

Background Checks

What Employers Need to Know



Handwriting practice sheet for the letters 'm' and 'g'. The page contains 15 rows of practice. Each row includes a blue arrow pointing right, followed by a series of 'm' and 'g' characters. The characters are placed on the top line, the middle dashed line, and the bottom line. Some characters are larger than others, and some are written in pairs. The letters are black, and the grid lines are blue.

Before You Get Background Information

EEOC

In all cases, make sure that you're treating everyone equally. It's illegal to check the background of applicants and employees when that decision is based on a person's race, national origin, color, sex, religion, disability, genetic information (including family medical history), or age (40 or older). For example, asking only people of a certain race about their financial histories or criminal records is evidence of discrimination.

Except in rare circumstances, don't try to get an applicant's or employee's genetic information, which includes family medical history. Even if you have that information, don't use it to make an employment decision. (For more information about this law, see the EEOC's publications explaining the Genetic Information Nondiscrimination Act, or GINA.) Don't ask any medical questions before a conditional job offer has been made. If the person has already started the job, don't ask medical questions unless you have objective evidence that he or she is unable to do the job or poses a safety risk because of a medical condition.

FTC

there are additional procedures the FCRA requires beforehand:

Tell the applicant or employee you might use the information for decisions about his or her employment. This notice must be in writing and in a stand-alone format. The notice can't 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 doesn't confuse or detract from the notice.

Apply the same standards to everyone, regardless of their race, national origin, color, sex, religion, disability, genetic information (including family medical history), or age (40 or older). For example, if you don't reject applicants of one ethnicity with certain financial histories or criminal records, you can't reject applicants of other ethnicities because they have the same or similar financial histories or criminal records.

Take special care when basing employment decisions on background problems that may be more common among people of a certain race, color, national origin, sex, or religion; among people who have a disability; or among people age 40 or older. For example, employers should not use a policy or practice that excludes people with certain criminal records if the policy or practice significantly disadvantages individuals of a particular race, national origin, or another protected characteristic, and does not accurately predict who will be a responsible, reliable, or safe employee. In legal terms, the policy or practice has a "disparate impact" and is not "job related and consistent with business necessity."

Be prepared to make exceptions for problems revealed

the FCRA has additional

requirements:

Before you take an adverse employment action, 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 you should have received from the company that sold you the report.

By giving the person the notice in advance, the person has an opportunity to review the report and explain any negative information.

After you take an adverse employment action, you must tell the applicant or employee (orally, in writing, or electronically):

that he or she was rejected because of information in the report;

the name, address, and phone number of the company that sold the report;

that the company selling the report didn't make the hiring decision, and can't give specific reasons for it; and

that he or she has a right to dispute the accuracy or completeness of the report, and to get an additional free report from the reporting company within 60 days.

Disposing of Background Information

EEOC

Any personnel or employment records you make or keep (including all application forms, regardless of whether the applicant was hired, and other records related to hiring) must be preserved for one year after the records were made, or after a personnel action was taken, whichever comes later. (The EEOC extends this requirement to two years for educational institutions and for state and local governments. The Department of Labor also extends this requirement to two years for federal contractors that have at least 150 employees and a government contract of at least \$150,000.) If the applicant or employee files a charge of discrimination, you must maintain the records until the case is concluded.

FTC

Once you've satisfied all applicable recordkeeping requirements, you may dispose of any background reports you received. However, the law requires that you dispose of the reports – and any information gathered from them – securely. 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? Rule Tells How”* at www.business.ftc.gov/documents/disposing-consumer-report-information-rule-tells-how.

Further Information

Background screening reports and the FCRA: Just saying you're not a consumer reporting agency isn't enough at www.business.ftc.gov/blog/2013/01/background-screening-reports-and-fcra-just-saying-youre-not-consumer-reporting-agency-i

Reentry Myth Buster: Criminal Histories and Employment Background Checks at csgjusticecenter.org.



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