

Pre-Employment Background Checks

Background Services

Does the applicant you want to hire have a criminal history? Do they really have the educational background they claim to have? What is their past work history like? At Occupational Testing Centers LLC, we will provide you with the information you need to make an informed decision.

We offer several package deals, or we can tailor a package for you based on your needs. It is our commitment to get you the information you need to make this important decision.

Package #1: \$25

Social Security Number/Address Verification
National Public Records Search
Registered Sexual Offender Search

Package #2: \$50

Social Security Number/Address Verification
National Public Records Search
Registered Sexual Offender Search
Driving History Search (1 state)
Previous Employment Verification (up to 2 employers)

Package #3: \$70

Social Security Number/Address Verification
National Public Records Search
Registered Sexual Offender Search
Driving History Search (1 state)
Previous Employment Verification (up to 2 employers)
Professional License Verification (1 state)
Credit Check

Package #4: \$90

Social Security Number/Address Verification
National Public Records Search Search
Registered Sexual Offender Search
Driving History Search (1 state)
Previous Employment Verification (up to 2 employers)
Professional License Verification (1 state)
Credit Check
Education Verification (up to 2 universities)

Package #5: \$125

Social Security Number/Address Verification
National Public Records Search
Registered Sexual Offender Search
Driving History Search (1 state)
Previous Employment Verification (up to 2 employers)
Professional License Verification (1 state)
Credit Check
Education Verification (up to 2 universities)
State Criminal Convictions (where available) - if not available, a 2 county search will be substituted.

*Add-On Services

County Searches - \$15 per county
State Criminal Convictions (where available) - \$35 per state
Driving History Search - \$15 per state
Previous Employment Verification - \$20 (up to 2 employers)
Professional License Verification - \$12 per state
Credit Check - \$17
Education Verification - \$20 (up to 2 universities)

Criminal Searches:

Level 1 – County search based on residency - \$20 per county
Level 2 – State repository or court check (where available) most states - \$35 (some states require add'l fees)
Level 3 – National public records search - \$20
SSN Verification - \$18
California Driving History - \$12
Non-California Driving History - \$20
Credit Check - \$20
Education Verification - \$20 (up to 2 universities)
Employment Verification - \$20 (up to 2 employers)
Civil Records Search - \$20 per county
Professional License Verification - \$20 per license
California Workers Compensation Search - \$20
Disposition Research Report - \$20 (up to 3)
Registered Sexual Offender Check - \$12
5-panel Drug Testing - \$49
*Package pricing available. Please contact us for more details.

Background Checks 101

Whether you are hired or promoted for a job may depend on the information revealed in a background check. Job applicants and existing employees as well as volunteers may be asked to submit to background checks. For some jobs, screening

is required by federal or state law. The current emphasis on security and safety has dramatically increased the number of employment background checks conducted. In short, employers are being cautious. At the same time, applicants and employees fear that employers can dig into the past in ways that have nothing to do with the job.

This guide explains the why and how of background checks. It also tells you what can be covered in a background report, your rights under the Fair Credit Reporting Act, and what you can do to prepare. For more information, go to the References section at the end of this guide. The PRC does not perform background checks.

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Part 1. Why Does an Employer Conduct a Background Check?

Employers check potential and current workers for several reasons. The things an employer wants to know about you can vary with the kinds of jobs you might seek. Here are a few of the reasons for employment screening.

- **Negligent hiring** lawsuits are on the rise. If an employee's actions hurt someone, the employer may be liable. The threat of liability gives employers reason to be cautious in checking an applicant's past. A bad decision can wreck havoc on a company's budget and reputation as well as ruin the career of the hiring official. Employers no longer feel secure in relying on their instinct as a basis to hire.
- **Current events** have caused an increase in employment screening.
- **Child abuse** and child abductions in the news in recent years have resulted in new laws in almost every state that require criminal background checks for anyone who works with children. The move to protect children through criminal background checks now includes volunteers who serve as coaches for youth sports activities and scout troop leaders.
- **Terrorist acts of September 11, 2001**, have resulted in heightened security and identity-verification strategies by employers. Potential job candidates and long-time employees alike are being examined with a new eye following September 11, 2001.
- **Corporate executives, officers, and directors** now face a degree of scrutiny in both professional and private life unknown before the Enron debacle and other corporate scandals of 2002.

- **False or inflated information** supplied by job applicants is frequently in the news. Some estimates are that 30% to 40% of all job applications and resumes include some false or inflated facts. Such reports make employers wary of accepting anyone's word at face value.
- **Federal and state laws** require that background checks be conducted for certain jobs. For example, most states require criminal background checks for anyone who works with children, the elderly, or disabled. The federal National Child Protection Act authorizes state officials to access the FBI's National Crime Information Center (NCIC) database for some positions. Many state and federal government jobs require a background check, and depending on the kind of job, may require an extensive investigation for a security clearance.
- **The "information age"** itself may be a reason for the increase in employment screening -- the availability of computer databases containing millions of records of personal data. As the cost of searching these sources drops, employers are finding it more feasible to conduct background checks.

I don't have anything to hide. Why should I worry?

While some people are not concerned about background investigations, others are uncomfortable with the idea of an investigator poking around in their personal history. In-depth background checks could unearth information that is irrelevant, taken out of context, or just plain wrong. A further concern is that the report might include information that is illegal to use for hiring purposes or which comes from questionable sources.

Part 2. What Is Included in a Background Check?

Background reports can range from a verification of an applicant's Social Security number to a detailed account of the potential employee's history and acquaintances. Here are some of the pieces of information that might be included in a background check. Note that many of these sources are public records created by government agencies.

| | | | |
|---------------------|----------------------|-------------------------|-----------------------|
| Driving records | Vehicle registration | Credit records | Criminal records |
| Social Security no. | Education records | Court records | Workers' compensation |
| Bankruptcy | Character references | Neighbor interviews | Medical records |
| Property ownership | Military records | State licensing records | Drug test records |
| Past employers | Personal references | Incarceration records | Sex offender lists |

Part 3. What Cannot Be in a Background Check Report?

The federal Fair Credit Reporting Act (FCRA) sets national standards for employment screening. However, the law only applies to background checks performed by an outside company, called a "consumer reporting agency" under the FCRA. The law does not apply in situations where the employer conducts background checks inhouse.

Your state may have stronger laws, such as California's Investigative Consumer Reporting Agencies Act (Civil Code §1786) and the California Consumer Credit Reporting Agency Act (Civil Code §1785). In addition, many state labor codes and state fair employment guidelines limit the content of an employment background check. (For more on the FCRA, see Part 5.)

Under the FCRA, a background check report is called a "consumer report." This is the same "official" name given to your credit report, and the same limits on disclosure apply. The FCRA says the following cannot be reported:

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.

The most recent change to the FCRA made criminal convictions reportable indefinitely. California still follows the seven-year rule (CA Civil Code 1786.18) as do some other states. To find the limit for reporting criminal convictions in your state, contact your state employment agency or office of consumer affairs. Other laws that should be considered:

Arrest information. Although arrest record information is public record, in California and other states employers cannot seek from any source the arrest record of a potential employee. However, if the arrest resulted in a conviction, or if the applicant is out of jail but pending trial, that information can be used. (California Labor Code §432.7).

In California, an exception exists for the health care industry where any employer who has an interest in hiring a person with access to patients can ask about sex related arrests. And, when an employee may have access to medications, an employer can ask about drug related arrests.

- Criminal history. In California, criminal histories or "rap sheets" compiled by law enforcement agencies are not public record. Only certain employers such as public utilities, law enforcement, security guard firms, and child care facilities have access to this information. (California Penal Code §§11105, 13300) With the advent of computerized court records and arrest information, however, there are private companies that compile virtual "rap sheets."

Employers need to use caution in checking criminal records. Information offered to the public by web-based information brokers is not always accurate or up to date. This violates both federal and California law when reported as such. Also, in California, an employer may not inquire about a marijuana conviction that is more than two years old.

- Workers' compensation. In most states including California, when an employee's claim goes through the state system or the Workers' Compensation Appeals Board (WCAB), the case becomes public record. An employer may only use this information if an injury might interfere with one's ability to perform required duties. Under the federal Americans with Disabilities Act, employers cannot use medical information or the fact an applicant filed a workers' compensation claim to discriminate against applicants. (42 USC §12101).

In California, employers may access workers' compensation records after making an offer of employment. To gain access, employers must register with the WCAB and confirm that the records are being accessed for legitimate purposes. Although the agency may not reveal medical information and the employer may not rescind an offer due to a workers' compensation claim (California Labor Code 132a), employers sometimes discover that applicants have not revealed previous employers where they had filed claims. In such situations, employers often terminate the new hire because it appears they falsified the application.

- Bankruptcies. Bankruptcies are public record. However, employers cannot discriminate against applicants because they have filed for bankruptcy. (11 USC §525)

Although these laws should prevent an employer from considering certain information, there is no realistic way for the applicant to determine whether such information will be revealed in a background check. This is particularly true for investigations conducted online where the information obtained from web-based information brokers might not be verified for accuracy or completeness. For example, if you were arrested but never convicted, a data search could reveal the arrest, but the investigator who compiled the information might not delve further into the public records to determine that you were acquitted or the charges were dropped. Reputable employment screening companies always verify negative information obtained from data base searches against the actual public records filed at the courthouse.

Can an employment application ask about things that should not be reported?

The FCRA does not prohibit an employer from asking questions in an employment application. See FTC letters to Nadell and Sum:

www.ftc.gov/os/statutes/fcra/nadell.htm
www.ftc.gov/os/statutes/fcra/sum.htm

For example, an employment application might ask if you have "ever" been arrested. The FCRA says a consumer reporting agency cannot report an arrest that from date of entry was more than seven years ago. It does not say the employer cannot ask the question.

How to handle such questions on an employment application is of real concern to many people, especially those concerned with a youthful mistake from the distant past.

State employment laws may limit the questions an employer includes on a job application. For example, in California an application may ask "job related questions about convictions except those that have been sealed, or expunged, or statutorily eradicated," but applications cannot ask "general questions regarding an arrest."

www.dfeh.ca.gov/Publications/DFEH%20161.pdf

It is important to remember, however, that even the restrictions on reporting imposed by the FCRA do not apply to jobs with an annual salary of \$75,000 or more a year. (FCRA §605(b)(3)).

Aren't some of my personal records confidential?

The following types of information may be useful for an employer to make a hiring decision. However, under the federal Fair Credit Reporting Act, the employer is required to get your permission before obtaining the records. (See PRC Fact Sheet 11, "From Cradle to Grave: Government Records and Your Privacy," www.privacyrights.org/fs/fs11-pub.htm)

- **Education records.** Under both federal and California law, transcripts, recommendations, discipline records, and financial information are confidential. A school should not release student records without the authorization of the adult-age student or parent. However, a school may release "directory information," which can include name, address, dates of attendance, degrees earned, and activities, unless the student has given written notice otherwise. (20 USC §1232g, www.ed.gov/offices/OM/fpco/ferpa/index.html)
- **Military service records.** Under the federal Privacy Act, service records are confidential and can only be released under limited circumstances. Inquiries not authorized by the subject of the records must be made under the Freedom of Information Act. Even without the applicant's consent, the military may release name, rank, salary, duty assignments, awards, and duty status. (5 USC §§552, 552a) For more on military records, visit the National Archives and Records Administration web site: www.archives.gov/facilities/mo/st_louis/military_personnel_records.html

- **Medical records.** In California and many states, medical records are confidential. There are only a few instances when a medical record can be released without your knowledge or authorization. The FCRA also requires your specific permission for the release of medical records. If employers require physical examinations after they make a job offer, they will have access to the results. The Americans with Disabilities Act allows a potential employer to inquire only about your ability to perform specific job functions. (42 USC §12101)

There are other questions such as age, marital status, and certain psychological tests that employers cannot use when interviewing. These issues are beyond the scope of this fact sheet. If you have further questions, contact the resources at the end of this fact sheet. The federal Equal Employment Opportunity Commission and the fair employment agencies in the states handle these issues.

What can my former employer say about me?

Often a potential employer will contact an applicant's past employers. A former boss can say anything [truthful] about your performance. However, most employers have a policy to only confirm dates of employment, final salary, and other limited information. California law prohibits employers from intentionally interfering with former employees' attempts to find jobs by giving out false or misleading references. (California Labor Code §1050)

Under California law and the laws of many other states, employees have a right to review their own personnel files and make copies of documents they have signed. If you are a state or federal employee, your personnel file is protected under the California Information Practices Act or the federal Privacy Act of 1974 and can only be disclosed under limited circumstances. (California Civil Code §56.20; California Labor Code §§432, 1198.5; 5 USC §552a)

Jobs such as truck driver positions fall under regulations of the federal Department of Transportation. Employers are required to accurately respond to an inquiry from a prospective employer about whether you took a drug test, refused a drug test, or tested positive in a drug test with the former or current employer. (49 CFR §40.25, 49 CFR §382.413. [Federal Motor Carrier Safety Administration Regulations](#))

Part 4. Who Conducts Background Checks?

There are many companies that specialize in employment screening. It is outside the purpose of this fact sheet to identify background checking companies by name. The most important thing to keep in mind is that companies conducting background checks fall into several broad categories. This can range from individuals commonly known as "private investigators," to companies that do nothing but employment screening, and to online data brokers.

Corporations that employ large numbers of people may have an established relationship with a third-party background checking company or may even use an affiliated company for their employment screening. Other background checking companies may work on a less formal basis with employers. There are about several companies that conduct employment screening and thousands others nationwide, including private investigators.

With the information age upon us, it is easy for employers to gather background information themselves. Much of it is computerized, allowing employers to log on to public records and commercial databases directly through dial-up networks or via the Internet. Finding one of these online companies is as easy as using an Internet search engine to find web sites that specialize in "background checks." Employers should beware of companies advertising on the Internet that they can "find everything about anyone." They are not necessarily going to be in strict compliance with federal and state laws, especially the provisions that require accuracy of background check reports.

Part 5. Fair Credit Reporting Act and Background Checks

The federal Fair Credit Reporting Act (15 USC §1681 et seq.) does not require employers to conduct employment background checks. But the law sets a national standard that employers must follow in employment screening. State laws may give an employee more rights than the FCRA.

Do I have a right to know when a background check is requested?

Yes. Amendments to the FCRA, in effect September 30, 1997, increase the disclosure and consent requirements of employers who use "consumer reports." Such reports might consist only of a credit check. (See Part 6) More extensive reports might include criminal histories, driving records, and interviews with neighbors, friends and associates.

To be covered by the FCRA, the Federal Trade Commission (FTC) says that a report must be prepared by an outside company -- a "consumer reporting agency" or business that "for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in ... assembling ... information on consumers for the purpose of furnishing consumer reports to third parties." (FCRA §603f)

Under the FCRA, the employer must obtain the applicant's written authorization before the background check is conducted. The authorization must be on a document separate from all other documents such as an employment application. In California, at the time an employer obtains permission for a background check, the applicant or employee should also be told that he or she may request a copy of the report. The FCRA, in contrast, says the subject is entitled to a copy of the report if a pre-adverse notice is given.

Under federal law, if the employer uses information from the consumer report for an "adverse action" - that is, denying the job applicant, terminating the employee, rescinding a job offer, or denying a promotion - it must take the following steps,

which are explained further in the Federal Trade Commission's web site, www.ftc.gov/bcp/online/pubs/buspubs/credempl.htm

- Before the adverse action is taken, the employer must give the applicant a "pre-adverse action disclosure." This includes a copy of the report and an explanation of the consumer's rights under the FCRA.
- After the adverse action is taken, the individual must be given an "adverse action notice." This document must contain the name, address, and phone number of the employment screening company, a statement that this company did not make the adverse decision, rather that the employer did, and a notice that the individual has the right to dispute the accuracy or completeness of any of the information in the report.

Modified disclosure and adverse action procedures under the FCRA (§604(b)(3)(B)) apply to positions subject to U.S. Department of Transportation (DOT) regulations such as truck drivers. The DOT has independent authority to set qualifications for workers in transportation industries. (49 USC §31502)

Does the FCRA fall short?

The federal law has two significant loopholes. First, if the employer does not use a third-party screening company but, rather conducts the background check itself, it is not subject to the notice and consent provisions of the FCRA. Second, the employer might tell the rejected applicant that its adverse decision was not based on the contents of the background investigation, but, rather that the job pool was so exceptional that it made its hiring decision based on the fact that there were individuals more qualified than the applicant.

In both of these situations, the applicant would not have the ability to obtain a copy of the background check to find out what negative information it contained. We have learned of situations where the individual remained unemployed for years, not knowing that wrongful criminal records which resulted from identity theft were the reason for the individual's failure to find employment. (Read "Identity Theft: The Growing Problem of Wrongful Criminal Records," www.privacyrights.org/ar/wcr.htm.)

Recent amendments to California's "investigative consumer reporting" law have closed those loopholes. California law now requires that individuals who are subject to employment screening are able to obtain a copy of the background check whether or not an adverse action has been taken. And applicants have the same rights to notice and consent whether the employer hires an outside company to conduct the investigation or does the background check itself. (California Civil Code §1786). And now in California when an individual requests a copy of their report from the consumer reporting agency, the agency must explain their rights in a document written in both English and Spanish.

Part 6. FCRA Update: Workplace Investigations and Annual File Disclosures

Recent amendments to the FCRA, known as the Fair and Accurate Credit Transactions Act of 2003 or FACTA, set a new standard for what FACTA calls "employee misconduct investigations." In addition, FACTA says job applicants and employees who have undergone an employment background screening covered by the FCRA may receive a free annual file disclosure from the company that performed the background check.

Workplace Investigations

What is an "employee misconduct investigation"?

This is an investigation conducted by a third-party your employer may hire if the employer suspects you of:

- Misconduct relating to your employment.
- A violation of federal, state or local laws or regulations.
- A violation of any preexisting written policies of the employer.
- Noncompliance with the rules of a self-regulatory organization, that, for example, oversees the securities and commodity futures industry.

Why was this change made to the FCRA?

This section was adopted to make it clear that employers do not have to get permission to conduct a misconduct investigation. Prior to this, FTC staff issued an opinion letter, the so-called "Vail Letter," that said the FCRA applies even when an employee is suspected of misconduct and the employer hires an outside investigator. (Note: California law already includes an exception for workplace misconduct investigations. www.privacyrights.org/fs/fs16a-califbck.htm)

If my employer suspects me of misconduct, what does this mean for me?

It means your employer does not have to give you notice and get your permission to conduct a misconduct investigation. Like other inquiries covered by the FCRA, this only applies if the employer hires an outside party to conduct the investigation.

It also means you will not receive a notice of your rights as others who are subject to a standard employment background check normally would. If, at the end of the investigation, the employer decides to take some action against you, you receive the "adverse action" notice only after the action has been taken.

You will receive only a "summary" of the investigation report, but not the more detailed report that may include sources.

Who will see the investigation report?

The report may be communicated to:

- The employer or its agent.

- Any federal or state officer, agency or department or any officer, agency or department of a unit of general local government.
- Any self-regulatory organization with regulatory authority over the activities of the employer or the employee.
- Others, as is otherwise required by law; or
- A government agency, in accordance with an existing FCRA section that allows a consumer reporting agency to disclose personal identifying information to a government agency.

Can I dispute the findings?

Not under the FCRA dispute procedure. That is because this new section on workplace misconduct investigations was effected by removing this type of investigation from the definition of "consumer report." Thus, the usual protections that apply to a "consumer report" conducted for employment purposes do not apply to workplace misconduct investigations. If you find yourself in this position, you will probably want to seek the advice of an employment law attorney.

Annual File Disclosure

Another new feature of the FCRA allows consumers to get a free copy of their credit report once a year. Final regulations adopted by the FTC set a geographical "rollout" schedule for free credit reports beginning December 1, 2004. The final regulations can be found on the FTC's web site at www.ftc.gov/opa/2004/06/freeannual.htm The schedule for access to free credit reports is also available on the PRC web site: www.privacyrights.org/fs/fs1-surv.htm

FACTA also requires a free annual file disclosure for consumer reports prepared by "nationwide specialty consumer reporting agencies." This refers to companies that compile, maintain files, and issue reports on consumers that relate to:

- Medical records or payments.
- Residential or tenant history.
- Check writing history.
- Employment history.
- Insurance claims.

For job applicants and employees, this means, starting in January 2005, you may receive a free copy of your "file" maintained by a "nationwide specialty consumer reporting agency" that supplies employers with background checks. Before, you could request a copy of your "file" but would have to pay for it.

Now, companies that provide employment background check reports have to, as a minimum, set up a toll-free number that gives you instructions on how to get the information in your "file." Companies may but are not required to also provide access to the free "file" disclosure through a web site address.

Your "file" is not the same as your "report." The "report" is the document the background screening company gives to your employer. The FCRA gives you the right to receive a copy of your "report" directly from the employer," but only if the

employer issues an "adverse action" notice. Your "file" is defined in the FCRA as ".all of the information [about you] recorded and retained by a consumer reporting agency regardless of how the information is stored." (FCRA §603(g)) You are entitled to see your "file," whether or not the employer gives the "adverse action" notice.

The FTC has declined to publish a list of national specialty consumer reporting agencies that are subject to this requirement. We will publish a list of these agencies and the toll free number or other means of access as this information becomes available. In the meantime, if you are asked to submit to an employment background check, it is a good idea to ask the employer for the name of the company that will do the check.

Part 7. Background Checks and Your Credit Report

An employment background check often includes a copy of your credit report. The three major credit reporting agencies (Experian, TransUnion, and Equifax) provide a modified version of the credit report called an "employment report." An "employment report" includes information about your credit-payment history and other credit habits from which current or potential employers might draw conclusions about you.

An employment report provides everything a standard credit report would provide. However it doesn't include your credit score or date of birth. Nor does it place an "inquiry" on your credit file that may be seen by a company looking to issue you credit. Having too many credit inquiries tends to lower your credit score.

My job doesn't require handling money. Why does the employer do a credit check?

Often employers use your credit history to gauge your level of responsibility. Whether a valid assumption or not, some employers believe if you are not reliable in paying your bills, then you will not be a reliable employee. Unfortunately, a bad credit report can work against you in your search for employment. For more on how a credit record can affect your job search, see the FTC's fact sheet on this topic, www.ftc.gov/bcp/online/pubs/alerts/ngcrdtalrt.htm

In addition to your payment history, a credit report typically includes information about your former addresses and previous employers. Employers can use this as one way to verify the accuracy of information you provide on an application or resume.

I never use credit. Can an employer hold that against me?

Yes. The employer might be looking for someone who has an established record of paying bills on time. The FCRA says only that certain things like negative information more than seven years old cannot be considered. The absence of a credit history can also be considered. But if this bit of information means you don't get the job, the employer has to give you an adverse notice decision. For more on

an employer's responsibility under the FCRA, see www.ftc.gov/bcp/online/pubs/buspubs/credempl.htm

Part 8. Investigative Consumer Reports:

What Will Your Neighbors Say?

Can an employer ask my friends and neighbors about me?

Yes. Under the FCRA, a background check that includes interviews with "neighbors, friends, or associates" about your "character, general reputation, personal characteristics, or mode of living" is called an "investigative consumer report." (The term "investigative consumer report" has a different meaning under California Law. See www.leginfo.ca.gov, Civil Code §1786.)

When information about you is gathered from interviews, the FCRA requires a separate disclosure. You are also entitled to know the "nature and scope" of an investigative consumer report, but you have to ask. For more on how the FTC staff interprets the term "investigative consumer report" and other key topics under the FCRA, visit the FTC web site www.ftc.gov/os/statutes/fcra/index.htm

Part 9. How to Prepare for a Background Check

When you know you are going to be on the job market, take the following steps to reduce the chances that you and/or the potential employer will be "surprised" by information found in the background check process:

- Order a copy of your credit report. If there is something you do not recognize or that you disagree with, dispute the information with the creditor and/or credit bureau before you have to explain it to the interviewer. Another individual's name may appear on your credit report. This happens when someone mistakenly writes down the wrong Social Security number on a credit application causing that name to appear on your file. Or you might be a victim of identity theft. (See PRC Fact Sheet 6 on your credit reporting rights, www.privacyrights.org/fs/fs6-crtd.htm, and Fact Sheet 17a on identity theft, www.privacyrights.org/fs/fs17a.htm.)
- **Check court records.** If you have an arrest record or have been involved in court cases, go to the county where this took place and inspect the files. Make sure the information is correct and up to date.

Reporting agencies often report felony convictions when the consumer truly believes the crime was reduced to a misdemeanor, or that it was reported as a misdemeanor conviction when the consumer thought the charge was reduced to an infraction. Court records are not always updated correctly. For example, a signature that was needed to reduce the charges might not have been obtained or recorded by the court. Don't rely on what your attorney may

have told you. If you think the conviction was expunged or dismissed, get a certified copy of your report from the court.

- **Check DMV records.** Request a copy of your driving record from the Department of Motor Vehicles, especially if you are applying for a job that involves driving.

Many employers ask on their application if you were ever convicted of a crime. Or they might word the question to ask whether you have ever been convicted of a felony or misdemeanor. Typically, the application says you do not have to divulge a case that was expunged or dismissed, or that was a minor traffic violation.

Don't be confused. A DUI (driving under the influence) or DWI (driving while intoxicated) conviction is not considered a minor traffic infraction. Applicants with a DUI or DWI who have not checked "yes" on a job application may be denied employment for falsifying the form -- even when the incident occurred only once or happened many years before. The employer perceives this as dishonesty, even though the applicant might only have been confused by the question.

- **Do your own background check.** If you want to see what an employer's background check might uncover, hire a company that specializes in such reports to conduct one for you. That way, you can discover if the data bases of information vendors contain erroneous or misleading information. (Consult the Yellow Pages under "Investigators.") Or, you can use one of the many online search services to find out what an employer would learn if conducting a background check in this way.
- **Ask to see a copy of your personnel file from your old job.** Even if you do not work there anymore, state law might enable you to see your file. Under California law, you can access your file until at least a year from the last date of employment. And you are allowed to make copies of documents in your file that have your signature on them. (California Labor Code §432.) You may also want to ask if your former employer has a policy about the release of personnel records. Many companies limit the amount of information they disclose.
- **Read the fine print carefully.** When you sign a job application, you will be asked to sign a consent form if a background check is conducted. Read this statement carefully and ask questions if the authorization statement is not clear. Unfortunately, jobseekers are in an awkward position, since refusing to authorize a background check may jeopardize the chances of getting the job.

Notice of a background check has to be on a separate form. The only other information this form can include is your authorization and information that identifies you. Neither the notice of a background check nor any other form should ask questions like "race," "sex," "full date of birth," or "maiden name." Such questions violate the federal Equal Employment Opportunity laws. And,

you should not be asked to sign any document that waives your right to sue a screening company or the employer for violations of the law.

- **Tell neighbors and work colleagues**, past and present, that they might be asked to provide information about you. This helps avoid suspicion and alerts you to possible problems. In addition, their prior knowledge gives them permission to disclose information to the investigator. Forewarning others speeds up the process and helps you get the job faster.

Part 10. References

Laws on Background Checks

- Federal Fair Credit Reporting Act, 15 USC §1681, www.ftc.gov/os/statutes/fcra.htm
- California Investigative Consumer Reporting Agencies Act, California Civil Code §1786, www.leginfo.ca.gov
- California Consumer Credit Reporting Agencies Act, California Civil Code §1785 www.leginfo.ca.gov

Laws on Workplace Discrimination

- **Equal Employment Opportunity Commission (EEOC)**, www.eeoc.gov/qs-employees.html
The EEOC was established by Title VII of the Civil Rights Act of 1964. It enforces the following laws:
 - **Title VII of the Civil Rights Act of 1964** (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin. 42 USC §2000e, www.eeoc.gov/laws/vii.html.
 - **Equal Pay Act of 1963**, which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination. 29 USC §206(d), www.eeoc.gov/laws/epa.html.
 - **Age Discrimination in Employment Act of 1967 (ADEA)**, which protects individuals who are 40 years of age or older. 29 USC §621, www.eeoc.gov/laws/adea.html.
 - **Americans with Disabilities Act of 1990 (ADA)**, which prohibits employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments. 42 USC §12101, www.eeoc.gov/laws/ada.html.

Contacting Government Agencies

- **U.S. Equal Employment Opportunity Commission (EEOC)**
1801 L Street, N.W.
Washington, D.C. 20507
Phone: (202) 663-4900

TTY: (202) 663-4494

Web: www.eeoc.gov

- **EEOC Field Offices**

To be automatically connected with the nearest EEOC field office, call:

Phone: (800) 669-4000

TTY: (800) 669-6820

- **Federal Trade Commission (FTC)**

Consumer Response Center, CRC-240

Washington, D.C. 20580

Phone: (877) FTC-HELP (877-382-4357)

TTY: (866) 653-4261

Web: www.ftc.gov

FTC Publications

- "Negative Credit Can Squeeze a Job Search,"
www.ftc.gov/bcp/online/pubs/alerts/ngcrdta1rt.htm
- "Using Consumer Reports: What Employers Need to Know,"
www.ftc.gov/bcp/online/pubs/buspubs/credempl.htm
- **California Department of Fair Employment and Housing**
The Department of Fair Employment and Housing does not currently accept complaints through the Internet or by mail. For information on how to file an employment-related complaint, call one of the numbers below.

(800) 884-1684 (Within California)

(916) 227-0551 (Outside California)

Web site: www.dfeh.ca.gov

- **Fair Employment Agencies in the 50 States**

The following web sites list fair employment agencies in the 50 states:

- <http://equalopportunity.monster.com/agencies>
- <http://www.state.hi.us/hcrc/OtherStates.htm>

Articles of Interest

- "Criminal Records and Getting Back into the Workforce: Six Critical Steps for Ex-offenders Trying to Get Back into the Workforce," by Les Rosen, Esq. -- September, 2003
www.privacyrights.org/ar/rosencrim.htm

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www.infolinkscreening.com