

The Legal Strategist

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TEXAS ESOTERIC FACTS

As a general rule, all articles contained in *The Legal Strategist* are original content. However, I came across this article in the June 14, 2011 issue of *The Legal Intelligencer* and thought it would be good to pass on to business owners. With the predominance of social media in society today, there are cautions that need to be followed when using such tools in the employee screening process.

- ◆ Texas boasts the nation's largest herd of whitetail deer.
- ◆ Texas includes 267,339 square miles, or 7.4% of the nation's total area.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in our newsletter, which can be viewed on *The Legal Strategist* tab of our web site, please contact our office to set up a consultation.

Scott Barrett

FEATURE TOPIC: The Legal Issues of Conducting Background Checks and Inquiries



As the economy rebounds, many employers affected by the recession are hiring again. The last time employers searched for talent when recruiting was being conducted at its current pace, the world of employee screening was very different. Philadelphia hadn't yet banned the "box;" there were not over 500 million Facebook users or multiple states enacting credit check laws. To avoid legal landmines, now is the time for employers to brush up on the basics of conducting background checks and inquiries.

Philadelphia recently enacted a criminal background check "Ban the Box" ordinance, the Fair Criminal Record Screening Standards Ordinance, signed by Mayor Michael Nutter on April 13, which becomes effective on July 12. "Ban the Box" laws, which have become increasingly common nationwide, regulate when and how a prospective employer can require an applicant to check the "box" on an application or otherwise ask the candidate about criminal convictions.

Employers who use third parties to conduct background checks must comply with the Fair Credit Reporting Act, (FCRA) the federal law regulating the acquisition and use of information considered "consumer reports" under this law. The term "consumer reports" is broadly defined, and includes information such as background reports, credit checks, motor vehicle records, as well as investigative consumer reports regarding an applicant or employee's character, general reputation, or personal characteristics obtained through personal interviews or employment verification with prior employers. The FCRA's compliance steps include disclosure and authorization, certification and advance notice of adverse action.

Studies have shown that managers often review the social networking sites of applicants prior to hire. Employers should be aware of the legal issues that could occur. For example, employers could obtain from an applicant's social networking site personal information about a candidate, such as his or her religion, disability or age, that an employer would generally be prohibited from requesting as part of the interviewing process. If an applicant were to be rejected for a position, the access to this information could possibly be considered evidence in a discrimination lawsuit alleging that this personal information played a part in the manager's decision making.

Negative credit reports, gaps in employment history, information about an applicant's non-work related background, such as a criminal history, can be cause for concern for prospective employers. However, using incorrect information, or using correct information in an improper or illegal manner when making hiring decisions, can violate the legal rights of employees and applicants and result in costly litigation. Therefore, employers should ensure they have fully researched the most current laws regarding conducting background checks and inquiries prior to initiating such practices, and should train hiring managers and recruiting professionals to conduct interviews and background inquiries in compliance with the law.

If you would like more information on developing your employee screening tools and information on the current state and federal laws governing the hiring process, please contact [Scott Barrett](mailto:Scott.Barrett@SBarrettLaw.com) to set up a consultation.