



UNIVERSITY OF ILLINOIS ALUMNI ASSOCIATION

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September 24, 2009, FINDING TALENT SEMINAR

LEGAL ISSUES: BACKGROUND CHECKS & ELECTRONIC COMMUNICATIONS

PRESENTATION HANDOUT

BY

A photograph of Charles A. Krugel, a man in a dark suit, standing in front of a panoramic view of a city skyline (likely Chicago) with a large body of water in the foreground. The name 'CHARLES A. KRUGEL' is overlaid in large, blue, bold letters across the top of the image.

CHARLES A. KRUGEL

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Employee Screening & Risk Assessment

Co-Authored by Tony Ramos & Charles Krugel

Recent headlines of workplace violence have raised serious questions regarding employee screening programs.

- What is negligent hiring?
- Should all companies be expected to have a screening policy?
- Does every employee need to be screened?
- What is considered an acceptable screening program?
- How much should a company expect to pay for screening?
- What can it cost a company should they chose not to have a screening program?
- Are all screening companies alike?

According to attorney Charles Krugel:

Negligent hiring & negligent retention lawsuits are an increasing employer exposure & liability expense. "According to a 2001 report by Public Personnel Management, employers have lost more than 79% of negligent hiring cases." Moreover, "average settlement of a negligent hiring lawsuit is nearly \$1 million." (Human Resources Management study; both above stats cited from ISO Review, Negligent Hiring: Employer Risk, <http://www.iso.com/Research-and-Analyses/ISO-Review/Negligent-Hiring-Employer-Risk.html>).

Underlying the idea of negligent hiring & retention is an employer's legal responsibility to provide employees, customers & the public a reasonably safe environment, & the liability imputed to employers when they fail to exercise reasonable care in providing such an environment. It's when this failure occurs that as an employer your business could be held liable for negligent hiring or retention.

Consequently, from a cost containment & legal liability perspective, it's increasingly crucial that many businesses conduct criminal background checks, conduct such checks in a competent manner & take reasonable action as a result of these inquiries. This means that if an employer undertakes criminal background checking, in order to avoid legal liability (e.g., negligence), it should carefully choose who does the screening as well as what's searched.

Although, some states don't require many businesses to screen job candidates (most financial, education & social service organizations are required to screen candidates), & many states' human & civil rights laws mandate that an employer cannot use a candidate's "arrest record" as the basis for denial of employment (narrow exceptions exist), the possible liability resulting from a business' failure to screen can cripple that business. According to a 2001 report by the Society of Human Resources Management & American Background Information Services, Inc., the

average settlement for negligent hiring lawsuits exceeds \$1.6 million.

Obviously, much of the burden falls on employers to determine what constitutes a competent background search. Of course, legal counsel can assist in this determination. Generally, such a search is based upon the job's essential requirements & context.

Courts look at why the essential duties of the job & the particulars of the business' industry necessitate the need to screen out convicted criminals, & which types of crimes prevent a candidate from being hired. Therefore, just knowing that a job candidate has been convicted of a crime may not be enough to insulate your business from liability. You'll probably need to know the exact nature of the conviction & connect it to the job.

In short, as a business, if you undertake criminal record checking, then choose a competent screener & screening method or service, check all candidates &/or employees, conduct the search in a good faith & reasonable manner, & use the results of those checks in a good faith & reasonable fashion.

As with all human resources related matters, in order to minimize expense & legal exposure, focus on prevention & proaction--research your screener & work with them to best determine what you need & why you need it.

Vendor Selection - Tony Ramos

Selecting the wrong screening vendor can be equal to or more devastating than hiring the wrong employee. The wrong vendor can provide you with nothing more than a false sense of security.

Select a vendor who has the expertise, experience & can clearly explain your screening options & their limitations. Typical choices include state, county court, national criminal databases & fingerprint searches. There are also choices of supplemental screening options which include driving record, credit reports, workers compensation, employment history, educational history & civil records as well. Your vendor can assist you in developing the right plan to match your needs.

Basic Program

- **Vendor Selection**
 - Select a vendor who can demonstrate a **national hit rate of at least 10%**. Hit rate is the **most** effective way to determine the quality of the service. In short, for every 100 applicants screened, the vendor

should be finding at least 10 with a criminal record. Don't be surprised if a vendor is hesitant or actually refuses to provide this information. Many operate with only a 6% or less hit-rate.

- **Social Security Trace**
 - This will help validate the number & provide up to 10-years of past residential history & names or aliases used.
- **County-court Record Search**
 - Counties searched should be selected based on the results of the trace & never from the job application. This will also provide you with the most accurate & current information available.
- **National Criminal Database Search**
 - For a more comprehensive program, include a national criminal database search. **Important note:** database findings must be verified by court records before acting upon them. Also, databases

searches should only be used to supplement an actual court record search & not in place of a court record.

- **FCRA (Fair Credit Reporting Act) Compliant**
 - Ensure your vendor is fully FCRA compliant, this will provide you with additional protective immunity against some civil lawsuits.
- **Cost**
 - While there are many factors such as volume & types of screening options selected which determine the actual cost, one can expect to pay \$20 to \$35 per person.

Co-Author: Tony Ramos, tramos@integrasecurity.org, has also authored "The Guide to Background Checks" which he developed for the Illinois Association of Chiefs of Police & is available for download from his web-site at www.integrasecurity.org

What's Appropriate to Ask Candidates If You're an Employer?

There are many inquiries which might lead to the inference that the employer is discriminating against a member of a protected class. Because of the legal implications & potential liability attached to them, these same inquiries shouldn't be made via e-communication.

Always focus on the essential functions of the job. Essential job functions may be defined by a *valid* job description.

For all candidates:

- Ask the same questions;
- Use the same background checking processes;
- Use the same tests/assessments; &
- Score/assess the same way; i.e., don't adjust scoring/assessment system unless for a valid &/or legal purpose.

Concerning questions, it's generally okay to:

- Focus on questions related to the *essential job functions*. Put another way, are the questions asked intended to solicit information connected to the applicant's ability & willingness to perform the essential job functions, or are they more indicative of illegal bias?
 - It's usually not an essential function to be of a certain race, age, sex, sexual orientation, etc. Exceptions are extremely limited.
- Ask questions to determine reliability. Such questions include asking what hours & days the person can work, or specific days or times they can't work.
- Ask if the applicant is legally eligible to work in the U.S. or if they have ever worked under another name.
- Ask if they have ever been convicted of a crime. If they've been convicted, then you could also ask what, when & how the case was resolved. However, you should only be concerned with a criminal conviction if such information relates to essential job functions. Moreover, the date of conviction may be relevant depending on the magnitude of the crime.
 - Must get written permission to do a criminal background check.
- Ask behavior oriented questions. Again, ask all candidates the same questions.
- Ask what kind of education or degrees a candidate has & what schools they attended.
- Ask an applicant's date of birth to determine employment eligibility. Use a disclaimer or indicate that the applicant is being asked only to determine eligibility.
- Relative to languages spoken, if the job requires language fluency, other than English, then you can ask if the applicant has that ability.
 - Don't ask about their native language.
- Ask if applicant has a problem with joining organizations, clubs, etc., that directly relate to ability to perform essential job functions; e.g., chambers of commerce or business groups.

Don't ask:

- About children, dependents, pregnancy or plans to start a family. If the candidate indicates that they're pregnant, then congratulate them, but don't relate pregnancy to the job unless some sort of accommodation is indicated.
- If the applicant owns or rents a car, unless the job requires having own transportation (e.g., sales or site visits).
- Questions to determine where the candidate is from; i.e., national origin.
- If the applicant has ever been arrested.
- If a candidate has any physical or mental disabilities. Also, don't ask if the applicant has any medical or behavioral problems, or if they're being treated for the same.
- If the applicant owns or rents a home
- If the candidate ever had wages garnished or if they've ever declared bankruptcy.
- About discharge from military service.
 - Can ask about the applicant's education, training & experience while in the military.
- What clubs, organizations, or societies they belong to, including fraternities or sororities.
- If they've filed for disability, worker's compensation, unemployment compensation or if they've ever sued or filed a complaint against a prior employer.
- About religious & ideological beliefs, associations or affiliations. *Possible exception:* if employer is a religious organization.
- Don't ask about gender or sexuality, including bisexuality, homosexuality or transgenderism.
- Don't ask about titles such as Mr., Mrs. & Ms.
- Previous residential addresses.
- When graduated college or high school; anything that has any bearing on age, ethnicity or socioeconomic class.

Employment Policies and Handbooks-To Use or Not To Use?

In general, there's no mandate that a business must have written policies or manuals. However, many public sector contracts & liability insurance carriers require, or strongly urge, policyholders to have documented policies.

Also, businesses looking for a sale or merger, or that have grown to the point where ad hoc policies and procedures are too inefficient & inconsistent, should consider creating documented policies or handbooks to help determine & improve the value of their workforce. Of course, profit is the ultimate determinant of value in the private sector.

Consequently, most businesses that wish to obtain government work, receive grants or some type of outside funding, or carry insurance, may need written policies.

There are many canned resources available to help businesses document and plan their HR policies. Some are credible. However, the problem associated with many of the canned products is that they don't address the company's actual needs & may not be current.

For example, many canned publications only address sexual harassment. However, if a company has never faced sexual harassment, but has faced racial harassment, what good is that policy?

After deciding whether to have documented policies, another key question is what policies to use. Factors such as the business' regulatory environment, industry & region (i.e., context) will dictate the answer.

Furthermore, a business has to determine what form these policies should take, e.g., a written memo, a multi-page document or a bound manual. The decision comes down to company size & complexity and purposes of the policies (again, context).

The larger and more complex the company, the greater the need for written employment policies addressing a large number and range of issues; i.e., a larger document. The smaller and less complex a business is means that it will probably have fewer issues to address, and it might not even have to put all of its in policies writing.

However, even a small company in a highly regulated or complex industry will probably have to address a greater number of employment issues via written policies; e.g., safety, record retention and destruction, and compliance reporting. In short, the complexity of a company and its industry is just as good an indicator of what form employment policies should take than the size of the workforce.

The purpose of the policies is another important indicator of which policies to have or put in writing. For example, if a 20-year old business has never addressed workplace violence issues, then it probably doesn't need to address this issue. Or, at most, it might not need to exhaustively address this issue because past performance is a credible indicator of future events. However, a relatively new business that is undergoing

rapid growth, and is hiring from a population that's at-risk to violence, might need to be more proactive and address workplace violence at the outset. In this workplace violence example, company size and industry complexity are less an indicator of policy needs and form than its intended purpose. In short, a company shouldn't seek to address issues it hasn't encountered, unless it could reasonably expect to encounter these issues in the near future, or it's somehow required by law or regulation to address them.

When discussing what kinds of policies to implement with clients or prospective clients, I emphasize that it's impossible to sufficiently cover every issue or circumstance that arises, and it's impossible to put everything in writing. Therefore, common sense & some sort of disclaimer is necessary.

Nevertheless, some businesses, especially small businesses, believe that it's better to put nothing in writing. This way, they won't give contentious employees and their attorneys ideas about lawsuits and complaints. Well I understand that logic, but I don't necessarily agree. The reason I don't agree is simple—unemployment compensation.

Financially speaking, unemployment compensation ("UC") disproportionately impacts against smaller businesses than it does larger businesses. It tends to eat up a greater percentage of a small business' operating expenses. Furthermore, UC claims administrators tend to only deny benefits when the employer provides them with documented proof of employee ineligibility; e.g., misconduct, quitting work, absenteeism. Moreover, UC claims processors usually seek documented proof of violations via employment policies. They expect the employment policies themselves to be in writing. It's another aspect of government bureaucracy.

Consequently, from a cost versus benefit perspective, if a business is paying a lot in UC, lower UC expenses may further serve to make a business more attractive to a buyer or partner.

FEDERAL, STATE & LOCAL BACKGROUND CHECKING & PRIVACY LAWS THAT MIGHT BE ENCOUNTERED IN THE WORKPLACE BY EMPLOYERS

Act/Law	Coverage	Basic Requirements	Damages/Penalties
Federal Trade Commission Act	All employers; except financial services	Ancillary effect in employment due to other laws enforced by Federal Trade Commission; gives FTC & Congress authority over U.S. commerce/trade issues; establishes fair trade & commerce requirements	Nominal fines up to \$5k/violation; cease & desist orders; compliance monitoring/reporting; imprisonment for criminal acts
Fair Credit Reporting Act (FCRA; federal)	All employers who use 3 rd party background checking services (not done internally; "consumer reporting agencies"); some aspects are excepted for certain financial services	Limited use of consumer/credit reports for employment decisions; prior to employment, must make written disclosure & obtain written authorization from candidate; before adverse action taken, must provide candidate with the report & summary of their rights	Actual/compensatory damages, attorney's fees & costs, punitive damages; \$3.5k fine/violation; criminal penalties, for willful & knowing violations, including imprisonment up to 2 years
Fair & Accurate Credit Transactions Act of 2003 (FACTA; amended 2009)	All employers except certain financial services (banks, etc.)	Amendment to the FCRA; notification & transparency rules regarding use of credit reports & other background checking (except criminal)	Actual/compensatory damages; attorney's fees & costs; fines (\$3.5k/violation); compliance reporting/monitoring; criminal penalties, for willful & knowing violations; maybe imprisonment?
Federal civil rights acts such as Title VII, ADA, pregnancy, etc.	Most employers	Can't discriminate on basis of protected class such as race, gender, national origin, religion, age, disability, socio-economic status, military status, color, etc.	May include punitive damages; back pay, front pay, raises; equitable relief such as being hired or promoted; affirmative action compliance monitoring/reporting
Employee Polygraph Protection Act (federal)	Most private employers; except government & businesses handling controlled substances or security companies; other narrow exceptions for theft or mismanagement	Can't use lie detector tests for pre-employment screening or during the course of employment	Hiring, reinstatement, promotion, lost pay, benefits & civil penalties up to \$10k
Health Insurance Portability and Accountability Act of 1996 (HIPAA); <i>Privacy Rule</i> ; & <i>Security Rule</i> —deals specifically with Electronic Protected Health Information (E PHI)	"Covered entities" (generally, health care clearinghouses, employer sponsored health plans, health insurers, & medical providers)	Regulates use & disclosure of information; establishes regulations for the use & disclosure of Protected Health Information (PHI); PHI is any information held by a covered entity which concerns health status, provision of health care, or payment for health care that can be linked to an individual	<i>Enforcement Rule</i> sets civil money penalties; imprisonment for fraud

Act/Law	Coverage	Basic Requirements	Damages/Penalties
Stored Communications Act (federal)	All businesses, employers & Internet Service Providers (ISPs); basically all of the U.S.A.	Provides 4 th Amendment like protection rights to "unreasonable searches and seizures" to online records, communications, etc. Limits what ISPs can turn over	Criminal—fine (unspecified) & imprisonment (2 years max.). Civil—actual damages, attorney's fees & costs; equitable relief
Electronic Communications Privacy Act of 1986 (amends the Wiretap Act)	Everyone	Gives citizens civil cause of action for intercepted or attempts to intercept electronic communications; key EXCEPTION for "ordinary course of business" (protects employers)	Damages (including punitives), injunctive relief, attorney's fees & costs
Federal & State Labor Relations Laws	All business, entities, government, etc.	Provides protection for concerted/collective actions & activities	Civil, injunctive, equitable
Family Educational Rights & Privacy Act (federal; FERPA)	All schools that receive fed funds (Dept. of Education)	Generally, schools can only disclose non-identification related info., like grades & disciplinary records, with prior consent of student/alum. Must permit corrections to errors. Narrow exceptions exist for criminal acts, terrorism, drugs	Vague; government may cut funding to offending school/system
Privacy Act and the Freedom of Information Act (federal)	Applies to military records. Operates much like FERPA above	Prevents disclosure of military records without proper authorization	Permits lawsuit against offending agency; equitable relief, fees & costs; actual & quantified damages; criminal penalty of misdemeanor & max \$5k fine
State & local criminal identification laws (IL Criminal Identification Act)	All employers, except many law enforcement or prosecutorial agencies	Expunged or sealed criminal records can't be used; job applications must state applicant isn't obligated to disclose sealed or expunged convictions or arrests; can't ask if an applicant has expunged or sealed records	Penalties are varied & may include monetary damages, equitable relief such as promotion or hiring & injunctions against future acts
Employment records or files disclosure acts (IL Employment Record Disclosure Act)	All employers	Employer providing a job reference to a prospective employer has civil immunity if it gives truthful & only job performance information	Costs, attorneys fees, damages
Human rights acts (IL Human Rights Act, municipal human rights ordinances/acts)	All employers	It's illegal to discriminate on basis of protected class such as race, gender, national origin, religion, sexual orientation/sexuality, age, disability, socio-economic status, military status, color, arrest record, etc. Increasing no. are including sexual orientation/preference	Monetary damages, equitable relief such as being hired or promoted, injunctive relief

Act/Law	Coverage	Basic Requirements	Damages/Penalties
Criminal Conviction Information Acts (IL)	All employers	<p>If conducting criminal background checks for employment purposes, must obtain applicant's express approval & maintain on file for a specified number of years.</p> <p>Can't ask applicants to disclose criminal convictions which have been expunged or sealed. Also, can't ask if they have any expunged or sealed records.</p>	Fines, actual & general compensatory damages, attorney's fees & costs. Criminal penalties in certain circumstances
Right to Privacy Acts (IL Right to Privacy in the Workplace Act)	All employers, except some nonprofits	Can't discriminate for lawful activities outside of work; no inquiry of employee or prior employers whether employee has previously filed a worker's compensation claim or occupational disease claim	Fines, actual damages, costs & fees awardable
Common Law, Contracts & State Communications Laws	Application, enforcement & penalties depends on state & jurisdiction		

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Federal Trade Commission

For Release: 08/11/2009; <http://www2.ftc.gov/opa/2009/08/qts.shtm>

Two Companies Pay Civil Penalties to Settle FTC Charges; Failed to Give Required Notices to Fired Workers and Rejected Job Applicants

Two companies that fired workers and rejected job applicants based on background checks without informing them of their rights under the Fair Credit Reporting Act (FCRA) have agreed to settle Federal Trade Commission charges that they violated federal law. The settlements require the defendants to pay \$77,000 in civil penalties and bar future FCRA violations.

Employers often conduct background checks and seek employees' and job applicants' credit records, criminal histories, and other background information from a consumer reporting agency (CRA) such as a credit bureau or background screening company. The FCRA requires that before taking adverse employment actions based on these consumer reports – for example, firing employees or denying job applications – employers must provide the employees or applicants with a copy of the report, identify the CRA that provided it, notify them that the CRA did not make the adverse action decision, and inform them that they have the right to obtain a free copy of the report from the CRA and dispute its accuracy.

According to the FTC's two complaints, both defendants contracted with a CRA to conduct background checks including criminal record reviews for employees and job applicants, and made hiring and firing decisions based on those background checks. The companies allegedly failed to provide the employees and applicants with pre-adverse action notices and adverse action notices as required by the FCRA.

The settlements require Quality Terminal Services, LLC and Rail Terminal Services, LLC to pay \$53,000 and \$24,000 in civil penalties, respectively, and to provide the FCRA-required notices in the future. The settlements also contain record-keeping and reporting provisions to allow the FTC to monitor compliance.

The Center for Democracy and Technology (CDT) filed a petition with the Commission complaining of adverse action notice violations by the defendants. The FTC acknowledges CDT's invaluable contribution in bringing these matters to the agency's attention. The Commission vote to refer the complaints and stipulated final orders to the Department of Justice for filing was 4-0. The action against Rail Terminal Services was filed in the U.S. District Court for the Western District of Washington; the action against Quality Terminal Services was filed in the U.S. District Court for the District of Colorado.

NOTE: The Commission files a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. A complaint is not a finding or ruling that defendants have actually violated the law. Stipulated court orders are for settlement purposes only and do not necessarily constitute an admission by the defendants of a law violation. Stipulated orders have the force of law when signed by the judge.

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(FTC File No. 0823022, 0823023) (QTS, RTS)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

UNITED STATES OF AMERICA v. QUALITY TERMINAL SERVICES, LLC, Civil Action No. 09-CV-01853

COMPLAINT FOR CIVIL PENALTIES, INJUNCTIVE AND OTHER EQUITABLE RELIEF

DEFENDANT'S BUSINESS PRACTICES

10. Defendant provides transportation services on a contract basis to certain railroads, including the Burlington Northern Santa Fe ("BNSF") and Union Pacific ("UP") Railroads. As part of these services, some of QTS's employees work on the properties of BNSF and UP.

11. In March 2007, BNSF and UP began requiring QTS to obtain background checks on all of its employees and job applicants. Only individuals who pass the background check receive an ID badge, which is necessary to obtain admission onto the railroads' properties.

12. To obtain the background checks, QTS contracted with e-Verifile.com, a consumer reporting agency that conducts background checks utilizing the "e-RAILSAFE" system. The e-RAILSAFE background checks include, among other things, a review of the applicant's or employee's criminal background records. These background checks are "consumer reports" within the meaning of Section 603(d) of the FCRA, 15 U.S.C. § 1681a(d).

13. The background checks obtained by QTS are used in determining whether to hire applicants or retain employees, and thus are consumer reports obtained for "employment purposes" within the meaning of Section 603(h) of the FCRA, 15 U.S.C. § 1681a(h).

14. Employees and job applicants who fail the background check are denied an ID badge and are fired (in the case of an employee) or not hired (in the case of an applicant). These actions are "adverse actions" within the meaning of Section 603(k) of the FCRA, 15 U.S.C. § 1681a(k).

15. From at least March 2007 through April 2008, QTS took adverse action against 53 job applicants by denying employment to them, based in whole or in part on information found in their background checks. In each of these cases, QTS failed to provide a pre-adverse action notice to the applicant, as is required by Section 604(b)(3) of the FCRA, 15 U.S.C. § 1681b(b)(3). In addition, in 42 of these cases, the adverse action notices that QTS provided to the applicants did not contain any of the information required by Section 615(a) of the FCRA, 15 U.S.C. § 1681m(a).

VIOLATIONS OF THE FCRA COUNT I

16. As described in Paragraphs 10 through 15, from at least March 2007 until April 2008, QTS failed to provide pre-adverse action notices to approximately 53 job applicants as to whom QTS took adverse action based in whole or in part on the individuals' consumer reports, prior to taking the action.

17. By and through the acts and practices described in Paragraph 16, Defendant has violated Section 604(b)(3) of the FCRA, 15 U.S.C. § 1681b(b)(3).

COUNT II

18. As described in Paragraphs 10 through 15, from at least March 2007 until April 2008, QTS failed to provide adverse action notices to approximately 42 job applicants as to whom QTS took adverse action based in whole or in part on the individuals' consumer reports, after taking that action.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO Civil Action No. 09-cv-01853-CMA-BNB
UNITED STATES OF AMERICA v. QUALITY TERMINAL SERVICES, LLC, a limited liability company

STIPULATED FINAL JUDGMENT & ORDER FOR PENALTIES, PERMANENT INJUNCTION, & OTHER EQUITABLE RELIEF

I. CIVIL PENALTY—IT IS ORDERED that Defendant shall pay to Plaintiff a civil penalty, pursuant to Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), in the amount of Fifty-Three Thousand Dollars (\$53,000.00) as follows:

A. Defendant shall make payment required by Paragraph I within ten (10) business days of the date of this Order in accordance with the instructions provided by the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, for appropriate disposition;

B. In the event of any default in payment, which default continues for ten (10) business days beyond the due date of payment, the entire unpaid penalty, together with interest, as computed pursuant to 28 U.S.C. § 1961, from the date of default to the date of payment, shall immediately become due and payable;

C. This judgment represents a civil penalty owed to the United States Government and is not compensation for actual pecuniary loss, and, therefore, it is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7). Defendant agrees that the facts as alleged in the complaint filed in this action shall be taken as true, without further proof, in any subsequent litigation filed by or on behalf of the Commission to collect any unpaid amount or otherwise enforce its rights pursuant to this Order.

D. Proceedings initiated under this Part are in addition to, and not in lieu of, any other civil or criminal penalties that may be provided by law, including any other proceedings Plaintiff may initiate to enforce this Order.

E. Defendant relinquishes all dominion, control, and title to the funds paid. Defendant shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise.

II. PROHIBITED BUSINESS ACTIVITIES—IT IS FURTHER ORDERED that Defendant and all other persons or entities within the scope of Fed. R. Civ. P. 65, whether acting directly or through any sole proprietorship, partnership, limited liability company, corporation, subsidiary, branch, division, or other entity, who receive actual notice of this Order, are hereby permanently restrained and enjoined from the following:

A. When using a consumer report for employment purposes, failing to provide a consumer to whom the consumer report relates, before taking adverse action against the consumer based in whole or in part on information contained in the consumer report, (1) a copy of the consumer report, and (2) a description in writing of the consumer's rights under the FCRA, as required by Section 604(b)(3) of the FCRA, 15 U.S.C. § 1681b(b)(3);

B. After taking adverse action against a consumer based in whole or in part on information contained in a consumer report, failing to provide to the consumer:

(1) notice of the adverse action taken; (2) the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) from which the consumer report was obtained; (3) a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and (4) notice of the consumer's right (A) to obtain, under Section 612 of the FCRA, 15 U.S.C. § 1681j, within 60 days after receiving notice of the adverse action, a free copy of the consumer report from the consumer reporting agency from which the report was obtained, and (B) to dispute, under Section 611 of the FCRA, 15 U.S.C. § 1681i, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency, as required by Section 615(a) of the FCRA, 15 U.S.C. § 1681m(a); and

C. Failing otherwise to comply with Sections 604 and 615 of the FCRA, 15 U.S.C. §§ 1681b and 1681m, as they may be amended from time to time.

III. COMPLIANCE MONITORING—IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in Defendant's possession or direct or indirect control to inspect the operation;

FREE RESOURCES FOR RESEARCH & INFORMATION

There's a great deal of free & sometimes high quality information available on the Internet. Many companies, universities, & professional organizations post laws, papers, their HR related policies & related information.

- Chuck Krugel's Website www.charlesakrugel.com
 - Access sample FCRA disclosure & waiver forms at , including sample forms from the American Red Cross, Northrop Grumman & Roman Catholic Archdiocese of Atlanta
 - At <http://www.charlesakrugel.com/labor-and-employment-law/materials-for-my-92409-u-of-i-seminar.html>, you can review three federal cases reviewing & discussing employers' use of electronic communications:
 - Fischer v. Mt. Olive Lutheran Church, U.S. Dist. Court, Wisconsin, 3/28/2002, 207 F. Supp.2d 914; &
 - Konop v. Hawaiian Airlines, U.S. Dist. Court of Appeals, 9th Circuit (CA), 8/23/2002, 302 F.3d 868). Summary of electronic communications interception; & labor relations implications.
 - Hillstone Restaurant Group v. Pietrylo, U.S. Dist. Court NJ, (2009)—unpublished decision; but case summary is available at <http://www.verdictsearch.com/index.jsp?do=news&rep=recent&art=174180> & <http://www.citmedialaw.org/threats/hillstone-restaurant-group-v-pietrylo#description>.
 - Although employer violated federal communications' laws like Stored Communications' Act, & had to pay \$17k in damages, the termination of employees for posting negative comments on employees' password protected MySpace page, the termination was upheld.
 - Good example of mixed decision; i.e., employer wins some & loses some.
- Federal Trade Commission www.ftc.gov
- Integra Security Alliance www.integrasecurity.org
 - Useful information regarding screening, security & investigations
- Equal Employment Opportunity Commission www.eeoc.gov/
- Business & Legal Reports www.blr.com
 - Updates concerning labor & employment law & HR
- Commerce Clearing House http://hr.cch.com/
 - Updates concerning labor & employment law & HR
- 19th Judicial Circuit Court of Illinois www.19thcircuitcourt.state.il.us
 - Excellent starting point for researching federal, state & local law. Well organized & easy to use.
- Illinois Society for Human Resources Management www.illinoisshrm.org
 - General HR legal & policy information
- Human Resources Management Association of Chicago www.hrmac.org
 - General HR legal & policy information
- Privacy Rights Clearinghouse (background checking) www.privacyrights.org

As a management side labor & employment attorney & human resources (HR) consultant, I have more than 15 years of experience in the field & have been running my own practice for 9-plus years; www.charlesakrugel.com.

In my own practice, my clients are small to medium



sized companies in a variety of industries. Besides providing traditional labor & employment law services, I represent companies desiring to institute preventive & proactive HR functions. These functions include policies & procedures, which help to efficiently & discreetly resolve issues in-house & prevent lawsuits &

complaints; they also help to reduce costs & act as catalysts for increasing productivity & profits.

Relative to results, I have negotiated more than 100 labor & employment agreements & contracts, including noncompete & severance/separation agreements, collective bargaining & related labor agreements. Also, I have argued more than 11 arbitrations, 13 mediations & 39 agency cases/complaints & have resolved 100-plus labor grievances & similar in-house complaints & completed over 100 in-house investigations. Moreover, I'm a published author in my field & am frequently the subject labor & employment law related TV, radio & newspaper interviews. My website contains most of these interviews.

My career choice is the result of a long running fascination with workplace behavior, management styles, & how & why people pursue particular vocations. While in college, I advanced my interest by majoring in psychology. After college, I pursued graduate study in industrial/organizational (I/O) psychology with the thought of being an I/O consultant. During my first year of graduate school, I realized that the practice of I/O psychology was too "touchy feely" for me. Consequently, I decided that once I earned my masters degree in I/O psychology, I would attend law school.

I earned my law degree (Juris Doctorate) from Ohio Northern University. My MA degree in I/O psychology is from the University of North Carolina at Charlotte. My BS degree in psychology is from Bradley University. During law & graduate schools, I was a graduate student representative for each school's university senate. During college, I was a rush chairman & executive board member for my fraternity.

Regarding to civic & association involvement, I'm on the following boards of directors:

- Member of the Board of Directors of the Greater O'Hare Association (GOA), www.greater-ohare.com, & member of the Government Affairs Team. One of Chicagoland's largest business associations & one of our most important advocates on behalf of business;
- Board Chairman for the YMCA Alliance, the workforce development arm of the YMCA's of Metropolitan Chicago;
- Member of the Young Professionals Board of the Chicago Bar Foundation, the charitable arm of the Chicago Bar Association; &
- Member of the Board of Directors for ChildServ (www.childserv.org), a 100-plus year old child & family advocacy, housing & adoption organization.

Also, I have been legal counsel for the Chicago chapter of Bikers Against Child Abuse (BACA); & I'm a volunteer "big brother"/mentor via the Jewish Children's Bureau. & I'm an active member of the Chicago chapter of the Labor & Employment Relations Association, the Chicagoland Chamber of Commerce (member of the Employment Law & Workforce Quality Committees).

Finally, some personal background information. I'm a native Chicagoan. Born & raised in West Rogers Park. I graduated from Rogers Public School. For high school, I graduated from Niles North in Skokie. It was during childhood that I was indoctrinated into the ways of business, self-employment & entrepreneurship. My father owned & ran his own chain of pharmacies in Chicago for 35 years. My grandfather was an immigrant businessman who owned his own grocery stores in Chicago. Family taught me the value of hard work & how to compete & succeed in business.