

## [Employment Background Checks: A Jobseeker's Guide](#) [1]

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### 1. Introduction

This guide explains what can be covered in a background report, your rights under the federal Fair Credit Reporting Act (FCRA), and what you can do to prepare for a background check. It also explains your right to get a copy of a background check and what to do if your report includes inaccurate or incomplete information. Most of the information in this guide applies only if the employer use a *third-party screening company* to conduct the background check. If the employer does not hire a third-party to conduct the investigation, but compiles the report *itself*, the provisions of the FCRA do not apply.

### 2. Why Do Employers Conduct Background Checks?

Whether you are hired or promoted may depend on the information revealed in a background check. Both job applicants and existing employees may be asked to submit to background checks. For some jobs, screening is required by federal or state law. In fact, [over two-thirds](#) [2] (69%) of organizations conduct criminal background checks on all of their job candidates. [The Report of the National Task Force on the Criminal Backgrounding of America](#) [3] lists the following reasons why employers conduct criminal background checks:

- Public safety
- Compliance with legal requirements
- Limitation of liability
- Conditions of doing business
- Protection of vulnerable populations
- Customer assurance
- Avoidance of loss of business
- Fear of business loss, or public or medical backlash over an incident caused by an individual with a past record

In addition, many employers conduct background screening for the following reasons:

- 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.
- Terrorist acts have resulted in heightened security and identity-verification strategies by employers.
- Corporate executives, officers, and directors face a degree of scrutiny in both professional and private life as a result of

corporate scandals.

- Fraudulent credentials (false or inflated information) supplied by some job applicants make employers wary of accepting anyone's word at face value.
- Federal and state laws may require background checks for certain jobs. For example, most states require criminal background checks for anyone who works with children, the elderly, or disabled. 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.

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

You may not have a skeleton in the closet or even be particularly concerned that your employer knows a lot about your private life. But, you certainly want to know that the information the employer receives is accurate, complete, and not misleading. You also want to know that the report is about *you* -- and not an identity thief who has stolen your good name. 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.

A [report](#) [4] prepared by the National Consumer Law Center (NCLC), found that background screening reports may:

- Mismatch people (for example, a person with no criminal background is mixed up with someone who has a criminal record)
- Omit crucial information about a case (for example, a person is arrested but then found innocent)
- Reveal sealed or expunged information (for example, a juvenile offense)
- Provide misleading information (for example, a single charge is listed multiple times)
- Misclassify offenses (for example, reporting a misdemeanor as a felony)

### **Does a criminal record mean I can never get a job?**

Not necessarily. The U.S. Equal Employment Opportunity Commission (EEOC) has said that use of criminal history may sometimes violate Title VII of the Civil Rights Act of 1964. This can happen, the EEOC says, when employers treat criminal history differently for different applicants or employees. A person cannot be denied employment based on a criminal record alone. Instead, the decision to hire or not must be based on a "business necessity," which requires the employer to consider:

- The nature and gravity of the offense or offenses.
- The time that has passed since the conviction and or completion of the sentence.
- The nature of the job held or sought.

EEO laws apply in employment situations whether the employer hires a third-party screening company or not. The EEOC has issued extensive [guidelines](#) [5] for employers in considering the criminal history of a job applicant or employee.

## **3. What Can Be Included in a Background Check Report?**

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. Information included in a background check will depend to some extent on the employer and the job involved. For many jobs, a state or federal law requires the employer to conduct a background check. Jobs that involve work with children, the elderly or people with disabilities are examples of jobs that will almost certainly require a criminal background check. Some employers search social networking sites such as Facebook for the profiles of applicants.

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 number
- Education records
- Court records
- Workers' compensation
- Bankruptcy
- Character references
- Medical records
- Property ownership
- Military records
- State licensing records
- Drug test records
- Past employers
- Personal references
- Incarceration records
- Sex offender lists

#### **Will my old conviction, probation, or arrest show up on a background check?**

It depends. What can be reported on a background check depends on a number of factors, such as the kind of job, salary, and whether the employer does the check or hires a third party screening company. Federal law allows the reporting of criminal convictions indefinitely. Your state may offer more protection. If you have a court record, check the court record yourself to see how this matter appears.

#### **4. What Cannot Be Included 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 in house. 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.

However, it is important to know that the above reporting restrictions do *not* apply to jobs with an annual salary of \$75,000 or more a year. (FCRA §605(b)(3) [6]).

Criminal *convictions* are reportable indefinitely, unless your state provides otherwise. California 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's 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 some 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. 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) However, there are private companies that compile virtual "rap sheets." Employers need to use caution in checking criminal records. Information offered online by data brokers is not always accurate or up to date.
- **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. Although WCAB 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 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 database searches against the actual public records filed at the courthouse.

### **Aren't some of my personal records confidential?**

An employer is required to get your permission before obtaining the following records:

- **Education records.** Under both federal and California law, transcripts, recommendations, discipline records, and financial information are [confidential](#) [7]. 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.
- **Military service records.** Under the federal Privacy Act of 1974, 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)
- **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 federal 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)

### **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)

## **5. 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.

### **Why do some employers 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. 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.

### **Do any state laws limit the use of credit reports for employment screening purposes?**

Several states have passed laws limiting credit reports for employment decisions with provisions that require a nexus to actual job duties. Those states are: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont, and Washington.

A **California** employer cannot review your credit report unless the job falls into one of numerous [exceptions](#) [8]. Credit checks are allowed for, among other things, jobs with the state Department of Justice, management positions, law enforcement jobs, and jobs that entail access to money, financial accounts, or personal information. For more on employment background checks in California, see PRC's guide to [Employment Background Checks in California](#) [9].

### **Can my employer continue to check my credit after I've been hired?**

Yes. The FCRA allows employment checks not only for hiring purposes but for other employment purposes such as promotion, retention, or transfer. Credit checks for the purposes of retaining you as an employee allows the employer to check your credit periodically. Once you have given your permission, you generally need not be asked again. Employers may run periodic checks, for example, as a way to identify individuals who have a high debt to salary ratio. To an employer, an employee who is overextended financially may be more prone to stealing from the company.

### **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.

### **My credit rating went down when I lost my job. Now I can't get a job because of poor credit. Is this fair?**

No. Often a poor credit rating results from circumstances that are beyond your control. The loss of a job or high medical bills often leads to late payments, even bankruptcy. Still a bank or other financial institution may reason that a solid financial history is a qualifying factor for an employee who has control over substantial sums of money. However, the same argument cannot be made when a credit check serves only as a kind of character screening. Some states have now recognized the unfairness in this by adopting laws that require a direct relationship to the job before a credit check is made.

## 6. Who Conducts Background Checks?

There are many companies that specialize in employment screening. 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. Some screening companies operate in specific areas of the country while others, conduct background screening nationwide.

It is easy for employers to gather background information themselves. Much of it is online, allowing employers to access public records and commercial databases relatively easily. Finding one of these online companies is as easy as using a search engine to find websites that specialize in "background checks."

Employers should understand that online data brokers may be subject to the FCRA, triggering obligations on the part of the company as well as the employer. In June 2012 the FTC announced a [settlement](#) [10] in a case charging online data broker Spokeo with acting as a consumer reporting agency.

The FBI maintains a criminal records data base, called the National Crime Information Center (NCIC). It can be accessed for some, but not all, criminal history checks. Whether an employer has access to the NCIC depends on the kind of job involved. The 1993 National Child Protection Act (42 USC §5119) authorizes states to establish procedures for national criminal history checks using the [NCIC](#) [11] for employees and volunteers who work with children, the elderly, and persons with disabilities. For more on the NCIC, visit the [joint website](#) [12] of the FBI and the Federation of American Scientists.

## 7. Your Rights Under the Fair Credit Reporting Act (FCRA)

The federal [Fair Credit Reporting Act](#) [6] (15 USC §1681 et seq.) (FCRA) covers "consumer reports" issued for multiple purposes, and this is a source of confusion to many individuals. In addition to covering credit checks, the FCRA also governs employment background checks for the purposes of "hiring, promotion, retention, or reassignment." To learn more about credit reporting, read our Consumer Guide, [Credit Reporting Basics: How Private Is My Credit Report](#) [13]. The FCRA does not *require* employers to conduct employment background checks. But the law sets a national standard that employers must follow in employment screening. In some states, laws may give an employee more rights than the FCRA.

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

Yes, if it is not performed by the employer. The background check 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](#) [14]:

- **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)

## Can a background check report include a case that was expunged?

According to the FTC, it should not. In August 2012, the agency [fined](#) [15] a background screening company \$2.6 million for, among other things, reporting criminal records that had been expunged. In addition, the FTC charged the company with failing to follow other FCRA provisions, including failure to provide consumers with a copy of their background check report.

Each state offers its own definition of expungement, based on different rules and laws. Generally, expungement can be viewed as the process to "remove from general review" the records pertaining to a case. But the records may not completely "disappear" and may still be available to law enforcement.

## I am applying for a job in a profession that is required by law to perform background checks, such as in law enforcement, childcare, or a hospital. Will this affect my rights under the Fair Credit Reporting Act?

Maybe. When a specific law requires a background check, that same law usually outlines the rights employees have. These rights may not necessarily follow the Fair Credit Reporting Act, the background screening law that governs "consumer reports." However, if a third-party screening company is hired, the FCRA would apply.

Law enforcement agencies or state licensing authorities may have direct access to state and federal criminal records databases, which many private employers do not have. A government-run database is not a consumer reporting agency and is not subject to the FCRA. Whether you have a right to get your report or make corrections may be spelled out in the background check forms you signed or perhaps on the agency's website.

However, individuals are generally allowed to access their own criminal records files maintained by a state or federal agency. To learn how to access your state's criminal records data files, visit the website of your [state Attorney General](#) [16]. The federal Privacy Act also gives you the right to request records maintained about you. To check federal criminal records, contact the [Federal Bureau of Investigation](#) [17].

## I am an independent contractor. What are my rights if the employer wants to do a background check?

The Federal Trade Commission staff has issued a couple of advisory opinion letters about contractors and the Fair Credit Reporting Act:

- **Allison Letter.** This [FTC advisory opinion](#) [18] says that a trucking operation that uses consumer reports to evaluate whether to hire independent owner operator truck drivers must comply with the provisions of the FCRA pertaining to consumer reports, including the disclosure and authorization provisions. The opinion goes on to say that even a homeowner who is considering hiring an individual to perform services for the homeowner is indeed required to comply with the FCRA when obtaining a "consumer report" on that individual. Like any employer, the homeowner must abide by the applicable disclosure and authorization provisions like any other employer.
- **Solomon Letter.** This [FTC advisory opinion](#) [19] says that the term "employment purposes," as used in the FCRA, should be interpreted broadly.

## Does a nonprofit organization have to follow the FCRA when screening volunteers?

Yes, if the investigation is conducted by a consumer reporting agency. Organizations whose employees and volunteers work closely with children, the elderly, or the disabled are most likely to conduct background checks. Read our guide on [volunteer background checks](#) [20].

## Does the FCRA require that I receive notice and give authorization at any time a background check is obtained?

The FCRA allows a "blanket" authorization. This means a one-time notice and authorization is sufficient to allow the employer to obtain reports at [any time](#) [21] during employment. The requirement to get authorization may, however, be different under state law. In *California*, for example, notice and authorization is required "at any time before a report is procured." (California Civil Code Sec. 1786.16)

## May an employment report include medical information?

The FCRA imposes specific obligations on employment screening companies. Medical information supplied for employment purposes requires your specific written consent and must be "relevant" to the employment. An employer may also ask you to take a pre-employment physical. If so, the Americans with Disabilities Act requires such requests be made only after a job offer.

## How 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.

### **Where do I go to complain about an employer or a background screening company that does not follow the FCRA?**

Complaints should be filed with the [Federal Trade Commission](#) [22]. Your state may also have a law that applies to employment background checks. In that case, file a complaint with your state Attorney General as well. Contact for state Attorneys General can be found through the [National Association of Attorneys General](#) [23].

The FCRA includes a private right of action; that is, consumers themselves may sue for violations. Attorneys who specialize in employment law may be located through the [National Employment Lawyers' Association](#) [24]. State and county bar associations are another resource for referrals.

### **8. There's an Error in My Background Check Report. What Should I Do?**

First, talk to the employer. Explain the report's errors, and tell the employer you intend to file a dispute with the employment screening company. Although the FCRA does not require the employer to hold the job for you, a sympathetic employer may be willing to give you a chance to correct any errors.

Next, file a dispute with the employment screening company that made the error. You may first call the company and tell them about the error. Then follow-up with a written dispute letter pointing out the errors in the report. Send your letter certified mail, return receipt requested.

Along with your letter you may submit information that verifies your side of the story. For example, you may have a common name. The background check report may show a criminal record for someone with your first and last name but with a different middle initial.

The process for disputing errors in an employment report is the same as the process for disputing errors in your credit report. For more about filing disputes, along with a sample dispute letter, see the FTC publication [How to Dispute Credit Report Errors](#). [25]

### **What happens after I file a dispute with the employment screening company?**

After you file your dispute, the screening company has 30 days to investigate. If, during that 30 day period you file additional information, the investigation may be extended by another 15 days. So, 45 days is the maximum time allowed for considering your dispute.

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 five 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.

### **I want to file a lawsuit against a background check company for reporting inaccurate information on my background check, because it cost me my job. What should I do?**

You should contact an employment or consumer lawyer to discuss your situation. An employment lawyer can be found through the [National Employment Lawyers Association](#) [26]. A consumer attorney can be found through the [National Association of Consumer Advocates](#) [27].

## **9. Employee Misconduct 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.

### **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. 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.

## **10. How To Prepare for a Background Check**

If you are going to be on the job market, you can take steps to prepare for a background check. You can reduce the chances that you and/or the potential employer will be "surprised" by information found in the background check process by doing the following:

- **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. The FTC's website explains how you can [order your free credit reports](#) [28] each year.
- **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. 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.

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 someone else 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. 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.
- **Review your social networking posts.** If you have created profiles in popular social networking sites such as Facebook, review, and if necessary, edit what you have posted to make sure that an employer would not be offended. Some employers are turning to third-party screening companies to monitor and report on a potential employee's social networking activity.
- **Review your blog posts.** Re-read your entries from the perspective of a potential employer. Remove or edit posts that could harm your jobseeking efforts. But don't necessarily remove content that shines a light on your positive achievements.
- **Do your own background check.** If you want to see what an employer's background check might uncover, hire a background screening company that specializes in such reports to conduct one for you. That way, you can discover if the databases of information vendors contain erroneous or misleading information.
- **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, job seekers are in an awkward position, since refusing to authorize a background check may jeopardize the chances of getting the job.
- **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.
- **Clean up your "digital dirt."** Conduct a search on your name -- in quotation marks -- in the major search engines such as Google. If you find unflattering references, contact the Web site to learn if and how you can remove them. You can monitor the web for new mentions of your name by setting up a [Google Alert](#) [29]. Google Alert will send you email updates of the latest Google results mentioning your name.
- **Request previous background check reports.** If you have been the subject of a background check covered by the FCRA, you may be entitled to receive a copy of your "file" from the employment screening company. If you do not know the name of the screening company, ask the employer who requested the check.

## 11. Employment Applications and "Ban the Box" Laws

The FCRA does not prohibit an employer from asking questions in an *employment application*. 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.

"**Ban the Box**" [laws](#) [30] are state, county, or city employment laws that may limit the questions that an employer includes on a job application. These laws may prohibit employers from inquiring into criminal history in a job application. These laws can be complex and varied. Typically, "Ban the Box" refers to the question on a job application about past criminal record and a box for "Yes" or "No."

The **California** Labor Code says an employer cannot ask about:

- Any arrest or detention that did not result in a conviction.
- Any arrest for which pretrial diversion has been completed.
- Any criminal records that have been expunged, sealed or dismissed.
- *Public sector employers* (California state and local agencies, cities and counties) are prohibited from asking about criminal records on *employment applications*. Public sector employers must review an applicant's qualifications *before* inquiring about their conviction history.

In addition, [AB 1008](#) [31] makes it unlawful for private employers with five or more employees in California to include on any employment application any question that seeks the disclosure of an applicant's conviction history *before* the employer makes a conditional offer of employment to the applicant. AB 1008 also makes it unlawful to inquire into or consider the conviction history of the applicant until after the employer has made a conditional offer of employment to the applicant.

Provisions of the Labor Code are reinforced in regulations of the California Department of Fair Housing and Employment. A Department [publication](#) [32] lists questions that are inappropriate for a California job applicant.

## 12. Resources

### Laws on Background Checks

- [Federal Fair Credit Reporting Act](#) [33], 15 USC §1681
- [California Investigative Consumer Reporting Agencies Act](#) [34], California Civil Code §1786
- [California Consumer Credit Reporting Agencies Act](#) [35], California Civil Code §1785

### Equal Employment Opportunity Commission (EEOC) Publications

- [Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964](#) [5]
- [Background Checks: What Job Applicants and Employees Should Know](#) [36]
- [Background Checks: What Employers Need to Know](#) [37]

### FTC Publications

- [Background Checks: What Employers Need to Know](#) [38]
- [Background Checks – Tips For Job Applicants and Employees](#) [39]
- [What Employment Background Screening Companies Need to Know About the FCRA](#) [40]

### Additional Resources

- "[Criminal Records and Getting Back into the Workforce: Ten Critical Steps for Ex-offenders Trying to Get Back into the Workforce](#) [41]," by Les Rosen, Esq. -- November, 2015
- [Criminal Data Broker Websites: Data Brokers that May Be Primary Source Aggregators of Private Criminal Records Databases](#) [42].
- "[Broken Records](#) [4]," a report prepared by the National Consumer Law Center (NCLC), April 2012
- [The Expunged Record](#) [43], a comprehensive guide to expunged records in employment background checks

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**Source URL (modified on June 28, 2018):** <https://www.privacyrights.org/consumer-guides/employment-background-checks-jobseekers-guide>

### Links

- [1] <https://www.privacyrights.org/consumer-guides/employment-background-checks-jobseekers-guide>
- [2] <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Pages/criminalbackgroundcheck.aspx>
- [3] <http://www.search.org/files/pdf/ReportofNTFCBA.pdf>
- [4] <http://www.nclc.org/issues/broken-records.html>
- [5] [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)
- [6] <https://www.consumer.ftc.gov/sites/default/files/articles/pdf/pdf-0111-fair-credit-reporting-act.pdf>
- [7] <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- [8] [http://leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0001-0050/ab\\_22\\_bill\\_20110920\\_enrolled.html](http://leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/ab_22_bill_20110920_enrolled.html)
- [9] <https://www.privacyrights.org/employment-background-checks-california-focus-accuracy>
- [10] <https://www.ftc.gov/news-events/press-releases/2012/06/spokeo-pay-800000-settle-ftc-charges-company-allegedly-marketed>
- [11] <https://www.fbi.gov/services/cjis/ncic>
- [12] <http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm>
- [13] <https://www.privacyrights.org/consumer-guides/credit-reporting-basics-how-private-my-credit-report>
- [14] <https://www.ftc.gov/tips-advice/business-center/guidance/using-consumer-reports-what-employers-need-know>
- [15] <https://www.ftc.gov/news-events/press-releases/2012/08/employment-background-screening-company-pay-26-million-penalty>
- [16] <http://www.naag.org/naag/attorneys-general/whos-my-ag.php>
- [17] <https://www.fbi.gov/about-us/cjis/identity-history-summary-checks>
- [18] <https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-allison-02-23-98>
- [19] <https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-solomon-10-27-98>
- [20] <https://www.privacyrights.org/volunteer-background-checks-without-giving-up-privacy>
- [21] <https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-james-08-05-98>
- [22] <https://www.ftccomplaintassistant.gov/#crnt&amp;panel1-1>
- [23] <http://www.naag.org/>
- [24] <https://www.nela.org/NELA/>
- [25] <http://www.consumer.ftc.gov/articles/0151-disputing-errors-credit-reports>
- [26] <http://exchange.nela.org/network/findalawyer>
- [27] <http://www.consumeradvocates.org/find-attorney>
- [28] <https://www.consumer.ftc.gov/articles/0155-free-credit-reports>
- [29] <http://www.google.com/alerts>
- [30] <http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>
- [31] [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1008](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1008)
- [32] <https://equity.ucla.edu/wp-content/uploads/2016/06/Questions-to-Avoid-dfeh-161.pdf>
- [33] <http://www.ftc.gov/os/statutes/fcradoc.pdf>
- [34] [http://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CIV&amp;division=3.&amp;title=1.6A.&amp;part=4.&amp;chapter=&amp;article=1.](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&amp;division=3.&amp;title=1.6A.&amp;part=4.&amp;chapter=&amp;article=1.)
- [35] [http://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CIV&amp;division=3.&amp;title=1.6.&amp;part=4.&amp;chapter=1.&amp;article=](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&amp;division=3.&amp;title=1.6.&amp;part=4.&amp;chapter=1.&amp;article=)
- [36] [https://www.eeoc.gov/eeoc/publications/background\\_checks\\_employees.cfm](https://www.eeoc.gov/eeoc/publications/background_checks_employees.cfm)
- [37] [https://www.eeoc.gov/eeoc/publications/background\\_checks\\_employers.cfm](https://www.eeoc.gov/eeoc/publications/background_checks_employers.cfm)
- [38] <https://www.ftc.gov/tips-advice/business-center/guidance/background-checks-what-employers-need-know>
- [39] <http://www.consumer.ftc.gov/articles/pdf-0044-background-checks.pdf>
- [40] [https://www.ftc.gov/tips-advice/business-center/guidance/what-employment-background-screening-companies-need-know-about?utm\\_source=govdelivery](https://www.ftc.gov/tips-advice/business-center/guidance/what-employment-background-screening-companies-need-know-about?utm_source=govdelivery)
- [41] <https://www.privacyrights.org/rosencrim.htm>
- [42] <https://www.privacyrights.org/blog/criminal-data-broker-websites-data-brokers-may-be-primary-source-aggregators-private-criminal>
- [43] <http://www.theexpungedrecord.com/>