



BEFORE YOU START YOUR NEXT JOB SEARCH: CHECK YOUR OWN BACKGROUND: EMPLOYERS ARE!



What Can An Employer Find In A Consumer Report?

In today's economy employers are constantly finding new tools to filter out qualified candidates from employment opportunities including promotions and reassignments. A 2010 poll of employer members of the Society of Human Resources Management revealed that, in their screens of job applicants, 92% of employers use criminal histories and 60% of employers use credit histories. A **consumer report** can include information regarding your credit payment history, criminal history, driving record, general reputation and lifestyle. This information may be obtained from any **consumer reporting agency (CRA)**, including all three credit bureaus, Experian, Equifax and TransUnion. Many employers use the information obtained in these reports to draw negative conclusions (or evaluations about job applicants).



What Rights Do I Have When An Employer Orders A Consumer Report About Me?

The Fair Credit Reporting Act (FCRA) regulates the dissemination and use of consumer reports which include credit and criminal history information. The FCRA requires employers and consumer reporting agencies to follow certain guidelines before and after a consumer report is ordered for anyone seeking a job or promotion.

1. Written Notice

An employer must give you written notice that it may obtain a consumer report for the purpose of evaluating you for employment opportunities.

2. Authorization

An employer must obtain written authorization to access your consumer report before the employer contacts a CRA for the information. If your current employer plans to review your consumer report for promotion purposes, the employer needs only to ensure that you gave written permission in the past and that you were informed that your credit information may be obtained during the course of your employment.



3. **Before taking adverse action**

An employer must give you a pre-adverse action disclosure that includes a copy of the consumer report obtained and a copy of “A Summary of Your Rights under the Fair Credit Reporting Act.”

4. **After taking adverse action**

After an employer makes an adverse decision based in whole or in part on information contained in your consumer report, the employer must notify you using an **adverse action notice**. This notice may be given orally, in writing or electronically but must include:

- The name, address, and phone number of the CRA who provided the report
- A statement that the CRA who provided the information was not responsible for the adverse decision and cannot provide additional explanations for the hiring decision.
- Information regarding your right to dispute the accuracy or completeness of any information contained in the report and your right to obtain a free copy of the report from the CRA if one is requested within 60 days. The CRA must provide you with a copy of the consumer report free of charge if requested within 60 days.



What Can I Do If An Employer Does Not Follow The FCRA?

If an employer violates your rights under the FCRA, you are protected. The FCRA allows you to bring an action against an employer or CRA in federal court. The Federal Trade Commission (FTC) and other federal agencies may also sue employers for noncompliance under the act.



Are There Any Other Federal Laws That Offer Protection?

Yes. Title VII, a Federal anti-discrimination employment statute, offers additional protection for minorities who aren't hired or are denied promotions due to **prior arrest or conviction for a criminal offense**.

- If an employer has a policy not to hire or promote anyone with an arrest record or anyone with a prior criminal conviction, that policy may violate Title VII.



- If an employer fails to hire or promote you based upon a prior conviction, the employer generally must show that the decision was made after considering the following three factors: (1) the nature and gravity of the offense; (2) the time elapsed since the conviction or completion of the sentence; and (3) the nature of the job sought. If the nature of the offense is unrelated to the nature of the job sought, or if the offense was a long time ago, failure to hire or promote based upon the conviction may violate Title VII.
- If an employer fails to hire or promote you based upon a prior arrest without conviction, the employer must investigate the arrest further to determine what occurred. If it is clear that no wrongful conduct occurred, if the nature of the offense is not sufficiently related to the nature of the job sought, or if the offense was a long time ago, failure to hire or promote based upon the arrest may also violate Title VII.



Does My State Provide Additional Protection Regarding The Use Of My Credit And Criminal History Information?

Maybe. You can research employment laws in your state by contacting the Equal Employment Opportunity (EEO) field office in your city or state. A directory of EEO field offices can be found at: www.eeoc.gov/offices.html. You can also look up state privacy laws in the “Compendium of State Privacy and Security Legislation,” compiled by the U.S. Dept of Justice Bureau of Justice Statistics, which is available at: <http://www.ojp.usdoj.gov/bjs/abstract/cspsl02.htm>. **Please note:** the Compendium was **last updated in 2002** and **changes to the law may have occurred**. Contact a local attorney for information on updated state laws.



How Can I Protect My Rights?

1. Read the fine print

When completing a job application, be sure to read the entire application. There may be language in small print disclosing the employer’s intent to check your background.

2. Check your credit report

You are entitled to one free credit report per year. To request a copy of your free credit report visit: www.annualcreditreport.com.



3. Check court records

If you have been arrested or convicted of an offense, go to the county where you were arrested or convicted and request a copy of your file. Review the file and correct any mistakes.

4. Even if you have never been arrested or convicted of an offense check your record

Check with your state to ensure that you have no record. Clerical errors can and do happen. You can correct errors, but you can only correct the errors that you find.



Resources & Links

1. The HIRE Network, a non-profit organization, maintains a list of state criminal record repositories at: www.hirenetwork.org/resource.html. Click on your state and scroll down to Section II.
2. To request your FBI record, follow the instructions at www.hirenetwork.org/fbi_rapsheets.html
3. If an employer has requested a background check covered by the FCRA, you may be entitled to receive a copy of your "file" from the employment screening company. For more information on how to request a free employment report, go to: www.privacyrights.org/fs/fs6b-SpecReports.htm#8. **If you have previously been convicted of an offense**, see an attorney to explore if you are eligible to get your conviction sealed, expunged, or legally minimized and to make sure you understand your rights.
4. For more information on your rights under the FCRA please visit the Federal Trade Commission website at: <http://www.ftc.gov/bcp/consumer.shtm>.



Has this happened to you?

If you believe an employer discriminated against you due to your race and the information in your criminal or credit history, please visit the Lawyers' Committee website and complete an intake questionnaire. The website is www.lawyerscommittee.org and the intake questionnaire may be found by clicking on the "Contact Us" button.