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U.S. BACKGROUND CHECKS PRIMER

A Guide for Businesses on a Myriad of Federal & State Laws Impacting Background Screening

TABLE OF CONTENTS

INTRODUCTION

It is critical for businesses to provide a safe environment for their employees and customers and protect the company's interests. Whether you are hiring employees, working with independent contractors, or engaging volunteers, background checks can help make sure you have the right people who can support your organization's success and the safety of your communities. Ultimately, background checks can help you mitigate risk and assist your business in retaining talent.

For many businesses, however, compliance with a myriad of federal, state, and local laws can be a daunting, and expensive, task. The Equal Employment Opportunity Commission ("EEOC") enforces Title VII of the Civil Rights Act of 1964 ("Title VII"), which prohibits employment discrimination based on race, gender, national origin and other bases. The Federal Trade Commission ("FTC") and Consumer Financial Protection Bureau ("CFPB") enforce the Fair Credit Reporting Act ("FCRA"), the law which governs background screening and sets forth rules regarding what types of information can be provided to employers and the procedure for employers to follow if it conducts background checks via a third-party consumer reporting agency. Many states and local jurisdictions also have laws governing different aspects of an employer's screening program, such as when employers can inquire about criminal history and what information can be considered.

Here is a primer on what businesses might consider when conducting background checks, while using their limited resources efficiently.

Chapter 1

DECIDE WHETHER YOUR COMPANY WILL CONDUCT BACKGROUND CHECKS AND CREATE A POLICY

Most companies have high standards for hiring employees, working with independent contractors, or engaging volunteers, yet remain challenged by budget limitations. Especially for small or medium businesses where decisions are made on short timeframes, making the right hiring decision is vital to success. Once you decide that you want to conduct background checks, the first step to ensure your company's screening success is to develop a written policy.

Any policy should be tailored to the unique needs of each company and the jobs within the company. The policy should detail the scope of background checks you will run, for example, criminal, credit, employment verification, education verification, driving records, and how you will comply with the law at all stages of the screening process. Base the types of checks on the needs of your business, the positions for which you hire, the correlation or relatedness of a check to the person's ability to perform a job, and applicable legal requirements or limitations.

When considering criminal history as part of the assessment process, one pitfall to avoid is having a blanket policy automatically prohibiting your company from hiring an individual convicted of any offense at any time.

Different considerations should generally apply for different positions. For example, hiring restrictions based on criminal history will likely be different for a delivery driver, a cashier, and employees that you send into customer's homes.

Policies should define how criminal history is evaluated, what factors are considered when reviewing candidates' criminal history, and when and how an individualized assessment is conducted.

Consider, at minimum, the following factors (known as the "Green Factors") when evaluating a candidate with a criminal history:[1]

- **The nature and gravity of the offense**
- **The nature of the job**
- **The time elapsed since the conviction or the completion of a sentence**

[1] https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions#VB6

Consider Creating an Adjudication Matrix With Your Policy

An adjudication matrix, which may identify whether certain types of offenses meet your hiring guidelines or require additional, individualized review, can be a helpful guide to assist employers when reviewing background reports with criminal history, but should not be a substitute for a holistic individualized assessment of the candidate. Properly implemented, an adjudication matrix can help with the initial review of a criminal record, accounting for the nature and gravity of the type of offense, the nature of the job and the time elapsed since the conviction or completion of the sentence. Screening policies should identify how criminal records that do not meet hiring guidelines based on the matrix are handled and when and how the individualized assessment process is initiated. Matrices should be consistently applied, and employers should be careful not to use a one-size-fits-all matrix for all positions companywide. Employers should also be cautious of including automatic disqualifications on a matrix, except in certain limited situations (such as where a particular disqualification is required by federal law).

What About Arrest-Related Inquiries?

In addition, employers should decide and document whether they will consider arrest records in their screening program and, if so, when and how. As part of this evaluation, employers should consider that not all arrests lead to criminal charges being filed and, even when an arrest does lead to charges being filed, not all cases result in a conviction. EEOC guidance on the use of arrest records in employment is clear that the fact that an individual has been arrested does not, on its own, establish criminal conduct, and that an exclusion based on an arrest alone is not job-relevant or consistent with business necessity.

Employers who consider arrest records as part of their screening program should first review the EEOC guidance on this topic and consult legal counsel. Employers who move forward with considering this information should document in their policy when and how they consider arrest records, including how they align their program with established EEOC guidance.

When to Ask About Criminal History?

Determine when your organization will ask a candidate, prospective contractor or interested volunteer about his or her criminal background. Should it be on the application? After the first interview? After a conditional offer? Certain state and local laws, referred to as "ban the box" laws, prohibit including the question until a specific point in the talent acquisition process. Some prohibit asking about criminal history on an application, and others prohibit asking until after the first interview or after a conditional offer. Federal law does not contain similar restrictions.

> **The best practice is to move your criminal history inquiry later in the hiring process.**

Conduct an Individualized Assessment

After reviewing these considerations, consider implementing a process that allows candidates an "opportunity to be heard" to establish why any potential exclusion should not apply to his or her circumstances.[2] The EEOC suggests, and some states and local jurisdictions require, this "individualized assessment" approach when reviewing a candidate's criminal history.[3] Factors the EEOC believes warrant consideration are:

- **The facts or circumstances surrounding the offense or conduct**
- **The number of offenses for which the individual was convicted**
- **Age at the time of conviction or release from incarceration**
- **Evidence that the individual performed the same type of work, post-conviction with the same or a different employer, with no known incidents of criminal conduct**
- **The length and consistency of employment history before and after the offense or conduct**
- **Rehabilitation efforts, e.g., education or training**
- **Employment or character references and any other information regarding fitness for the particular position**
- **Whether the individual is bonded under a federal, state, or local bonding program**

State and local laws may require these or other factors, so it's important to check the laws that apply to you. The person or people who conduct this analysis should be familiar with Title VII, the EEOC's guidance, the FCRA, and any state or local laws. Outline a plan to keep records of these decisions that include the reasoning behind the employer's adjudication decision.

Should You Check Credit History?

The EEOC generally cautions against their overbroad use of credit reports in employment and encourages employers to narrowly tailor credit checks to job-related reasons, and to document the business necessity for doing so. When reviewing credit history, consider conducting a similar analysis analyzing the nature of the job, the nature of the negative information, and the time elapsed since the negative information arose to determine whether a hiring prohibition is job-related. Be familiar with state and local laws in the 14 jurisdictions that limit an employer's use of credit-related background information for employment purposes, and in some cases also prescribe notice and review requirements.[4]

Discuss the Fair Credit Reporting Act and How You Will Comply

Your policy should address that you are familiar with the FCRA and state fair credit reporting laws, and outline how you will comply.

[2] Some local jurisdictions, such as Los Angeles, New York and San Francisco, require that organizations conduct an individualized assessment.

[3] https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions#VB6

[4] As of publication (2026).

Chapter 2

ENGAGE A BACKGROUND SCREENING COMPANY

The ideal background check is accurate, comprehensive, consistent, timely, and, of course, legal. The work involved differs depending on the location of the candidate and where he or she has lived in the past; coordinating these factors can be difficult and labor intensive. For these reasons and more, many companies do not conduct their own background checks and instead outsource this function to consumer reporting agencies (CRAs). If you rely on a CRA such as HireRight to run your background checks, you must comply with the FCRA and applicable state consumer reporting laws.

Key Terms:

- **Consumer Report**
- **Consumer Reporting Agency**
- **Permissible Purpose**

Consumer Report

Consumer reports are defined as written, oral, or other communications by a CRA that bear upon a consumer's (e.g., candidate's or employee's) credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, and are used (or expected to be used) as a factor in establishing eligibility for a "permissible purpose," including "employment purposes." Section 603(d) of the FCRA (15 U.S.C. § 1681a(d)).

Consumer Reporting Agency

Under the FCRA, a CRA is defined as any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties. When an organization seeks a consumer report from a CRA about a candidate or employee for "employment purposes," it must comply with certain requirements. Section 603(f) of the FCRA (15 U.S.C. § 1681a(f)).

Permissible Purpose

This is an FCRA-approved reason for obtaining consumer reports and/or investigative consumer reports, which includes "employment purposes." Section 604 of the FCRA (15 U.S.C. § 1681b).

Chapter 3

WHAT AN EMPLOYER NEEDS TO DO UNDER THE FCRA BEFORE RUNNING A BACKGROUND CHECK

The FCRA imposes legal obligations on companies that obtain background check reports from CRAs for employment purposes Under the FCRA, before ordering a background check on a candidate, employers must ensure that an individual (i) has been given a disclosure that informs them that a background check is being conducted for employment purposes, and (ii) consents to having a background check conducted. Employers must also provide certain certifications to their background screening company about their intended use of the background report. Here are more details on these requirements:

Disclosure for Consumer Reports

Whenever an employer seeks to obtain a consumer report for employment purposes, the FCRA mandates that, before doing so, the employer provide the candidate a clear, conspicuous, standalone written disclosure , separate from the application, to inform the candidate that a consumer report may be obtained for employment purposes.[5]

Candidate Authorization

An employer must also obtain written authorization from the candidate prior to requesting a consumer report for employment purposes.

Certification to CRAs

Before a CRA such as HireRight can provide a consumer report, the employer requesting the report must certify to the CRA that it will be used for employment purposes and no other purpose and that it has provided the required written disclosure and obtained the required written authorization. The employer must also certify that the information being obtained will not be used in violation of any federal or state equal employment opportunity law or regulation. Lastly, the employer must certify that it will comply with any applicable adverse action requirements set forth in the FCRA and described below.

Important note: There may be additional requirements for each of these pre-report steps depending on the state and the screening services being requested.

[5] FCRA §604(b)(2)(B) allows for alternative disclosure and authorization methods for employers considering candidates for certain transportation positions.

Chapter 4

WHAT AN EMPLOYER MUST DO UNDER THE FCRA AFTER RECEIVING A CONSUMER REPORT

Pre-Adverse Action Notification:

Before taking any adverse action, an employer must notify the individual they are considering taking an adverse action based in whole or in part on information contained in the consumer report. It must provide the candidate with: (1) a copy of the consumer report obtained from the CRA; and (2) a summary of the consumer's rights under the FCRA, which can be found at https://www.hireright.com/PDFs/FTCConsumerRights.pdf and any local or state specific notices.[6]

Adverse Action Waiting Period

After providing the pre-adverse action notice, an employer must wait a "reasonable period of time" before taking the adverse action. The FTC has informally opined that a five business day waiting period is reasonable, but certain state and local laws may mandate a longer period.

This waiting period is designed to give candidates an opportunity to correct or challenge incorrect information on a consumer report and provide the employer any additional information they may want to have considered before the organization actually takes adverse action.

> **Note that many state and local jurisdictions have specific processes employers must follow when considering adverse action, including mandated waiting periods, individualized assessment factors, and specific notice requirements.**

Adverse Action Notification

After waiting a "reasonable period of time," or the time period mandated by applicable law, an employer must provide the candidate with:

- **Notice of the adverse action taken**
- **The name, address, and toll free telephone number of the CRA that furnished the consumer report**
- **A statement that the CRA did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken**
- **Notice of the consumer's right to obtain a free copy of the consumer report from the CRA within 60 days**
- **Notice of the consumer's right to dispute the accuracy or completeness of any information in the consumer report furnished by the CRA.**

There also may be additional state or local requirements for these notices.

[6] A number of states and local jurisdictions, including but not limited to, California, New York (and New York City), Massachusetts, Washington and New Jersey, require additional consumer reporting law notices. (Note this is not an exhaustive list of any state or local notice requirements.)

Chapter 5

STATE AND LOCAL BAN-THE-BOX AND FAIR CHANCE HIRING LAWS

Ban-the-box laws limit when an employer may permissibly ask about an individual's criminal history. Historically, employers often asked about an individual's criminal history on an employment application. The trend in the law has been to prohibit this practice. Each ban-the-box law prohibits any covered employer from asking about criminal history until a certain point in the process, such as after a first interview or conditional offer. However, each state and local law is nuanced as to what can be asked, and when it can be asked. In addition, many jurisdictions have fair chance hiring laws that impose additional obligations on employers regarding the inquiry into (e.g., asking the candidate directly; ordering a background check) and use of criminal history information for employment purposes, including the need to provide individualized notices or assessments as applicable. For more information, including a jurisdiction-by-jurisdiction breakdown of ban-the-box and fair chance laws, check out our Ban the Box and Fair Chance Hiring whitepaper in the HireRight Resource Library. Consult with your legal counsel to determine whether your organization is subject to any of these ban-the-box or fair chance laws and, if so, what those laws require of your organization.

Chapter 6

BEST PRACTICES

Conducting background checks for employment purposes is an extremely important tool for many businesses. The following are some best practices for all employers:

Review Job Descriptions

Employers should review the requirements of each position and determine whether a background check is necessary for that position and, if so, what screening services are relevant and necessary. Review and consider narrowing the positions for which you are running credit reports and make sure that all screening services requested for each candidate is relevant to the specific position for which the candidate applies.

Review Policies and Procedures

Review background screening policies and procedures and develop processes to ensure that all the necessary authorizations are being obtained and all required notices and disclosures are being provided to candidates in compliance with the FCRA and other applicable laws.

Comply with the EEOC Guidance

Remember the EEOC's guidance and when reviewing a candidate's criminal history information, and should also consider:

- **The nature and gravity of the offense**
- **The amount of time passed since the conviction and/ or completion of the sentence**
- **The nature of the job held or sought**
- **Apply the EEOC's individualized assessment factors. Determine how your organization will allow candidates to explain special circumstances surrounding their criminal conviction history information so you can conduct an individualized assessment.**

Consider the Timing of Background Checks

Determine when to inquire about an individual's criminal history and when to conduct a background check (i.e., after making conditional offers of employment or after an interview).

Review Disclosure Statements and Authorizations

Carefully review disclosure and authorization forms for compliance on a regular basis. Consider eliminating any extraneous information from the disclosure form, such as a release of liability , and consider reviewing the forms with legal counsel.

Comply with Pre-Adverse and Adverse Action Notice Requirements

Employers must also review their procedures for ensuring that pre-adverse action and adverse action notices are provided in accordance with the FCRA and state and local laws, including all the necessary federal and state enclosures. Employers must also ensure they provide candidates with copies of their consumer report and give them a reasonable opportunity to dispute the accuracy of the reports, before the adverse action is taken.

Comply with State Requirements

Be aware of the laws in the states in which your company operates. This includes but is not limited to state consumer reporting laws and state and local credit check laws, ban-the-box and fair chance laws, and other background screening-related laws.

ABOUT HIRERIGHT

HireRight is a leading global provider of technology-driven workforce risk management and compliance solutions. We provide comprehensive background screening, verification, identification, monitoring, and drug and health screening services for approximately 34,000 customers across the globe. We offer our services via a global platform that tightly integrates into our customers' human capital management systems, enabling highly effective and efficient workflows for workforce hiring, onboarding, and monitoring. In 2025, we screened approximately 85 million job applicants, employees, and contractors for our customers and process approximately 93 million screens. For more information, visit HireRight.com.

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