

Background Checks and Your Legal Rights

Categories : [CANDIDATE CONNECTION](#)

Date : July 24, 2012

Whether you are hired or promoted for a job may depend on the information revealed in a background check. Today, job candidates, current employees and even volunteers may be asked to submit to background checks.

Employers check potential and current workers for several reasons. The things an employer wants to know about you can vary depending on the job for which you are interviewing. Negligent hiring lawsuits, corporate scandals involving false resume histories, federal and state laws and even acts of terrorism all play a part in the prevalence of pre-employment background checks.

What makes the situation even more complicated is that these reports can range from a simple Social Security number verification to a detailed account of your employment history and personal life conducted by a 3rd party reporting agency.

The federal Fair Credit Reporting Act (FCRA) has established a set of national standards for employment screening. However, the law has several loopholes and only applies to background checks performed by a 3rd party reporting agency. It does not apply to situations where employers conduct background checks in-house (and this includes a hiring manager's search of social media sites and Google).

In addition, there is a lot of inaccurate information out there that can raise issues for you.

An employer must ask your permission to conduct a background check, and it must be on a separate form from the application. In addition, if the employer wants to see your medical records,

that consent must be separate and specific.

The FCRA does stipulate that the following *cannot* be reported by the 3rd party agency*:

- Bankruptcies after 10 years**.
- Civil suits, civil judgments, and records of arrest, from date of entry, after seven years.
- Paid tax liens after seven years.
- Accounts placed for collection after seven years.
- Any other negative information (except criminal convictions) after seven years.

**NOTE: These restrictions do not apply to jobs with an annual salary of \$75,000 or more a year. (FCRA §605(b)(3)).*

***NOTE: Recent bankruptcies can be included, but federal law prohibits discrimination against applicants who have filed bankruptcy.*

Under the FCRA, job candidates and employees have specific rights. These include:

- **Right to a “pre-adverse action disclosure”.** If the employer is prepared to deny you employment as a result of information obtained during the background check, a disclosure must be provided to you (before the actual decision is made). It should include a copy of the report and an explanation of your rights under both the FCRA and the Fair and Accurate Credit Transactions Act (FACTA).
- **Right to an “adverse action notice”.** If the employer denies you employment as a result of information obtained during the background check, a notice must be provided to you. It should include the name and contact information of the screening company, that the employer made the adverse decision — not the credit reporting agency — and that you as the applicant can dispute the information for either accuracy or completeness.
- **Right to an investigation.** If you file a dispute with the 3rd party reporting agency, they have 30 days to investigate. If, during this period, you provide them with additional information, they can extend the investigation for another 15 days. A maximum of 45 is allowed to work through the dispute.
- **Right to results.** If information in your background screening report cannot be verified, it must be deleted. You must receive written notice of the results of the investigation not later than 5 business days after the investigation is completed. You can ask the screening company to send the revised report to anyone who has received an employment report about you within the last two years. You also have the right to receive another free copy of your report within 60 days.

The Privacy Rights Clearinghouse recommends that you take several pro-active steps at the start of your job hunt, including checking the accuracy of your

- credit report
- motor vehicle records
- personnel file at past employers.

This blog only covers a small portion of the issues around pre-employment background checks. If you would like more information on employment background checks, please check out the fact sheet “[Employment Background Checks: A Jobseeker’s Guide](#)” found at the Privacy Rights Clearinghouse website.

NOTE: A [full-color, downloadable PDF](#) is available.