



UPS Facing Fair Credit Reporting Act (FCRA) Class Action Lawsuit

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United Parcel Service, Inc. (“UPS”), the world’s largest package delivery company, was recently hit with a proposed class action lawsuit in a federal court in Florida. The lawsuit alleges that the company violated the Fair Credit Reporting Act (“FCRA”) by “using background checks to make employment decisions without providing workers or applicants with the results.”

The complaint was filed by John Riley (“Riley”), who claims that UPS offered him a job as a service representative; however, shortly after Riley accepted the position, UPS revoked the offer based on the results of a background check. Riley stated that when he was offered the job in November 2016, he was informed that the offer was contingent upon the completion of a background check, which would be performed by a third party at the request of UPS. By mid-November, Riley was informed that the job offer was rescinded due to the results of that background check. Those results were allegedly not shared with Riley. Consequently, he did not have the opportunity to review the results and discuss them with those in charge of the hiring process.

Riley’s complaint also states that UPS regularly “conducts background checks on most of its applicants as part of its screening process, also subjecting current employees to background checks occasionally during their time with the [company].” The complaint alleges that “[i]t was unlawful for defendant to terminate plaintiff’s employment or deny plaintiff employment on the basis of information contained in a consumer report, without first providing plaintiff with a copy of the report, notifying plaintiff of his rights under FCRA, and giving plaintiff a reasonable opportunity to respond.”

As you know, FCRA is a federal law that generally regulates how consumer reporting agencies use an individual’s information and “promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies”. According to the Equal Employment Opportunity Commission (“EEOC”), there are several requirements that an employer must satisfy both before performing a background check and after the background check has been completed, in order to be in compliance with FCRA.

Before performing the background check, an employer must tell the applicant or employee that the employer may use the information for decisions about the employee’s employment. Furthermore, the employer must obtain the applicant’s or employee’s written permission to perform the background check and must certify to the company generating the report that it has complied with FCRA’s requirements in this regard. If an employer decides to take an adverse action against an applicant or an employee based on the results of a background check, the employer is required to provide the applicant or employee a notice that includes a copy of the

consumer report that the employer relied on to make its decision, and a copy of “A Summary of Your Rights Under the Fair Credit Reporting Act.” The EEOC states that this “summary” should be provided by the company who generated the report.

Riley now seeks to represent a “proposed class of all UPS workers and prospective employees in the United States who have suffered adverse employment action based on information contained in a consumer report without receiving proper notice during the last five years.” Riley is seeking statutory damages between 100 dollars and 1,000 dollars for each FCRA violation committed by UPS, as well as putative damages, attorneys’ fees, and costs.

The suit against UPS is in its early stages and it is not yet clear whether Riley’s claims have merit. However, this suit serves as a warning to companies who may not be in compliance with FCRA when it comes to the use of background checks of applicants or employees. Employers should take the time to ensure that all employees who handle hiring and use background checks in the hiring process are aware of FCRA’s requirements.

If you have any questions or concerns regarding employment related issues, please contact James G. Ryan at jryan@cullenanddykman.com or at 516-357-3750.

Thank you to Bridget Hart, a law clerk at Cullen and Dykman, for her assistance with this blog post.

*Please note that this is a general description of law and does not constitute legal advice.