

GoodHire 



How Well Do You Really Know
BACKGROUND CHECK LAWS?

Tough compliance questions... answered.

KEEP IN MIND

As useful as these tips and explanations are, they're not intended as legal advice. Always consult your own counsel with questions related to your specific practices and compliance.

Whether you scored 100% or missed a few, your confidence will skyrocket once you know the why behind the correct answers. Our **in-house compliance experts** offer these answer to make everything crystal clear.



It's illegal to look at a candidate's social media accounts during the hiring process.

A

True

B

False

GOOD TO KNOW

Looking at a candidate's social media profile isn't illegal. But proceed with caution – doing so can cause legal headaches for you.

For example, Title VII of the Civil Rights Act of 1964 makes it unlawful to deny applicants employment based on their race, religion, national origin, or sex. Other laws such as the Americans with Disabilities Act (ADA) and Age Discrimination in Employment Act (ADEA) prohibit denial based on disability and age, respectively.

That kind of information often appears as part of an online social profile. Even though a person may choose not to fill in those fields or display them publicly, photos and other shared information can expose details about these characteristics.

You could argue that mere access to this restricted information doesn't create liability under federal law when you decide not to hire a candidate. You can insist that things like race, religion, national origin, and gender weren't taken into consideration during the hiring process.

But if the person denied employment decides to file a civil suit as a result, you'd have to go to trial to prove it. And proving that you did or didn't take the restricted information into consideration is a fact-based argument and would require a jury determination. That means a lot of time, money, and resources.

If you're going to use social media in your hiring process, look for an FCRA-compliant vendor to handle it for you. Companies like **Fama** will only show you information that's relevant to your hiring decision (such as violent language or images).

Q 2

“Ban the Box” refers to which of the following?

A

Removing check boxes and questions about criminal records from employment applications

B

Eliminating background checks from the employment screening process

C

Preventing employers from asking about criminal records in a job interview

D

All of the above

GOOD TO KNOW

The grassroots ban-the-box campaign aims to help people with criminal records have a better chance to get hired. It began with a simple goal – to remove the question that asks whether the job applicant has been convicted of a crime from all employment applications.

Ban-the-box laws typically don't forbid employers from inquiring about an applicant's criminal history or from running background checks. They can affect the timing of background checks and inquiries about criminal records, though. And they can make complying with the FCRA-mandated adverse action process trickier.

In some jurisdictions, ban-the-box laws set out adverse-action requirements that are more robust than those required by the Fair Credit Reporting Act. Hundreds of states, counties, and cities have passed their own versions of a ban-the-box law, leaving employers to navigate a complex web of federal and local rules when using background checks.

Q 3

Adverse Action notices are legally required when you decide not to hire someone because of a background check. Who faces legal repercussions if the notices aren't delivered to the candidate?

A

The CRA

B

The employer

C

The job candidate

D

The data provider

GOOD TO KNOW

In the eyes of the law, the responsibility is clear: The FCRA requires “an employer who expects to take adverse action, based in whole or in part on a consumer report, to provide the individual with a copy of the report and a summary of consumer rights under the FCRA before the action is taken.” (Section 604(b)(3))

Failing to deliver and address the adverse action process is one of the key triggers for expensive and time-intensive hiring lawsuits.

That's why it's so important to choose a background check company that has the compliance expertise and commitment to guide you through the adverse action process.



According to the FCRA, a background check company may report criminal convictions for people applying for positions that pay \$75,000 a year (or more) for how long?

A

5 years

B

7 years

C

12 years

D

Unlimited

GOOD TO KNOW

The FCRA generally limits how long consumer reporting agencies can report adverse information about a consumer to seven years. Exceptions include bankruptcy information (which can be reported for 10 years) and information provided for employment screening. The FCRA allows adverse information, such as criminal convictions, to be reported indefinitely if the salary of the position the person is applying for is \$75,000 or more.

Many state laws similarly ban background check companies from reporting on records of arrest, indictment, or conviction that are more than seven years old (counting from the date of disposition, release, or parole) unless the salary for the position is a certain amount. The salary threshold in some state laws is lower than that defined under the FCRA – in some cases as low as \$20,000 – so the state threshold would determine the reporting time restriction.

These overlapping local, state, and federal laws make choosing a background screening provider with compliance expertise critical.



The FCRA does not apply if you have job candidates pay to run a background check on themselves and show you the results.

A

True

B

False

GOOD TO KNOW

Under the FCRA, it doesn't matter who paid for the background check if it was requested by the employer. That means if you ask for a background check on a candidate in the hiring process (whether you, a staffing agency or the candidate paid for it) the FCRA applies. That means you (or the staffing agency) must provide relevant notices, get consent, and follow the adverse action process.

Now, if you didn't ask for the background check, but a candidate shares one with you anyway, the picture isn't as clear. Although there's currently no case law that establishes whether the FCRA would apply, it probably makes sense to follow the FCRA to be safe. As always, though, consult your own legal counsel for advice.



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