

Edge Information Management, Inc. Attends Equal Employment Opportunity Commission (EEOC) Meeting on Use of Criminal Records for Employment Screening Background Checks in Washington DC

July 26, 2011

Joe Langford, President, and Norm Gagnon, Director of Compliance with Edge Information Management, along with Montserrat Miller with Arnall Golden Gregory LLP (lobbyist for the National Association of Professional Background Screeners (NAPBS)) and other members of NAPBS attended the July 26, 2011 meeting of the EEOC Commission which provides guidelines and endorses federal laws prohibiting employment discrimination. The Commission's main focus for this meeting was the potential employment barriers faced by individuals with arrest and convictions records and the effect of any disparate impact on minority classes that violate Title VII of the Civil Rights Act of 1964.

The meeting agenda consisted of three panels:

- Panel 1: Best Practices for Employers
- Panel 2: An Overview of Local, State and Federal Programs and Policies
- Panel 3: Legal Standards Governing Employers' Consideration of Criminal Arrest and Conviction Records

The following is an excerpt from Montserrat Miller's EEOC Meeting – Follow up Memorandum to NAPBS:

Final analysis

On the whole this was not a balanced meeting and it was heavily slanted toward arriving at the conclusion that the use of criminal histories presents a barrier to employment and even went so far as to say it was a factor leading to the high recidivism rate we have in this country. There was no balance with the witnesses presenting the other side of the coin in terms of victims of workplace violence, theft or other crimes. There was no balance with the witnesses to fully explain the need and value of appropriately conducting criminal history checks by employers and the role the background screening industry plays.

The closest witness the “employer” community had was on the third panel, Barry Hartstein, who testified that the current EEOC guidance should not be modified at this time. His was the lone voice and the rest argued, where they could, that the EEOC's guidance should be modified and some factors floated for consideration include: (1) requirement that consideration be given toward one's rehabilitation; (2) individualized assessments; (3) placement of a timeline on length of time that criminal history records can be used.

Mind you, this whole exercise is about the EEOC's guidance and how they will re-write it and what restrictions they will place either on the use of arrest and conviction records OR on employer's ability to use such records. I would not be surprised if the guidance also requires employers to distinguish between new hires and current employees where a past criminal conviction comes to light. Remember, EEOC cannot pass laws as they are not a legislative body. However, of concern is how their guidance would be interpreted by their field offices and in that regard, I need only mention one case as an example of the EEOC gone amuck – *EEOC v. Peoplemark, Inc.*, Case No. 1:08-cv-907 (W.D. Mich. 2011).

Closing Comments

There is a 15 day comment period and NAPBS will be preparing and filing comments. It is our understanding that SHRM, the Chamber of Commerce, and the Consumer Data Industry Association (CDIA) will also file comments. Also, comments could be coming from the National Retail Federation who also was in attendance for this meeting.

NAPBS is part of a coalition and may sign on to a letter, as they did prior to the Commission meeting, highlighting the value of background checks and the role they play in creating safe working environments for employers, principals, and volunteer organizations. The coalition agrees that background checks are an effective way to protect vulnerable individuals such as children, the elderly, and the disabled, as well as individuals in vulnerable situations like home repairs and deliveries.

If you would like more information or have specific questions as to this meeting please contact normg@edgeinformation.com. Edge is a founding member of NAPBS and is also an active member of the Governmental Committee. We will keep everyone informed of pertinent new information as the EEOC begins to review and possibly revise their guidelines.