

Swift Faces Class Action Over Background Checks

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The case of *Daniel et al. v. Swift Transportation Corp.*, filed in the U.S. District Court for the District of Arizona, provides a reminder to employers of the importance in complying with **Fair Credit Reporting Act (“FCRA”) requirements prior to and during the hiring process**. In the Swift case, three applicants were denied employment and filed suit claiming Swift obtained and used **criminal background checks without required FCRA notice or authorization**, among other alleged violations.

According to the complaint, it is alleged that Swift **violated FCRA requirements to provide applicants and employees with clear and conspicuous stand-alone written disclosures that a consumer report may be used for employment purposes**. The suit also alleges, among other things, that Swift failed to get proper authorization or consent before procuring such reports, failed to provide notice of the employees’ right to get a free copy of the report and dispute its accuracy and failed to provide pre-adverse or post-adverse action letters.

The suit proposes three separate classes, consisting of **1) people who received inadequate disclosures, 2) people who were adversely treated after not being given a copy of their criminal report at least five days before the adverse decision was made, and 3) applicants who weren’t hired where Swift didn’t provide required disclosures within three days of making their ultimate employment decision**. The suit claims that each proposed class has more than 300 members, and requests relief including class certification, unspecified statutory and punitive damages, attorneys’ fees and costs, and pre- and post-judgment interest.

While employers have the right to perform criminal background checks under the FCRA, the procedure for properly performing those checks must be followed. Such procedures include a stand-alone notice and authorization, providing a copy of the FCRA Summary of Rights, providing a copy of the background check (in states where required), and providing pre- and post-adverse action letters with appropriate time to respond. Failure to comply with these procedures, as noted above, can result in costly class action litigation.

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