

Understanding the FCRA and How it Applies to Pre-Employment Screening

The Fair Credit Reporting Act (FCRA) has been in effect for almost 30 years. Since its inception, this act has governed the collection and use of certain information for a number of permissible purposes. Given the law’s name, one might be led to believe that it pertains only to an individual’s credit history and worthiness. This belief, however, is a popular misconception. In 1996, Congress adopted wide-ranging amendments to the FCRA that imposed substantial new requirements on users of “consumer reports” for employment purposes. The revised FCRA affects how employers procure pre-employment screening and provides candidates with specific rights in dealing with consumer reporting agencies.

This overview is intended to provide only preliminary information on a very complex law. We strongly recommend that you review the law in its entirety online at <http://www.faircreditreportingact.com>. Additional information and discussion are also available online at <http://www.ftc.gov>.

Basic Definitions as provided in the revised FCRA

Person	In the FCRA’s text, a “person” refers to any employer, credit issuer, etc., who requests information regarding a consumer.
Consumer	“Consumer” is defined as the individual. For employment purposes, this definition includes any individual on whom you request screening services (i.e. potential employees you are considering for hire or current employees up for promotion).
Consumer Report	A “consumer report” pertains to information gathered by any third-party regarding a consumer’s credit worthiness, credit standing, <i>general reputation, character, personal characteristics</i> , etc. A consumer report is used to describe <u>any</u> information acquired and reported to you by a pre-employment screening firm or third-party regarding a candidate’s history. Communication of this report can be verbal or written.
Consumer Reporting Agency (CRA)	A “Consumer Reporting Agency” refers to any third-party firm that, for a monetary fee, gathers and provides information regarding a consumer. A pre-employment screening firm is considered a consumer reporting agency.
Adverse Action	An “adverse action” occurs when you utilize information contained in a consumer report (whether in whole or in part) to take an action that adversely affects the consumer. For example, a determination not to hire a candidate based on information reported to you in his/her background check is considered an “adverse action.”

What does the law require of Employers and Pre-Employment Screening Vendors?

Employer Requirements	Pre-Employment Screening Vendor Requirements
Employers must certify (agree in writing) that they understand the employer requirements under the FCRA and that they will abide by all applicable employment law.	Before we can process any request for a consumer report, we are required to obtain a certification (or written agreement) from the employer stating that they understand their responsibilities under the FCRA and will abide by all applicable employment law.
Employers are required to make a “clear and conspicuous disclosure” to the candidate that a consumer report might be obtained for employment purposes and to obtain his/her signed consent <u>prior</u> to requesting a report.	We need the candidate’s signed disclosure and consent (as required under the FCRA) before processing any request for background information. This disclosure serves as legal notification to the individual that the employer may obtain a consumer report for consideration.
Employers must handle the information received in a consumer report (background check) in accordance with employment law and must notify the candidate if they decide against hire based on the information contained in a consumer report.	We are required to obtain, document, and report information to you with fairness and accuracy and in accordance with the FCRA’s reporting requirements.
If an adverse action is taken, employers must provide the candidate with a written copy of his/her rights under the FCRA and the name, address, and phone number of the agency that provided the report.	If an adverse action is taken, we are required to provide a copy of the consumer report to the individual upon request.

Please review the online resources listed above to understand your full responsibility under the FCRA.