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BACKGROUND CHECKS

Faulty records are a particular hazard for Arizona employers

by Dinita L. James

Equal Employment Opportunity Commission (EEOC) guidance on the use of arrest and conviction records in employment decisions is causing concern for employers around the country. Arizona employers, in particular, face great difficulty in getting accurate background information, according to a recent report.

In March, the Arizona Criminal Justice Commission issued a report that spells out just how flawed the state's information in the National Instant Criminal Background Check System (NICS) is and how expensive it will be to fix it.

Garbage in, garbage out

Arizona criminal justice agencies are required to submit arrest and case deposition information for all felony, sexual, domestic violence, and DUI offenses to a central state repository called the Arizona Computerized Criminal History (ACCH). Arizona's information in the NICS comes from the ACCH's records.

Most background check vendors advertise that they provide NICS background checks. However, by law, NICS records are reserved for law enforcement and jobs requiring a fingerprint check; vendors use their own proprietary databases that they likely develop from public information contained in the ACCH and the NICS.

The state report identified considerable gaps in the ACCH's information. The system relies on employees at dozens of agencies in Arizona to enter and track information properly. One of the biggest problems identified by the study is a large number of arrests in the ACCH system without deposition information.

There are many reasons for the lack of deposition information, the most legitimate of which is that the case is still under investigation or being prosecuted. More problematic, however, are the charges that either are never prosecuted or are amended at various points in the

criminal justice process. In each case, the ACCH relies on an employee going back and manually correcting the electronic record. In far too many cases, that correction does not happen.

Another common problem is that law enforcement may make an arrest on one charge but a prosecutor pursues a different charge after the investigation. That can result in duplicate records for the same arrest, no link between the records, and at least one of them left without deposition information.

Those problems can result in a job candidate appearing to have multiple arrests when there was only one, but another type of issue can also come up: no information on a background check on a candidate who is wanted on a felony charge. The Arizona Criminal Justice Commission's report contains a shocking statistic: Of 44,075 outstanding Arizona felony warrants, only 13,344 appeared in the NICS database.

Bottom line

The report recommends full automation of the process in Arizona as well as technical support and training for law enforcement agencies, prosecutors, and court personnel. According to the study, a complete fix could cost as much as \$24 million. With that kind of price tag, the fix will not be in place anytime soon.

In the meantime, however, Arizona employers need to heed the guidance from the EEOC and follow the dictates of the federal Fair Credit Reporting Act (FCRA). That means you need to give an applicant who appears to have a disqualifying criminal offense the chance to challenge the background check information before making a decision not to hire him on that basis.

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