



Reporting on the practicalities

AVOID THE WRATH OF THE EEOC AND TITLE VII



DOES EVERY APPLICANT GET THEIR ENTITLEMENT TO FAIR AND EQUAL TREATMENT? HOW HR AND EMPLOYERS CAN AVOID THE WRATH OF THE EEOC AND TITLE VII

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*“Common sense is the collection of prejudices acquired by age eighteen.”
Albert Einstein*

We see many decisions made during the hiring process that makes one convinced that Einstein was right on the mark! It seems that we lose sight of everything but the restrictions placed upon us by well meaning law makers, and do not consider the practicalities involved in the process. By that I mean that we lose all sense of common sense, which despite Einstein’s statement we hope has been enhanced by those horror stories we read about almost every day. Did you ever stop to think why the Equal Employment Opportunity Commission is so busy?

Title VII of the Civil Rights Act 1964 prohibits discrimination by covered employers on the basis of race, color, religion, sex or national origin, or because of his or her association with another individual of a particular race, color, religion, sex, or national origin. Seems fair to me, after all how do any of those characteristics indicate any measure of predictable behavior, ability, or job performance?

The EEOC is now very active in pursuing employers who make indefensible decisions that are in any way linkable to disparate treatment or disparate impact upon a protected class (one of the five above).

Disparate treatment is fairly obvious, and is effectively the intentional act of treating a protected individual or group of protected individuals in a different way that is less favorable than the way everyone else is treated.

Disparate impact often referred to as Adverse Impact is effectively unintentional and occurs when everyone is treated the same, subject to the same tests, standards etc,. However, despite the hiring authority’s neutral stance on the process, it results in huge differences in the outcome for members of one of the protected classes. What is really important to remember is that Adverse (Disparate) Impact is not illegal. It only becomes illegal if the employer cannot justify the activity causing the adverse impact as "job related". That means that the activity **MUST** have a direct bearing on the job itself. It is not sufficient to say that it is a matter of policy, but there must be sufficient evidence to show that it is an **essential part of the job**.

Recently we have seen a sizeable increase in EEOC activity in the area of Adverse Impact. It seems that although there are instances of intentional discrimination it is the apparent innocence that is landing employers in trouble with EEOC.

One of the areas of great attention is the use of Credit Checks in the selection process.

Well, some say, if someone's credit is really bad they must be a risk. I mean you can't trust someone with debts beyond their means to work in your accounting office, or be the cashier in a restaurant or store. The temptation will be too great. So we need to see their credit before we hire them. Maybe if the job is in a financial arena, the use of credit reports is justified.

Not so, say those who have fallen on hard times. We may have borrowed beyond our means, we may have defaulted on our payments, maxed out our credit cards, and maybe been foreclosed, but we are not thieves. In fact give us the job and we will work harder than you can imagine to keep it.

There are many reasons why credit is not a good indicator of work performance potential, and unless there are compelling reasons a credit report should not be a part of the hiring screening process. The misuse of credit report data will tend to discriminate against minority groups and will bring lawsuits by EEOC and/or plaintiff attorneys. The tendency for minorities to have bad credit to a greater degree than others is a fact of life in America. The use of those credit reports in the hiring process is a perfect example of an employer, without thinking and in total innocence, creating an Adverse Impact.

This is now subject of Federal inquiry, and following Illinois, and Oregon, it is likely new Federal Law will restrict the use of credit reports in the hiring process subject to certain provisions such as banking, financial and similar positions.

What is difficult to comprehend is why new legislation is necessary when the Fair Credit Reporting Act (FCRA) already clearly states that any information about a candidate, such as criminal records, driving history, credit report, must show a clear relevance to the position sought. Does a ditch digger dig deep ditches or collect receivables?

About the Author

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From an exceptional career in law enforcement with the world renowned Scotland Yard to academic excellence to entrepreneurial success, Dymer's professional experiences, zest to learn and share knowledge make him uniquely qualified to lead SingleSource Services Corporation.

Seeking to utilize his combined human resource, academic and professional experiences, Dymer founded SingleSource Services Corporation in 1995 to provide employers with a full array of employment-related investigative services from a "single source."

Dymer is called on to provide expert witness testimony and assists media as an authoritative source. A frequent presenter and speaker to professional organizations, trade and business associations and civic groups, including as an executive professor at the University of North Florida where he speaks on fraud avoidance. He is the co-author of "The Warm Body Syndrome," a white paper presented to the annual convention of the International Society for Research in Healthcare Financial Management.

About SingleSource Services

SingleSource Services is a national employment screening company. With the belief that backgrounds are like fingerprints, our comprehensive research techniques will produce accurate, complete and thorough background checks that are Fair Credit Reporting Act (FCRA) compliant.

Our screening services help over 2,300 companies, throughout all industries, measure the character and integrity of applicants prior to hiring. Today, SingleSource Services is the Engine Driving HR for our recruiter, manager, and employer partners providing online tools to manage people. These leading-edge tools are efficiently delivered in a web-based environment, supported by a team of experienced professional and friendly advisors. Innovative cost cutting programs, custom created for every client, group, and association make Single Source the provider of choice for many national organizations of all sizes

Single Source is a founder member of the National Association of Professional Background Screeners (NAPBS) as well as Concerned CRA's an organization whose members do not send data offshore but use domestic agents thus protecting personal data.