“nature and scope of the investigation”; and prior to taking any adverse action against an employee must provide the employee a complete and unedited copy of the investigative report.

When the FCRA amendments were passed in 1996, Congress did not intend for such burdensome restrictions to be placed on employers who seek to provide safe, crime free workplaces for their employees. The Occupational Safety and Health Act requires employers to provide a safe and secure workplace. And Civil rights laws require employers to investigate allegations of sexual harassment and discrimination. Yet these restrictions make such inquiries impossible. Even if the employer is able to persuade a suspect employee to consent to an investigation, the investigation could still be thwarted by the accused who may be able to “cover his tracks.”

Even more important is the chilling effect of providing investigative reports to suspected miscreants. What witness will be forthcoming when they find out the accused will know who spoke to the investigator? What is the logic of asking a wronged employee if you can investigate him?

Americans are all concerned with the rise in incidences of workplace violence, including killings this month in Seattle, Washington and Honolulu, Hawaii. At a time when we are all concerned about workplace violence, the FCRA is tying the hands of employers who attempt to protect their employees.

The application of the FCRA is far broader than Congress intended when the law was amended to require consent for an employer to investigate a limited number of illegal or unsafe activities in the workplace. These limited activities include drug use or sales, violence, sexual harassment, employment discrimination, job safety or health violations, criminal activity including theft, embezzlement, sabotage, arson, patient or elder abuse, and child abuse.

Additionally, should an employer seek to use such a report to take any action against an employee, the employer must inform the employee at a reasonable time prepared as well as the nature and scope of the report. This is important legislation that should be considered early in the next session of Congress. I urge my colleagues to join as cosponsors and push for speedy passage of this bill. I urge my colleagues to join as cosponsors and push for speedy passage of this bill.

The legislative history of the 1995 amendments to the FCRA is intriguing. The legislation was drafted through a careful bipartisan process. The House passed the FCRA as stand-alone legislation. The legislation removes the restrictions on employers to investigate allegations of sexual harassment, job safety or health violations, criminal activity including theft, embezzlement, sabotage, arson, patient or elder abuse, and child abuse.

The House report said that the amendments were intended to protect employees from “harassment, discrimination, or retaliation that may result from a mandatory independent investigation.” The House report also stated that the amendments were intended to provide employers with the “ability to conduct investigations to determine the nature and scope of the report.”

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