

Guidelines on Background Check Report Information

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.

Under the FCRA, a background check report is called a "consumer report." This is the same name given to your credit report, and the same limits on disclosure apply. 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, the above reporting restrictions do *not* apply to jobs with an annual salary of \$75,000 or more a year. (FCRA §605(b)(3)).

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 employment agency or office of consumer affairs.

Your state may have stronger laws, such as California's Investigative Consumer Reporting Agencies Act (Civil Code §1786) and the California Consumer Credit Reporting Agency Act (Civil Code §1785). In addition, many state labor codes and state fair employment guidelines limit the content of an employment background check.

Other laws that should be considered:

- **Arrest information.** Although arrest record information is public record, in *California* and 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).
- **Bankruptcies.** Bankruptcies are public record. However, employers cannot discriminate against applicants because they have filed for bankruptcy. (11 USC §525)

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