



Client Alert



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Background Screening Company to Pay \$2.6 Million Penalty for Violations of the Fair Credit Reporting Act

On August 8th, the Federal Trade Commission (“FTC”) announced a \$2.6 million settlement with HireRight Solutions, Inc. (“HireRight”) to resolve FTC allegations that the employment background screening company violated the Fair Credit Reporting Act (“FCRA”) and engaged in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act.

The FTC alleges that HireRight violated the FCRA in four areas: report accuracy (FCRA § 607(b)); file disclosure (FCRA § 609); reinvestigations (FCRA § 611); and procedures for reporting adverse public record information for employment purposes (FCRA § 613).¹ In addition to various administrative provisions, the Stipulated Final Judgment and Order for Civil Penalties, Permanent Injunction, and Other Equitable Relief (“Stipulated Order”) that the FTC and HireRight agreed to imposes obligations on HireRight in each of these four areas.

Accuracy. The Stipulated Order enjoins HireRight from failing to maintain reasonable procedures to assure maximum possible accuracy of consumer report information in violation of section 607(b) of the FCRA, specifically by failing to:

- Assure that the information reflects the current public record status of consumers’ information, such as expungement of a criminal record;
- Prevent the inclusion of multiple entries for the same criminal offense in a single report; and,
- Prevent the provision of obviously erroneous consumer report information, such as purported information on a single consumer that includes records of other consumers with different names, dates of birth, or other identifiers that are available in the public record.

The FTC alleges that HireRight, “in multiple instances,” failed to follow reasonable procedures in each of these areas and, as a result, produced inaccurate reports which resulted in consumers being denied employment.²

¹ United States v. HireRight Solutions Inc, “Complaint for Civil Penalties, Permanent Injunction, and Other Equitable Relief,” (“Complaint”) Civil Action No. 12-1313, (August 8, 2012). HireRight, in agreeing to settle the matter, did not admit to any wrongdoing.

² *Id.*, pages 4-5.

File Disclosure. The Stipulated Order enjoins HireRight from failing to disclose to a consumer all information in their file at the time of request, in violation of section 609(a)(1) of the FCRA. The Complaint alleges that HireRight either failed to provide consumers with information in their file or failed to do so upon request and consequently they experienced “numerous backlogs for fulfilling consumers’ request because of inadequate staffing or technical problems.”³

Reinvestigation. The Stipulated Order enjoins HireRight from requiring that a consumer who disputes the completeness or accuracy of information in their report obtain a copy of their report before conducting a reasonable reinvestigation, in violation of section 611(a)(1)(A) of the FCRA; as well as, failure to provide written notice to the consumer of the results of the reinvestigation not later than five business days after its completion, in violation of section 611(a)(6) of the FCRA. The Complaint alleges that “in numerous instances” HireRight would require consumers disputing information in their report to have a copy of the report before initiating a reinvestigation and that HireRight failed to provide the consumers with written notice of the results of the reinvestigation.⁴

Public Record Reporting/§ 613 notices. The Stipulated Order enjoins HireRight from failing to comply with the FCRA § 613 requirement when reporting public record information for employment purposes that likely would be adverse to the consumer, by either providing notice to the consumer at the time the information is reported to the user or maintaining strict procedures designed to insure that public record information reported is complete and up to date. According to the Complaint, HireRight’s process was not initiated until the day that the report was electronically transmitted to the employer and typically took more than one day to complete. The Complaint states that “notices were not mailed to consumers at the time the information was reported to employers.”⁵

This Alert is provided by Montserrat Miller, NAPBS Legislative Counsel. If you have any questions please contact Ms. Miller or Arnall Golden Gregory LLP’s Privacy Practice Group at 202-677-4038.

³ *Id.*, page 6.

⁴ *Id.*, page 6.

⁵ *Id.*, page 7.