Samant and Darius Charney of Center for Constitutional Rights, Robert Coulter of Indian Law Resource Center, and Michel Kirkpatrick of Public Citizen Litigation Group. Defendant is represented by Preet Bharara, Allison Penn, Daniel Filor, and Tara Lamorte of the United States Attorney General.

Plaintiffs brought suit against the U.S. Census for Census' policy of requiring applicants to provide "official court documentation" for any and all arrests. On March 15, 2011, the court granted in part and denied in part a motion to dismiss premised primarily on the grounds that the Plaintiffs have not exhausted their administrative remedies. All but one plaintiff was allowed to continue with the litigation, but the class allegations were dismissed for failure to meet the class action administrative complaint pleading requirements unique to federal employment. 29 C.F.R. § 1614.204(a). Plaintiffs will rectify the dismissal of the class allegations by filing on behalf of plaintiffs who have met the federal administrative pleading requirements.

Case is currently in discovery for class certification.

Kellam v. Independence Charter School, Case No. 2:10-cv-01644 (E.D. Pa., filed April 14, 2010). Plaintiff is represented by May Mon Post of the Post Law Firm. Defendant is represented by Walter Swayze III and Brian Franklin of Segal, McCambridge, Singer & Mahoney.

Plaintiff is an African American male with a 1999 conviction for aggravated assault. Plaintiff was hired by Defendant, a non-profit corporation, in 2003 as a part-time Lunchroom Assistant. On September 1, 2004, Plaintiff was promoted to a full-time Lunchroom Assistant position. On November 16, 2004,

Plaintiff was terminated from his position because of his criminal background check. Plaintiff had disclosed his conviction on the initial job application.

Following his termination, Plaintiff filled out a Charge Questionnaire with the EEOC on March 15, 2005. This was converted into a formal Charge of Discrimination by EEOC personnel and signed by Plaintiff on January 20, 2006. At that time, the charge was filed concurrently with the Pennsylvania Human Relations Commission (“PHRC”). On January 28, 2010, the EEOC issued a right to sue letter, and Plaintiff filed his complaint on April 14, 2010. Plaintiff brought his claim under both Title VII and the Pennsylvania Human Rights Act.

On August 17, 2010, the court denied Defendant’s motion to dismiss. Defendant’s sole argument was that the statute of limitations had run on Plaintiff’s claims because his Charge of Discrimination was not signed until 430 days after the act of discrimination. Because Plaintiff had timely filed his Charge Questionnaire at the EEOC 119 days after the act of discrimination and had provided sufficient information, the court found that the Plaintiff did timely file his charge of discrimination and the statute of limitations does not bar his claim under Title VII. While the court did find that the filing of the Charge Questionnaire was insufficient to constitute the filing of a charge with the PHRC, the Plaintiff’s PHRA claim was saved by the doctrine of equitable tolling.

Case is currently in discovery.

Mayer v. Driver Solutions, Inc., Case No. 10-cv-01939 (E.D. Pa., filed April 30, 2010). Plaintiffs are represented by Janet Ginzberg and Brendan Lynch of Community Legal Services, Inc., and Adam Klein, Justin Schwartz, Samuel Miller, and Rachel Bien of Outten & Golden LLP. Defendant is represented by Jacqueline Gallagher and Jacob Sitman of Obermayer Rebmann Maxwell & Hippel LLP.

This class action suit alleges that Defendant, a company that trains and places new truck drivers, violates Title VII by refusing to “procure placements for applicants with a felony conviction, no matter how old the conviction, its relation to the job, or the fitness or ability of the applicant for the job.” An amended complaint was filed on July 23, 2010.

Case is currently in discovery for class certification.

Hudson v. First Transit, Inc., Case No. C10-03158 (N.D.Cal., filed July 20, 2010). Plaintiffs are represented by Teresa Demchak, Roberta Steele, and James Kan of Goldstein, Demchak, Baller, Borgen & Dardarian, Matthew Piers, Kalman Resnick, and Christopher Wilmes of Hughes Socol Piers Resnick & Dym, and Madeline Neighly of the National Employment Law Project. Defendant is represented by Theodora Lee, Constance Norton, and John Hong of Littler Mendelson PC.

Plaintiff is an African American woman with a 2000 felony conviction for welfare fraud. After successfully completing her four days of jail time and five years of probation, Plaintiff’s conviction was reduced to a misdemeanor and dismissed by the State of California.

In March 2009, Plaintiff left her position as a paratransit driver with MV Transportation to accept a position as a paratransit driver with First Transit, Inc., one of the nation's largest bus providers. Soon thereafter, Plaintiff was terminated from her position because of her criminal history. Although Plaintiff informed First Transit that the charges against her had been reduced and dismissed, she was nonetheless terminated from her position.

On November 19, 2009, Plaintiff filed a charge of discrimination with the EEOC. On June 1, 2010, she received a right to sue notice. The class action suit was filed on July 20, 2010.

Case is currently in discovery for class certification.

EEOC v. Kaplan, Case No. 1:10-cv-02882 (N.D. Ohio, filed December 21, 2010). Plaintiff is represented by Debra Lawrence, Regional Attorney for the EEOC-Philadelphia District Office, Mary Kate Boehringer, Supervising Trial Attorney for the EEOC-Baltimore Field Office, and Jeffrey Stern, Cleveland Field Office. Defendant is represented by Gerald Maatman, Steven Pearlman, Jennifer Riley, and Brandon Spurlock of Seyfarth Shaw LLP, and Stephen Zashin, B. Jason Rossiter, and David Vance of Zashin & Rich Co., LPA.

The EEOC brought suit against Defendant, a company that offers career-oriented certificate and degree training in the United States and internationally, alleging that Defendant's use of credit history information in employment decisions has "a significant disparate impact on Black job applicants and incumbents, is not job-related and consistent with business necessity," and thus violates Title VII.

Case is currently in discovery.

Current FCRA Litigation

Hunter v. First Transit, Inc., Case No. 1:09-cv-06178 (N.D. Ill., filed October 5, 2009). Plaintiff is represented by Matthew Piers, Christopher Wilmes, Cristina Siepel, Joshua Karsh, and Kalman Resnick of Hughes Socol Piers Resnick & Dym, Ltd. Defendant is represented by James McKenna, Peter Bulmer, and Jason Selvey of Jackson Lewis, LLP.

On October 5, 2009, a class action lawsuit was filed against First Transit, one of the nation's largest transit providers, for violations of the Fair Credit Reporting Act (FCRA). The suit alleges that Defendant terminated or denied employment to class members in reliance on information contained in consumer reports without first providing class members with a pre-adverse action disclosure, including a copy of the report and information of the individual's rights under FCRA, and an opportunity to dispute the accuracy of the reported information.

Consolidated with First Student case and recently settled the case for \$5.9 million. A fairness hearing is scheduled for August 1, 2011.

Joshaway v. First Student, Inc., Case No. 2:09-cv-02244 (C.D. Ill., filed October 5, 2009). Plaintiff is represented by Kalman Resnick, Matthew Piers, Christopher Wilmes, Cristina Siepel, and Joshua Karsh of Hughes Socol Piers Resnick & Dym, Ltd. Defendant is represented by Peter Bulmer, James McKenna, and Joshua Selvey of Jackson Lewis LLP.

Class action lawsuit filed on October 5, 2009 in the Central District of Illinois and transferred to the Northern District on November 1, 2010.

Consolidated with First Transit case and recently settled for \$5.9 million. A fairness hearing is scheduled for August 1, 2011.

Ryals v. HireRight Solutions, Inc., et al., Case No. 3:09-cv-00625 (E.D. Va., filed October 5, 2009). Plaintiff is represented by Leonard Bennett and Matthew Erausquin of Consumer Litigation Associates PC, Anthony Pecora, Dennis O'Toole, and Matthew Dooley of Stumphauzer, O'Toole, McLaughlin, McGlamery & Loughman, and Christopher North. Defendant is represented by Amy Davis, Dane Butswinkas, Daniel Shanahan, and Frank Bowman of Williams & Connolly LLP.

Class action lawsuit filed on October 5, 2009. Its class claims alleged that HireRight and its predecessor USIS violated Section 1681k of FCRA by failing to notify the subject at the time when it issued criminal background reports, and Section 1681i by imposing obstacles and delays to reinvestigations following consumer disputes.

Consolidated with Smith v. HireRight and Henderson v. HireRight and recently settled.

Smith v. HireRight Solutions, Inc., et al., Case No. 4:10-cv-444 (N.D. Okla., filed July 7, 2010). Plaintiff is represented by Sharon Dietrich and Janet Ginzberg of Community Legal Services, Inc., James Francis of Francis & Mailman PC, and David Searles of Donovan Searles, LLC. Defendant is represented by Matthew Hank, Robert Drake, Rod Fliegel, and William Simmons of Littler Mendelson.

On December 17, 2009, a class action suit was filed in Philadelphia against HireRight, one of the largest providers of consumer reports, and its predecessor USIS. It alleged that Defendants' practice of duplicate reporting of criminal cases was a violation of Section 1681e(b) of FCRA by failing to utilize procedures designed to assure maximum possible accuracy, and Section 1681k by failing to maintain strict procedures to assure that the information is complete and up to date. It also alleged violation of Section 1681k by failure to provide contemporaneous notice of providing a report to an employer.

On June 7, 2010, Defendant's motion to transfer the case to Oklahoma was granted.

Consolidated with Henderson v. HireRight and Ryals v. HireRight and recently settled.

Henderson v. HireRight Solutions, Inc., et al., Case No. 4:10-cv-443 (N.D. Okla., filed February, 1, 2010). Plaintiff is represented by Sharon Dietrich and Janet Ginzberg of Community Legal Services, Inc., James Francis of Francis & Mailman PC, and David Searles of Donovan Searles, LLC. Defendant is represented by Matthew Hank, Robert Drake, Rod Fliegel, and William Simmons of Littler Mendelson.

The lawsuit alleged that Defendants' practice of reporting criminal cases that had been expunged was a violation of Section 1681e(b) of FCRA by failing to utilize procedures designed to assure maximum possible accuracy, and Section 1681k by failing to maintain strict procedures to assure that the information is complete and up to date. It also alleged violation of Section 1681k by failure to provide contemporaneous notice of providing a report to an employer.

Complaint filed in Philadelphia on February 1, 2010. Case transferred to Oklahoma on July 13, 2010.

Consolidated with Ryals v. HireRight and Smith v. HireRight and recently settled.

Williams v. Prologistix, Case No. 1:10-cv-00956 (N.D. Ill., filed February 11, 2010). Plaintiff is represented by Matthew Piers and Christopher Wilmes of Hughes Socol Piers Resnick & Dym, Ltd. Defendant is represented by Michael Cramer and Michael Ray of Ogletree, Deakins, Nash, Smoak, & Stewart, PC.

A class action suit was filed on February 11, 2010 alleging violations of the Fair Credit Reporting Act (FCRA). Plaintiff was not provided a pre-adverse action disclosure with a copy of the consumer report, a description of his rights under FCRA, or a pre-adverse action opportunity to dispute the accuracy of the reported information.

Motion to certify class was granted on January 27, 2011. Case is currently in discovery.

Recent NY Attorney General Settlements

In the Matter of the Investigation of Andrew M. Cuomo, Attorney General of the State of New York, of RadioShack Corporation, AOD No. 09-148 (November 20, 2009).

Settlement agreement arising from the New York Attorney General's investigation of "whether RadioShack unlawfully rejected the employment applications and withdrew conditional offers of employment of persons based on real or perceived criminal records histories (1) that could not be lawfully considered for employment purposes; and (2) that RadioShack improperly determined were directly related the job duties or created an unreasonable risk to persons or property without considering a number of factors required by New York ... Law."

In the Matter of the Investigation of Andrew M. Cuomo, Attorney General of the State of New York, of ChoicePoint Workplace Solutions, Inc.; ChoicePoint Precision Marketing LLC; ChoicePoint Public Records, Inc.; and ChoicePoint Services, Inc., AOD No. 09-165 (December 17, 2009).

Settlement agreement arising from the New York Attorney General's investigation of whether ChoicePoint violated federal and state law by "unlawfully aided and abetted employers in New York State who exclude and/or excluded applicants from consideration for employment (1) based upon information that could not be lawfully considered for employment purposes; and (2) without considering a number of factors required by New York Correction Law."

In the Matter of the Investigation of Andrew M. Cuomo, Attorney General of the State of New York, of ARAMARK Corporation, AOD No. 09-164 (February 2, 2010).

Settlement agreement arising from the New York Attorney General's investigation of "whether ARAMARK unlawfully rejected employment applications based on criminal records histories without considering a number of factors required by New York ... Law."

In the Matter of the Investigation of Andrew M. Cuomo, Attorney General of the State of New York, of ABM Industries Incorporated, AOD No. 10-173 (December 23, 2010).

Settlement agreement arising from the New York Attorney General's investigation of "whether ABM unlawfully rejected employment applications based on criminal record histories without considering a number of factors required by New York ... Law."