Katie's Korner Q1 2020

January 1st, 2020

About Peopletrail

We are the leading provider of advanced background checks and pre-employment screening. We work hard every day to help you make an informed hiring decision. Our PBSA accreditation, Actionable Insight®, and human touch set us apart when it comes to comprehensive and accurate pre-employment screening solutions.

The Drug and Alcohol Clearinghouse

The Federal Motor Carrier Safety Administration's (FMCSA) New Year's Resolution is to improve our Nation's roadway safety. The FMCSA and the Federal Government hope to do that with the help of a secure, online database called the Drug and Alcohol Clearinghouse. The Drug and Alcohol Clearinghouse will give employers and other authorized users real-time information about commercial driver's license (CDL) and commercial learner's permit (CLP) holders' drug and alcohol program violations. The hope is that the database will improve safety by giving employers and authorized individuals access to real time information they need to make informed safety decisions about which employees must be removed from safety-sensitive functions, including operating a commercial motor vehicle (CMV).

The Drug and Alcohol Clearinghouse will institute a database of drivers who've failed or refused a drug test. Employers will be required to do both electronic AND manual record queries for the next three years because the database will take 3 years to fully populate. A violation that occurs in 2019 will not appear in the database, requiring a manual check with a driver's former employers. It is anticipated that the database will be fully populated by 2023, and manual checks will no longer be necessary.

Fleets of all sizes will be required to query all new driver hires and yearly for existing drivers. Additionally, employers will be required to report those drivers that have failed or refused to take a DOT drug tests. In addition, the employers will have to report the results for drivers required to complete a return-to-duty program and clean drug test to the Drug and Alcohol Clearinghouse.

The Drug and Alcohol Clearinghouse will commence on January 6th.

Peopletrail will remain your consortium/ third-party administrator (C/TPA). Our clients who employ CDL or CLP drivers must designate Peopletrail as their consortium/ third-party administrator (C/TPA) in the Clearinghouse. You may assign us permission to report violations, report return-to-duty (RTD) test results, and/or conduct queries on their behalf.

If you are not currently registered with Clearinghouse, We encourage and invite you to do so at your earliest convenience. Registering before January 6th, 2020 is the first step to ensure that both you and your company will be ready when the Clearinghouse is operational.

It's also essential for registering your company purchase a query plan. Peopletrail will not be able to conduct queries on your behalf until this has been done. Without the query plan, we will

not be able to do queries for you. We have been told on good authority to purchase your query plan before January 6th, 2020, to avoid any unnecessary delays in conducting queries.

CCPA & FCRA Exception - Overview

California is leading the Nation on data privacy. Commencing on January 1, 2020, the California Consumer Privacy Act (CCPA) will go into effect, and this law is a considerable change in privacy law in California and the United States because of the Act's nationwide reach. The Act has limited exceptions, any for-profit company doing business with California residents, and collecting personal data.

Collecting personal data could include incidental website traffic via cookies, may be required to comply with the Act's strict data privacy rights. The Act gives fundamental rights to the consumer, and they are such as:

- What personal information the business has collected about them;
- Whether their personal data is being sold or disclosed for a business purpose to others;
- To prohibit the sale of their personal information;
- To delete their personal information; and
- To not be discriminated against for exercising their CCPA rights.

CCPA will make changes to how companies collect, maintain, and share information. The Act also requires changes in company websites and vendor agreements. Furthermore, the Act grants a private cause of action for consumers whose information is compromised by a data breach.

What is CCPA?

CCPA creates new consumer rights relating to personal information of California residents collected by a business. CCPA is similar to GDPR, but compliance.

What Businesses are Regulated by CCPA?

CCPA applies to all for-profit businesses doing business in California that collect consumer personal data. A consumer is any resident of California. "Personal information" is defined in part as "information that identifies, relates to … or could reasonably be linked, directly or indirectly,

with a particular consumer or household (California Civil Code 1798.140 https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB375)."

Exceptions to CCPA are not-for-profit organizations, and for-profit organizations which:

- Have annual gross revenue less than $25 million;
- Possess personal information of less than 50,000 or more California consumers, households, or devices
- Earn less than half of its annual revenue from selling consumers' personal information.

FCRA Exception and Peopletrail

Peopletrail's Compliance Manager, Katie L. Adams-Anderton, has been working with PBSA to get an FCRA amendment/exception passed in AB1355 (2018).

The FCRA exception allows any "…activity involving…" the FCRA to be exempted due to the strict FCRA regulations.

Prior to the exception, only the sale of information to a CRA was exempted. This is a much-needed clarification that the CCPA does not apply to ANY activity governed by the FCRA – regardless of the actor. These amendments allow covered businesses to not have to disclose, provide or delete their data. This amendment is a permanent change to the CCPA for the time being, because the smoke has not settled in California, and we still fight the good fight.

Alastair Mactaggart and Californians filed a new "CCPA 2020" ballot initiative to "fix" things they felt weren't right with the legislatively negotiated statute, and this could undo our amendment.

Mr. Mactaggart has until November the 15th to respond to the commentary (due to the California AG by November 9th) and adjust the initiative before the language is "locked."

A PBSA task force and Katie L. Adams-Anderton were formed to come up with extensive technical commentary on CCPA Ballot 2020. Comments were finalized and mailed/emailed by October 18th, in order to create a direct dialogue with Mr. Mactaggart.

As of October 29th, Mr. Mactaggart personally reached out to thank PBSA for our input and will be fully reviewing this week. It should be noted that CCPA 2020 DOES NOT change the FCRA screening exemption we fought for in AB1355 (2018). However, we are going to continue still fighting to ensure we have protection if the ballot measure is passed.

Conclusion

It’s important to remember that even though backgrounds are exempted from California’s privacy act doesn’t mean that employers can ignore the new law. Employers may still have some responsibilities under the new law. Peopletrail recommends utilization of a competent legal representative for any legal issues.

Puerto Rico and Credit Reports

Puerto Rico has made it harder to use credit reports in making employment decisions.

The "Act to Protect Employees Credit Information" (PR Act. No. 150 of October 8, 2019) restricts employers from refusing to hire, firing, or any other means of discriminating against an employee or applicant due to the information in their credit report or on account of the employee's credit history. The law stops employers from verifying or obtaining the credit history information or credit reports of an employee or applicant.

The Act is in immediate effect and the fines for noncompliance range from $1,000 and $2,500 for each violation.

However, there are exceptions to this Act. Credit reports can be obtained only for specific positions, including, for example:

- Managerial positions;
- Positions for which a credit report are required by law;
- Positions that stipulates that they have access to financial or personal information of other individuals, this does not include the information typically provided for in a shopping transaction;
- Positions that involve access to trade secrets (as defined by local law);
- Positions that require a financial responsibility to the employer; and specific positions that have regular access to cash or other goods.

It's vital for Puerto Rico employers to modify any practice of obtaining and using credit reports to comply with this new enactment. If the use of a credit report is permitted, establish that written consent is obtained. Furthermore, Puerto Rico employers should revise any forms to guarantee compliance with the Act, and nationwide employers should tailor their compliance needs to the federal Fair Credit Reporting Act and applicable state laws.

Illinois Marijuana Update

Illinois will be ringing in the new year with the Illinois Cannabis Regulation and Tax Act (the "Act"). Starting on January 1, 2020, the Act will legalize adult-use recreational marijuana across the state and create a daunting regulatory framework.

Initially, employers could fire their employees for testing positive for marijuana, but medical marijuana users are protected by law in Illinois as long as the employee is sober at work). However, under the new Act, only employees who are intoxicated on the job can be disciplined or fired for their marijuana use.

The Act stops employees from being terminated off-duty marijuana use. Furthermore, the Act allows employees that are axed or disciplined for their off-duty use have the right to privately sue their former employer for lost wages and legal fees.

The looming problem with this is how an employer will tell if an employee is intoxicated on the job; there is not a test currently available to show accurately if the individual is intoxicated at that time. It is widely known within the drug testing industry that single marijuana consumption can show up on a test up to a month after use.

Criminal Mischiefs

Criminal mischief is a crime governed by state laws, which vary by state. It generally involves any damage, defacing, alteration, or destruction of tangible property with criminal intent.

The following the Criminal Mischief Statute for Utah.

Utah Code § 76-6-106

(Current through Chapter 5 of the 2019 First Special Session)

Section 76-6-106 - Criminal mischief

(1) As used in this section, "critical infrastructure" includes:

(a) information and communication systems;

(b) financial and banking systems;

(c) any railroads, airlines, airports, airways, highways, bridges, waterways, fixed guideways, or other transportation systems intended for the transportation of persons or property;

(d) any public utility service, including the power, energy, and water supply systems;

(e) sewage and water treatment systems;

(f) health care facilities as listed in Section 26-21-2, and emergency fire, medical, and law enforcement response systems;

(g) public health facilities and systems;

(h) food distribution systems; and

(i) other government operations and services.

(2) A person commits criminal mischief if the person:

(a) under circumstances not amounting to arson, damages or destroys property with the intention of defrauding an insurer;

(b) intentionally and unlawfully tampers with the property of another and as a result:

(i) recklessly endangers:

(A) human life; or

(B) human health or safety; or

(ii) recklessly causes or threatens a substantial interruption or impairment of any critical infrastructure;

(c) intentionally damages, defaces, or destroys the property of another; or

(d) recklessly or willfully shoots or propels a missile or other object at or against a motor vehicle, bus, airplane, boat, locomotive, train, railway car, or caboose, whether moving or standing.

(3)

(a)

(i) A violation of Subsection (2)(a) is a third degree felony.

(ii) A violation of Subsection (2)(b)(i)(A) is a class A misdemeanor.

(iii) A violation of Subsection (2)(b)(i)(B) is a class B misdemeanor.

(iv) A violation of Subsection (2)(b)(ii) is a second degree felony.

(b) Any other violation of this section is a:

(i) second degree felony if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of $5,000 in value;

(ii) third degree felony if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of $1,500 but is less than $5,000 in value;

(iii) class A misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of $500 but is less than $1,500 in value; and

(iv) class B misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss less than $500 in value.

(4) In determining the value of damages under this section, or for computer crimes under Section 76-6-703, the value of any item, computer, computer network, computer property, computer services, software, or data includes the measurable value of the loss of use of the items and the measurable cost to replace or restore the items.

(5) In addition to any other penalty authorized by law, a court shall order any person convicted of any violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses incurred in responding to a violation of Subsection (2)(b)(ii), unless the court states on the record the reasons why the reimbursement would be inappropriate.

Utah Code § 76-6-106

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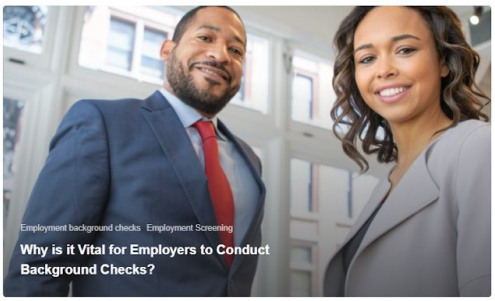
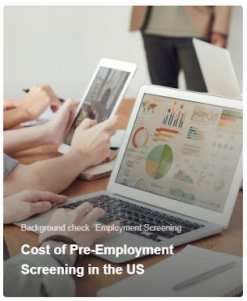
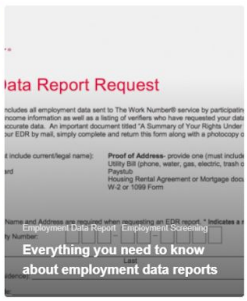
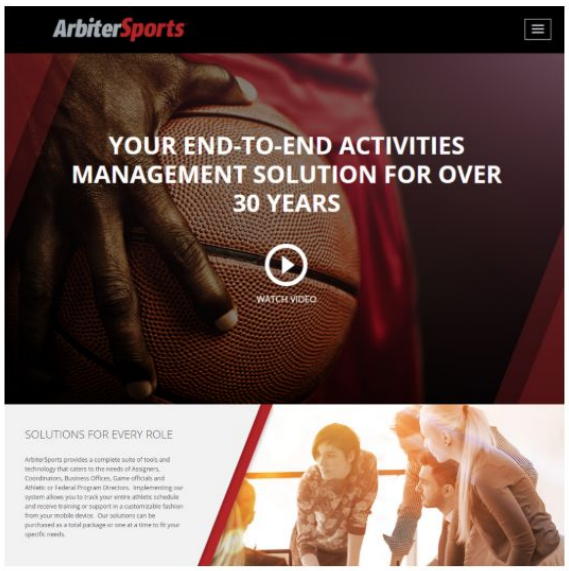






The Peopletrail Difference is more than a mantra, it permeates our culture and drives every interaction. We take pride in developing solutions that address your unique needs. Learn how Peopletrail has streamlined screening services.

Case Study of the Quarter



ArbiterSports

Eligibility Screening for Sports Leagues & Associations

Organizing and delivering events in the world of sports and recreation is a complex task. In 1984, ArbiterSports pioneered the use of computer technology to help manage officiating programs. Today, sports leagues and associations make nearly 10 million assignments to more than 700,000 officials every year using ArbiterSports technology. ArbiterSports sought a vendor partner who would understand the unique needs of diverse, end-user clients and could provide dedicated account management expertise to each. Peopletrail's Actionable Insight Screening technology helps assigners and leagues gain trusted intelligence as part of scheduling and assigning officials for athletic contests.

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