

# Background screening and the fair credit reporting act

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Recent incidents with domestic and international significance have compelled employers to give more weight and attention to the practice of conducting background checks not only on job applicants but on their current employees as well. Some of these events prodded employers to resort to background screening on their own initiatives while others had been the subject of state and federal requirements. One of the most noteworthy events were the 9/11 terrorist attacks which have made employers more security conscious, leading them to subject the backgrounds of both their prospective and present workers to more rigorous examination.

A recorded increase in lawsuits filed against employers involving all sorts of negligence in the hiring of employees, on the other hand, caused employers to stop hiring applicants based solely on their instincts about human nature. Corporate frauds and scandals similar to the Enron case of 2002 had also impelled employers to scrutinize both the private and professional lives of the members of their upper management teams such as “ corporate executives, officers, and directors” in efforts aimed at preventing financial losses.

Newspaper reports claiming that as high as 40% of job applicants in the country have been submitting fabricated resumes and false information have similarly alerted employers into ascertaining the backgrounds of people approaching them for employment (Privacy Rights Clearinghouse). A heightened interest on background checking also resulted from the observed

rise in cases involving abductions and abuse of children, older people, and persons with disabilities.

This resulted to majority of the states requiring employers to conduct “ criminal background checks for anyone who works with children, the elderly, or disabled. ” In fact the database of the National Crime Information Center (NCIC) of the Federal Bureau of Investigation is now accessible to state officials under the authority of the National Child Protection Act primarily for this purpose (Privacy Rights Clearinghouse). Employers conduct background checks under the authority of the “ Fair Credit Reporting Act (FCRA),” a federal law.

Although background checks are not a requirement under the FCRA, employers nevertheless do so in order to comply with the standards set by the national government concerning screening of employees. These national standards are established by the FCRA. Under the FCRA, external organizations should undertake the investigation into the backgrounds of applicants or employees and include the same in a “ consumer report. ” Employers are not allowed to apply the provisions of the FCRA to checks which they themselves have done (Privacy Rights Clearinghouse).

Examples of information and/or records that could be obtained or accessed through a background check are: “ criminal convictions, driving records, social security number, property ownership, past employees, vehicle registration, character references, personal references, credit records, court records, neighbor interviews, state licensing records, incarceration records, workers’ compensation, drug test records, sex offender lists, educational

records, military service records, dental records, and bankruptcies within the preceding ten years.

” The following information could likewise be available to a check conducted under the FCRA as long as the investigation should cover only the preceding seven years: “ civil suits, civil judgments, paid tax liens, and accounts placed for collection” (Privacy Rights Clearinghouse). Under the provisions of the FCRA, before an employer could have a background check conducted, the written consent of the applicant should first be obtained.

If after reading the report the employer decides to take an “ adverse action” i. e. he/she decides not to hire the applicant, terminate an employee, rescind an offer of a job, or refuse to promote an employee, he/she is required to provide the applicant or employee with a notice or a “ pre-adverse action disclosure” together with a copy of the result of the background check.

After undertaking the “ adverse action,” the name and address of the screening entity should be provided to the applicant or employee in an “ adverse action notice” together with an advice that he/she “ has the right to dispute the accuracy or completeness of any of the information in the report” (Privacy Rights Clearinghouse). Reference Privacy Rights Clearinghouse. Employment Background Checks: A Jobseeker’s Guide. July 2007. 23 September 2007