

PUBLICATION

Employment Background Checks: Tips Employers Should Know to Comply With Federal Laws

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Many employers rely on background checks to screen job applicants and employees when making important personnel decisions, including hiring, retention, and promotion. In March, the Equal Employment Opportunity Commission (EEOC) and the Federal Trade Commission (FTC) co-published two documents that emphasize the importance of employers complying with federal laws when conducting background checks for employment purposes. The EEOC enforces federal employment discrimination laws, and the FTC enforces the Fair Credit Reporting Act (FCRA), which generally applies to background checks conducted by third parties.

The documents—[Background Checks: What Employers Need to Know](#) and [Background Checks: What Job Applicants and Employees Should Know](#)—do not depart from prior agency guidance on this topic, but rather provide tips for employers, job applicants, and employees. Here are some of the highlights of the EEOC's and FTC's suggestions for employers:

1. Don't Discriminate

The agencies stress that it is not illegal for employers to ask questions about an applicant's or employee's background or to require a background check, but employers cannot unlawfully discriminate. When deciding to conduct background checks and when using their results, employers should apply the same standards to everyone, regardless of their race, national origin, color, sex, religion, disability, genetic information (including family medical history), or age (40 or older).

For example, the EEOC notes that asking only people of a certain race about their financial histories or criminal records is evidence of discrimination. Likewise, the EEOC advises that "if you don't reject applicants of one ethnicity with certain financial histories or criminal records, you can't reject applicants of other ethnicities because they have the same or similar financial histories or criminal records."

2. Give Advance Notice and Obtain Written Consent for Background Checks by Third Parties

Employers who use third parties to conduct background checks must follow specific notice and consent requirements set forth in the FCRA. An employer must provide written notice to the applicant or employee that the employer might use the information for decisions about the person's employment. Additionally, the employer must get the applicant's or employee's written permission to do the background check.

3. Provide Notice Before and After Taking an Adverse Action

The FCRA has additional requirements for when an employer takes an adverse action based on information obtained in a background check conducted by a third party. Adverse actions include not hiring an applicant or firing an employee.

Before taking an adverse action, the employer must give the applicant or employee a notice that includes a copy of the consumer report and a copy of a document that describes the applicant's or employee's rights

under the FCRA. By providing notice in advance, the applicant or employee has an opportunity to review the report and explain any negative information. *After* taking an adverse action, the employer must tell the applicant or employee specific information, including the contact information of the company that sold the report, that the person was rejected because of information in the report, and that the person has the right to dispute the accuracy or completeness of the report.

4. Preserve Background Information for at Least One Year and Dispose of Reports Securely

Employers must keep background reports for at least one year after the reports were generated or after a personnel action was taken, whichever comes later. When disposing of background reports, employers must dispose of the information securely so that the information cannot be read or reconstructed.