

Five Things To Avoid When Conducting Employment Background Check

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Before offering an applicant a job, employers often conduct an employment background check. Employment background checks, also known as “consumer reports,” can include information from a variety of sources, such as credit reports and criminal records. What many employers do not realize, however, is that there are very specific federal and state laws that must be adhered to when conducting and using employment background checks.

There has recently been an increase in class action lawsuits brought against employers for violating such laws, specifically the Fair Credit Reporting Act (FCRA). To help ensure compliance with the laws, here are five things you should avoid when conducting employment background checks:

1. **Burying the Disclosure and Authorization form in the employment application.** 1. The FCRA specifically says that a disclosure form must be completed by the subject of the report. This form must consist solely of the disclosure, and it must be on one page, separate from any other internal documents. This is a very simple rule that many employers break.
2. **Not providing the applicant with their rights under the FCRA.** Anytime you elect to run a background check for employment purposes, you must provide a document to the applicant explaining their rights under the FCRA (i.e. the “FCRA Summary of Rights”). This three-page notice **MUST** be provided to every applicant who resides in the United States.
3. **Using criminal records that are more than 7 years old.** Only criminal records that (a) resulted in a conviction and (b) are not older than seven years from the date of disposition can be used. Unfortunately, because many third party background screening vendors do not provide this information, many employers are unaware of this rule. Using criminal records that do not meet these criteria results in potential liability for you, especially if the applicant isn’t hired due to inaccurate information being reported.
4. **Making an employment decision based on criminal records that didn’t result in a conviction.** This is where many employers are really getting in trouble with regards to non-compliance. The FCRA explicitly states that only convictions are reportable on an employment background check. Many background screening vendors ignore this, and provide “forbidden” information. If you are an employer and are receiving employment background checks with any of the following types of things listed in the “criminal record” section, it may be a good idea to switch background screening vendors:
 - Dismissed
 - Expunged
 - Pending
 - Not Guilty
 - Deferred
 - Sealed
 - Not Prosecuted
5. **Not allowing the applicant to review and dispute the findings of the report.** When you decide to take adverse action based on the results of an employment background check, you must follow the pre-adverse/adverse action process. This process essentially gives the applicant an opportunity to view the background report procured and identify any inaccuracies. If there are any issues with the report, the applicant is able to contact the background screening company and dispute the findings.