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in web-based technology

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Jackson Lewis Help Line.....

Did you know that - as a Sterling customer - you have complimentary access to our Jackson Lewis Help Line to assist with employment and labor issues and legal questions?

Jackson Lewis is the preeminent workplace law firm representing management in over 40 offices nationwide. Of course, customers should always first seek guidance from internal legal counsel, but direct access to a secondary specialist is a key point of differentiation for Sterling customers.

Please click [here](#) to log in.....

Complimentary Webinars.....

Did you know that - as a Sterling customer - you can participate in complimentary online webinars offered throughout the year by our resident subject matter experts?

Here's our schedule through the end of December:

- ▶ **Electronic Drug Testing Options For Employers** – October 13, 2010
- ▶ **The Fair Credit Reporting Act and the Background Check Process** - November 10, 2010
- ▶ **Primary Designated Employer Representative (DER) Responsibilities** – November 17, 2010

Please click [here](#) to register.....

Sterling is also holding a series of webcasts presented by Jackson Lewis. This complimentary series, **"Top Ten Mistakes in Hiring"**, is designed to address topics of particular interest to employers and hiring professionals, including interviewing practices, background checks, FCRA compliance, wage law, etc. Each hour long webinar is followed by a half hour Q&A session for attendees.

One remaining session is scheduled for **December 14, 2010, "Year End Legal Update: What Happened in 2010 & What is Expected in 2011"**. Dates/topics are subject to change. Please check the [Upcoming Events](#) page of the Sterling Infosystems website for the latest webcast details.

Background Screening Focus – New Mexico.....

Consumer reporting agencies are prohibited from reporting arrests and indictments pending trial, or convictions of crimes greater than seven years from date of release or parole. Such items shall no longer be reported if at any time it is learned that after a conviction a full pardon has been granted, or after an arrest or indictment a conviction did not result. (N.M. Stat. Ann §56-3-6(A)(5))



Massachusetts – CORI System.....



Effective August 6, 2010, Massachusetts Governor Patrick signed legislation to overhaul the state's Criminal Offender Record Information (CORI) system. The legislation impacts Massachusetts employers' ability to acquire and use criminal background information for disqualification purposes. One provision of the new law that is receiving

a great deal of attention is a prohibition (subject to certain exceptions) on Massachusetts employers utilizing an "initial written application form" to obtain information regarding applicants' criminal

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Helpful Links.....

- Fair Credit Reporting Act (FCRA)
- Equal Employment Opportunity Commission (EEOC)
- Federal Trade Commission (FTC)
- Department of Labor (DOL)
- Department of Transportation (DOT)
- Department of Health and Human Services (DHHS)
- Substance Abuse and Mental Health Services Administration (SAMHSA)
- National Institute on Drug Abuse (NIDA)
- Office of National Drug Control Policy
- Drug & Alcohol Testing Industry Association (DATIA)
- Substance Abuse Program Administrators Association (SAPAA)

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backgrounds. As a result, most Massachusetts employers will need to remove questions about an applicant's criminal background from their employment application by November 4th, 2010. More information about the CORI reform bill including a potential obligation imposed on Massachusetts employers to implement a background checking policy and modifications to criminal background information that can be obtained from the state and used by a Massachusetts employer will follow well prior to the effective date of any provisions. Of course, Sterling will use its best efforts to provide practical guidance for employers to maximize their ability to lawfully obtain and act on criminal background information which the employer feels renders the applicant unsuitable for employment.

Illinois Joins List Of States Narrowly Circumscribing Credit Checks Of Employees.....

Effective January 1, 2011, the ability of Illinois employers to conduct credit checks on applicants/employees and use the information for employment purposes will be significantly restricted. Illinois House Bill 4658 -- the Employee Privacy Act -- was signed on August 10, 2010 by Governor Quinn. The Act will prohibit all but a handful of employers from:



- (1) Inquiring into an applicant or an employee's credit history;
- (2) Ordering a credit report from a consumer reporting agency; or
- (3) Taking any employment action (such as refusing to hire someone) because of the individual's credit history or credit report. An individual can bring a private cause of action in state court to enforce this Act and can seek injunctive relief and damages as well as costs and attorneys' fees.

There are exceptions to the Act's coverage. Employers in the following industries are specifically exempted from coverage:

- ▶▶ banks and other financial institutions;
- ▶▶ businesses engaged in insurance;
- ▶▶ state law enforcement agencies;
- ▶▶ state and local government agencies that require credit reports; and
- ▶▶ qualified debt collection agencies.

Also, any business can still conduct a credit check if it can establish credit worthiness is a bona fide job qualification. To be a bona fide job qualification, however, the employer will have to establish at least one of the following specific requirements:

- ▶▶ The position involves unsupervised access to cash or goods with a value of \$2,500 or more;
- ▶▶ The position involves power to sign for business assets of \$100 or more per transaction;
- ▶▶ The position is a managerial position which involves setting the direction or control of the business;
- ▶▶ The position includes access to protected information such as personal or confidential information, financial information, trade secrets or State or national security information;
- ▶▶ The United States Department of Labor or the Illinois Department of Labor has promulgated criteria establishing that credit worthiness is a bona fide job qualification; or
- ▶▶ State or Federal requires the individual's credit history or requires that the individual be bonded or otherwise secured to hold the position.

Finally, it is important to note that the Act only restricts access to credit information. It does not prevent an employer from obtaining a background report or investigatory report from a consumer reporting agency as allowed under the Fair Credit Reporting Act as long as the report obtained does not include credit information. Further, if an employer is permitted to obtain credit information, no specific disclosures are required on any type of consent form.

Drug-Free Workplace – An Effective Policy.....



A written DFWP policy and its distribution are well-established best practices, and two of the most important steps for employers in implementing and maintaining an effective program. An effective policy will serve as a "cornerstone" for a long-term successful program.

A written policy and signed acknowledgement of its receipt from covered employees is mandated:

- ▶▶ For employers required to perform substance abuse testing under federal regulations
- ▶▶ By most states for non-federal workplace testing

A written policy protects the employee and the employer through defined procedures established for administering and enforcing all aspects of the program. A written policy also informs employees:

- ▶ Of the employer's zero tolerance position concerning substance abuse
- ▶ Of performance expectations
- ▶ Of steps that will be taken if policy is violated



At minimum, an employer's DFWP policy document will specifically identify:

- ▶ Job titles, functions, or work assignments and tasks covered by policy
- ▶ Statement that covered employees are required to submit to testing specified by policy
- ▶ Circumstances under which an employee or job applicant will be tested for substance abuse
- ▶ Drug/alcohol testing procedures with statement that testing process integrity will be safeguarded by the employer
- ▶ Parts of the work day or other time period an employee must refrain from alcohol use, as well as other employee behavior/conduct that will be prohibited
- ▶ Specific employee behavior/conduct that would constitute a refusal by the employee to submit to required substance abuse testing
- ▶ Consequences for an employee found to have violated policy, including the requirement that the employee's removal from covered work will be immediately necessary
- ▶ Consequences for an employee found to have a prohibitive alcohol concentration in their test sample
- ▶ Internal employer resource(s) to respond to employee inquiries regarding the employers program
- ▶ Information concerning available substance abuse assistance options for employees
- ▶ Statement that DFWP testing activity will be confidentially maintained and disclosed only upon written request from the employee or job applicant, or under specific court order or regulatory requirement
- ▶ Statement that all covered employees are required to acknowledge receipt of employer policy and to abide by its provisions

Screening Vendors & Contractors.....

Are your vendors and contractor employees being screened to meet your standards? Can you afford to make important decisions without the confidence that they are held to the same high screening standards you are accustomed to?

Sterling's extended workforce programs have revealed ineligibility rates as high as 20% for some customers. Contact your Sterling representative to discuss available options and effective programs to ensure vendor and contractor accountability.

Other Compliance-Based Products

- ▶ **Instructor-Led Training (Online and Onsite)**
 - Designated Employer Representative (DER)
 - Supervisory Substance Abuse Awareness (RST)
 - Employee Substance Abuse Awareness
- ▶ **Substance Abuse Testing Policy Development/Review**
 - DOT and Non-DOT
- ▶ **Mock Substance Abuse Testing Program Auditing**
 - Please click [here](#) to learn more.....*

? ? ? ? ? Compliance Questions Of The Quarter ? ? ? ? ?

Question: Which states restrict the use of credit checks by employers?

Answer: Hawaii, Illinois, Oregon, Washington State

Question: Which state restricts inquiries into conviction records of applicants until after a conditional offer is made?

Answer: Hawaii

Question: Can a Consortium/Third-Party Administrator (C/TPA) or other service agent function as a DER for a DOT-covered employer?

Answer: The DER must be an employee of the covered employer, and cannot be a contractor or service agent. The only exception to this permits a C/TPA to function as a DER for owner-operator truck drivers.

Please click [here](#) to submit a question. All will be responded to and at least two will be selected for posting in the next issue.

There's absolutely no one better than our customers to help the Sterling Compliance Team prepare for the next quarterly publication of the ***Sterling Sentinel***.

Please email your thoughts and recommendations for future articles and content to:

sterlingsentinel@sterlinginfosystems.com



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