Employment Screening – Overview of the FCRA and ADA

The information provided below is provided to our customers as a courtesy and should not be considered legal advice:

The FCRA (The Fair Credit Reporting Act)

Under the FCRA, whether you are a small company or large, having your employees sign a disclosure form authorizing that a background check be conducted is required. The FCRA includes all consumer reports. From state to state the laws are different on what and how information can be used during the employment screening process and it is important to know these laws.

The Federal Credit Reporting Act stipulates that the following information cannot be reported on an employer background check. Although arrest records are a matter of public record, they are not considered a conviction and cannot be reported. Records that are limited to time restrictions include; civil lawsuits, judgments, collection accounts, tax leans, any other negative information. The Information retrieved from these searches is limited to seven years. There are a few exceptions to the seven year rule. One of these exceptions includes criminal convictions. There is no time limit on criminal history results, another exception is Federal bankruptcy. A Bankruptcy records search can be conducted for a ten year period. While federal criminal records and bankruptcies can be included in background checks, discrimination against applicants who have filed for bankruptcy is prohibited by federal law. Below are some of the guidelines that the FCRA requires while conducting a background check.

1. Advising the applicant, in writing and separately from the application, that an investigation may be conducted and report generated by a third party.

2. Obtaining written permission from the applicant before obtaining the investigation or report.

3. Notifying the applicant within three days of retaining a third party to conduct such an investigation that the request has been made and the applicant may request additional information as to the scope of the investigation.

4. Providing the applicant with a written summary of rights under FCRA.

5. Notifying the applicant of any report generated and the fact that an adverse employment decision may be made on the basis thereof (which notice must also include information about the investigating party).

6. Notifying the applicant of any adverse decision. For employment purposes, an “adverse action” means 1. a denial of employment, 2. any other decision for
employment purposes that adversely affects any current or prospective employee. The FCRA requires an employer to provide “the applicant or employee with a copy of his/her rights under the FCRA ( “Summary of Rights Under the FRCA”) before taking adverse action based upon information contained in the consumer report.

If adverse action is taken the employer must provide the employee or applicant with notice of the following;

1. The name, telephone number and address of the consumer reporting agency issuing the report.

2. Notice that the consumer reporting agency was not involved in the adverse action.

3. A statement to the employee or applicant about their right to obtain a copy of the employee or applicant’s file from the consumer reporting agency. The report needs to be made within 60 days of the notice of the adverse action.

4. The employee or applicant should be provided with a statement regarding their right to directly dispute the accuracy of the information provided by the consumer reporting agency.

**Penalties for Noncompliance FCRA**

Employers that are “negligent in failing to comply” with the FCRA’s requirements are liable to a consumer for actual damages, costs of a suit, and attorney’s fees. In addition, if an employer is determined to be in “willful noncompliance,” it may face punitive damages. Criminal penalties also may be imposed if a person obtains a credit report under false pretenses.

For more information on the FCRA and copies of sample notices, visit the FTC’s web site on the Internet at [http://www.ftc.gov/os/statutes/fcrajump.htm](http://www.ftc.gov/os/statutes/fcrajump.htm).

**The American With Disabilities Act (ADA)**

The Equal Employment Opportunity Commission (EEOC) defines a disability as a person who:

1. has a physical or mental impairment that substantially limits one or more major life activities

2. has a record of such an impairment

3. or is regarded as having such an impairment
Under ADA, using disability or medical data/information in the employment screening process is restricted and should not be part of the interview and/or background check. The American With Disabilities Act (ADA) covers companies with fifteen or more employees, including local and state governments.