



Newsletter August 2011

## **What's New in Background Screening**

Employers who wish to use background screens should be advised to follow the rules established by their state. Each state varies, so it is important to evaluate the requirements in each of the states the employer conducts business.

In a recent case involving a transportation company, the company was subject to a \$5.89 million dollar class action suit. The transportation company failed to adhere to the requirements of the Fair Credit Reporting Act (FCRA) in obtaining written authorization from employees before obtaining criminal background checks. Further some candidates were denied employment without providing the applicants with a copy of their criminal background reports.

The FCRA requires that all background checks be conducted with consent and that in the case an adverse employment action occurring as a result of a background check, the applicant is entitled to certain notifications including a copy of the report.

In July 2011, the San Francisco Human Rights Commission held a hearing to determine if the use of criminal histories in evaluating candidates should be banned. San Francisco is considering making candidates with a criminal history a protected class in the City.

The City is in process of creating protections in employment for individuals who have had prior arrests or convictions. The city will achieve this by limiting use of criminal records in hiring decisions and designating ex-convicts a protected class.

The City believes citizens who are gainfully employed will not commit additional crimes and will become productive citizens in the community.

The San Francisco Human Rights Commission cannot enact ordinances or regulations under its sole discretion. The Commission can prepare recommendations for the Board of Supervisors to review and enact.

On a federal level, the EEOC has published guidelines on how employers may use the criminal records of applicants. Employers may not have a blanket "no hire" policy for candidates with criminal histories.

An organization called "Ban the Box" has launched a movement to eliminate questions about prior convictions from public employment applications. Some states already prohibited public employers from asking about criminal history on employment applications. Even private employers must ask questions about prior criminal histories in specific ways in order for the inquiry to be permissible.

We recommend employers use background check providers with specific experience in the state where they conduct their business. Also, confer with a qualified labor attorney or Human Resources Consultant in order to form your company's pre-employment processes.

## **Pending Legislation**

Employment Development Department: This Bill will increase the time employers have to respond to Unemployment Insurance Benefits claims from 10 days to 30 days.

**Employer Bereavement Leave:** This Bill has passed assembly. It would require employers to give employees with 60 days of service up to 4 days of unpaid bereavement leave.

**Domestic Workers:** Domestic workers include those who perform a variety of household services for an individual or a family, from providing care for children and elderly dependents to housekeeping. Some domestic workers live within the household where they work. This Bill originally required paid vacation for domestic workers. Although it's been revised, it is still in hearing for August.

**Privacy:** This is a Senate Bill which adds notice requirements for security breaches in personal information.

**English Only Rules:** This Bill would extend restrictions on English only rules to all business transactions.

**Pregnancy:** This Bill has passed in Senate. It would require employers to continue health insurance coverage for the 16 weeks of Pregnancy Disability Leave, even if the employee is not eligible for FMLA/CFRA.

### **Employer Question**

“Mr. Executive President asked if it was true that some attorneys are soliciting for employees' business by putting ads on the radio to point out that employers must give employees 15 minute breaks. He wanted to know what employers can do to protect themselves from such litigation.”

**Answer:** Yes, it is true. Lawyers are soliciting business. I've heard the radio spots and seen bill boards on highway 101.

Currently the meal and rest period law in California requires the employee be provided with an unpaid meal break of 30 minutes (or more) for a work period of more than five hours per day. If the daily work period is no more than six hours, the meal period may be waived by mutual consent of employer and employee.

A second meal period of not less than thirty minutes is required if an employee works more than ten hours per day, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived.

Unless the employee is relieved of all duty during the meal period, the meal period is considered as "on duty" and is counted as hours worked. Hours worked must be compensated at the regular rate of pay.

Further, employers are required to permit nonexempt employees a rest period, to be taken in the middle of each work period. The rest period must be at least 10 minutes, but can be more.

A rest period is not required for employees whose total daily work time is less than three and one-half hours. The rest period is counted as time worked and is a paid rest break. Employees can be required to remain on the work premises during paid breaks.

Here are steps an employer can take to protect themselves and their businesses:

- Assure your Company policy complies with California (or local state) law
- Document the company break and meal period policy in the employee handbook
- Provide training to employees and to managers
- Ensure employees are logging/punching in and out for meal periods (not rest breaks, rest breaks are "on the clock" and are paid time)
- Act promptly if an employee misses a "punch"
- Establish a process to correct missed or incorrect "punches"
- Promptly counsel employees not following your policy
- Conduct exit interviews with exiting employees to head off claims

To learn more, contact the HR professionals at MyOHR. [www.MyOHR.com](http://www.MyOHR.com)

These articles should not be construed as legal advice or as pertaining to specific situations.  
Consult with your legal counsel for further information.

*MyOHR provides key Human Resources consulting and support for small, emerging and mid-size companies. Focusing on Human Resource Legal Compliance, MyOHR assists business in achieving operational efficiency by providing the infrastructure necessary to manage the workforce in compliance with State and Federal requirements. MyOHR is cost effective for companies that have not budgeted for a full-time HR position. Contact Jaime Orendac, SPHR-CA at [Jaimeo@MyOHR.com](mailto:Jaimeo@MyOHR.com).*

Stay “In The Know” in 2011 –

### **Educational Seminars**

We have a variety of educational seminars planned for 2011. Some will be live from the office of our partner in Campbell. Others will be conducted using “Go To Meeting” web conferencing.

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### **September Educational Session**

#### **OHR’s Quarterly Harassment Prevention Training for Managers**

As a service to your business we have a quarterly Harassment Prevention Training. Those sessions occur each quarter on the last Thursday of the month at 1:00 PM. Mark your calendars for March, June, September and December. We also do individual sessions for your offices, including Managers and Supervisors and non supervisory employees.

The next OHR Harassment Prevention Training for Managers session is scheduled for **Thursday, September 29th at 1:00 pm** in Campbell, CA. To register please RSVP for the live session at [Harassment Prevention Training](#)