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California Court Limits Defenses Available to Employers Requesting Employee Background Checks



By [Bryan Hawkins](#) on August 17, 2015

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Background checks can provide California employers with vital information concerning their employees. In order to protect individual privacy rights, however, the California legislature has created two separate laws governing the procedure for such checks: the Investigative Consumer Reporting Agencies Act (“ICRAA”), which generally governs reports concerning “character information,” and the Consumer Credit Reporting Agencies Act (“CCRAA”), which generally governs consumer credit reports. In a 2007 decision, *Ortiz v. Lyon Management Group, Inc.*, the California Court of Appeal determined that the ICRAA was “unconstitutionally vague” if the report in question was arguably governed by both acts. On August 12, 2015, the California Court of Appeal for the Second Appellate District issued its opinion calling that 2007 decision into question.

In [Connor v. First Student Inc.](#), the employee alleged that her employer’s background check violated the ICRAA. Based on the Fourth Appellate District’s decision in *Ortiz*, the lower court dismissed the action after determining that the background report in question was arguably governed by both the ICRAA and the CCRAA. The employee appealed. The Second Appellate District reversed the lower court’s ruling, determining that *Ortiz* was wrongly decided because there was nothing in either the ICRAA or the CCRAA precluding the application of both acts to reports pertaining to both “character information” and creditworthiness.

With the decision in *Connor*, California employers must be sure that any background reports they obtain comply with all applicable law, including the ICRAA and the CCRAA as well as the other applicable federal laws and local ordinances. More importantly, and to the extent there was any need, *Connor* is yet another reminder that California employers must continue to be diligent as they traverse California’s complex legal landscape. Failing to do so risks not only statutory liability but also substantial legal costs.

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