

COMPLIANCE WITH THE FAIR CREDIT REPORTING ACT

AmericanChecked cannot provide its users with legal advice. However we can help to educate you on your responsibilities so that you do inadvertently run afoul of the law.

The Fair Credit Reporting Act (FCRA) is the law that governs our respective responsibilities when we provide and you use the “consumer reports” we provide.

The Federal Trade Commission and the Consumer Financial Protection Bureau enforce the law. In the past several years, they (and the Plaintiff Bar) have been aggressive in scrutinizing employer practices under the FCRA. Their main focus has been on disclosure and authorization issues and failure to comply with pre and post adverse action notices.

Below is information regarding these two issues and other areas that we encourage you to review. In fact, you might review your policies and procedures, using the below as a checklist for compliance.

Before You Get a Consumer Report

You must:

- Tell the applicant or employee that you might use information in their consumer report for decisions related to their employment. This notice must be in writing and in a stand-alone format. The notice cannot be in an employment application. You can include some minor additional information in the notice, like a brief description of the nature of consumer reports, but only if it does not confuse or detract from the notice.
- Get written permission from the applicant or employee. This can be part of the document you use to notify the person that you will get a consumer report. If you want the authorization to allow you to get consumer reports throughout the person's employment, make sure you say so clearly and conspicuously.
- Certify compliance to the company from which you are getting the applicant or employee's information. You must certify that you:
 - notified the applicant or employee and got their permission to get a consumer report;
 - complied with all of the FCRA requirements; and
 - will not discriminate against the applicant or employee or otherwise misuse the information, as provided by any applicable federal or state equal opportunity laws or regulations.

It's a good idea to review applicable laws of your state related to consumer reports. Some states restrict the use of consumer reports – usually credit reports – for employment purposes.

Before You Take an Adverse Action

Before you reject a job application, reassign or terminate an employee, deny a promotion, or take any other adverse employment action based on information in a consumer report, you must give the applicant or employee:

- a notice that includes a copy of the consumer report you relied on to make your decision; and
- a copy of [A Summary of Your Rights Under the Fair Credit Reporting Act](#), which the company that gave you the report should have given to you.

Giving the person the notice in advance gives the person the opportunity to review the report and tell you if it is correct.

After You Take an Adverse Action

If you take an adverse action based on information in a consumer report, you must give the applicant or employee a notice of that fact – orally, in writing, or electronically.

An adverse action notice tells people about their rights to see information being reported about them and to correct inaccurate information. The notice must include:

- the name, address, and phone number of the consumer reporting company that supplied the report;
- a statement that the company that supplied the report did not make the decision to take the unfavorable action and can't give specific reasons for it; and
- a notice of the person's right to dispute the accuracy or completeness of any information the consumer reporting company furnished, and to get an additional free report from the company if the person asks for it within 60 days.

Investigative Reports

Employers who use "investigative reports" – reports based on personal interviews concerning a person's character, general reputation, personal characteristics, and lifestyle – have [additional obligations under the FCRA](#). These obligations include giving written notice that you may request or have requested an investigative consumer report, and giving a statement that the person has a right to request additional disclosures and a summary of the scope and substance of the report. (See 15 U.S.C. section 1681d(a), (b)).

DISPOSING OF CONSUMER REPORTS

When you're done using a consumer report, you must securely dispose of the report and any information you gathered from it. That can include burning, pulverizing, or shredding paper documents and disposing of electronic information so that it can't be read or reconstructed. For more information, see [Disposing of Consumer Report Information? New Rule Tells How](#).