

 PINNACLE Investigations
Our Passion is Your Protection

Avoid the Common Pitfalls: FCRA and EEOC Compliance

Presented by:
Ryan Brewer

 PINNACLE Investigations
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Pinnacle Investigations' seminars are presented as a service to educate organizations on best practices in background screening and should not be considered legal advice. We encourage our clients to consult with legal counsel on all policies and procedures.

I'm sorry, we can't hire you, but your background check was hilarious.



 your eCards
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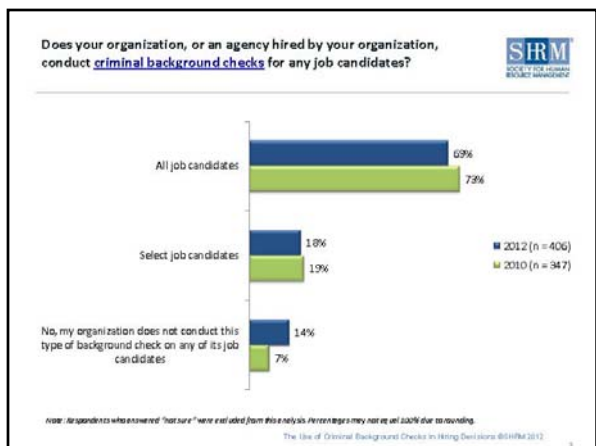
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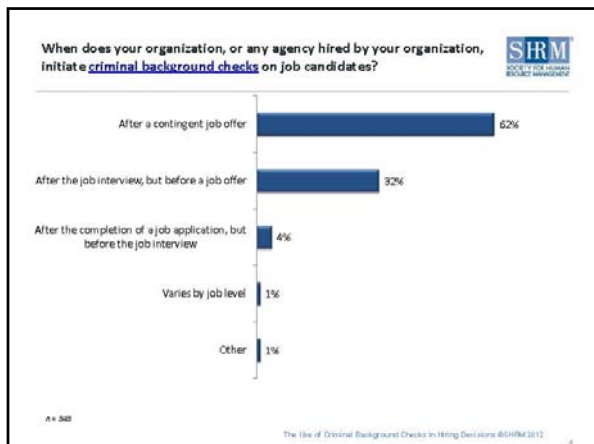
Our mission at Pinnacle Investigations is to provide accurate, thorough and timely background reports to aid our clients in building a safe, secure workplace while remaining in compliance. We provide education to help our clients meet their due diligence while understanding compliance and the rights of the applicant. At Pinnacle, we work in partnership with our clients and always have a trained professional available to help.

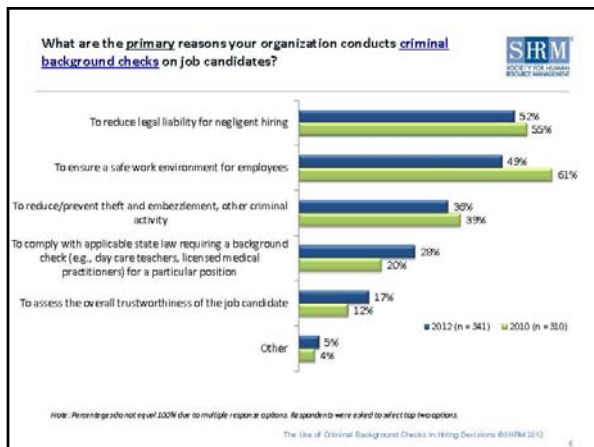
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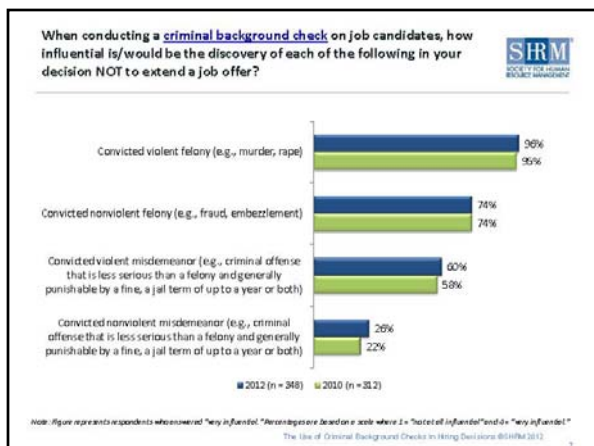
- Why Conduct Background Checks
- A Proper Background Check
- FCRA Compliance
- EEOC Compliance
- Latest Trends & Topics
- Question & Answer

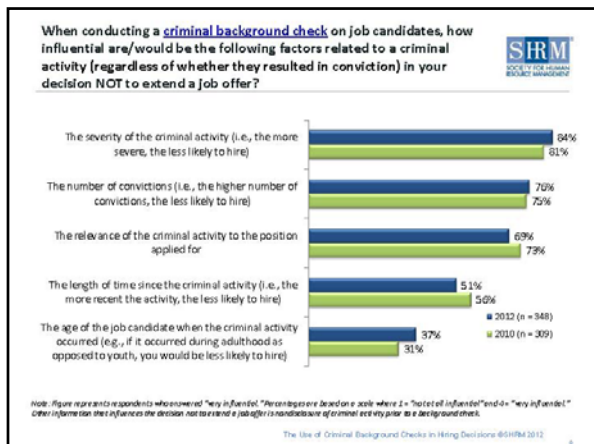
Criminal Background Checks:
Current Trends

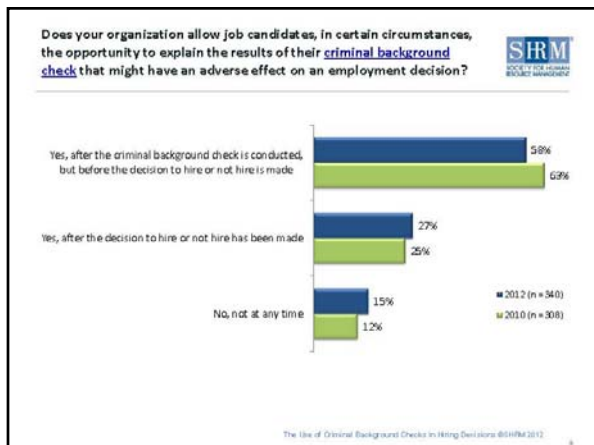













Why Run Backgrounds?

To Protect Person and Property

What is workplace violence?
 Workplace violence is any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. It ranges from threats and verbal abuse to physical assaults and even homicide. It can affect and involve employees, clients, customers and visitors. Homicide is currently the fourth-leading cause of fatal occupational injuries in the United States. According to the Bureau of Labor Statistics Census of Fatal Occupational Injuries (CFOI), of the 4,547 fatal workplace injuries that occurred in the United States in 2010, 506 were workplace homicides. Homicide is the leading cause of death for women in the workplace.

-US Department of Labor

Criminal Background Checks:
 Current Trends





Why Run Backgrounds?

Nearly 2 million American workers report having been victims of workplace violence each year. Unfortunately, many more cases go unreported. The truth is, workplace violence can strike anywhere, anytime, and no one is immune. Research has identified factors that may increase the risk of violence for some workers at certain worksites. Such factors include exchanging money with the public and working with volatile, unstable people. Working alone or in isolated areas may also contribute to the potential for violence.

-US Department of Labor

Criminal Background Checks:
Current Trends






Why Run Backgrounds?

A report by the US Chamber of Commerce has revealed that three out of four employees will be stealing from their employees this year. One of these people is a habitual thief has been stealing regularly, or will be doing so. If this situation is allowed to prevail, then there is one in three chances that the business will fail and the owner will have to declare a bankruptcy.

Employee theft statistics for the current year show that companies in the United States will lose between a whopping \$20 and \$40 billion. This will include small-scale burglary, like shoplifting and large-scale fraud.


-Human Resources Journal


Criminal Background Checks:
Current Trends



Employee Theft Statistics	Data
Amount stolen annually from U.S. businesses by employees	\$50,000,000,000
Percent of annual revenues lost to theft or fraud	7 %
Percent of employees who have stolen at least once from their employer	75 %
Percent of employees who have stolen at least twice from their employer	37.5 %
Percent of all business bankruptcies caused by employee theft	33 %
Amounts Stolen	Percent
\$1,000,000 and up	25.3 %
\$500,000 – \$999,999	9.6 %
\$100,000 – \$499,999	28.2 %
\$10,000 – \$49,999	16.8 %
\$1,000 – \$9,999	7 %
\$1,000 or less	1.9 %
Median Amount Stolen	\$175,000
Demographics	
Men	59.1 %
Women	40.9 %

Criminal Background Checks:
Current Trends





Why Run Backgrounds?


To Avoid Negligent Hiring


Negligent Hiring: *The failure to use reasonable care in the employee selection process, resulting in harm caused to others. Employers have a legal duty not to hire people who could pose a threat of harm to others, which can include everything from slight to fatal bodily injury, theft, arson, or property damage.*

Due diligence is defined as *the attention and care that a reasonable person exercises under the circumstances to avoid harm to other persons or their property. Failure to make this effort is considered negligence.*

Appropriate due diligence is necessary to ensure that the applicant hired does not pose a foreseeable risk to others with whom he or she might interact while on the job. Pinnacle's trained investigators ensure that your due diligence is appropriately met.

Criminal Background Checks:
Current Trends







Why Run Backgrounds?

HR Statistics: False Information

1. 53% of all job applications contain inaccurate information.
2. 49% of the 3,100 hiring managers surveyed had caught a job applicant fabricating some part of his/her resume.
3. 34% of all application forms contain outright lies about experience, education, and ability to perform essential functions on the job.
4. 9% of job applicants falsely claimed they had a college degree, listed false employers, or identified jobs that didn't exist.
5. 11% of job applicants misrepresented why they left a former employer.

Criminal Background Checks:
Current Trends






Why Run Backgrounds?

HR Statistics: Bad Hires

6. Negligent hiring cases have had verdicts costing up to \$40 million.
7. The average settlement of a negligent hiring lawsuit is nearly \$1 million.
8. Employers have lost more than 79% of negligent hiring cases.
9. It costs \$7,000 to replace a salaried employee, \$10,000 to replace a mid-level employee, and \$40,000 to replace a senior executive.
10. The U.S. Department of Labor estimates that the average cost of a bad hiring decision can equal 30% of the first year's potential earnings.

-HR.com

Criminal Background Checks:
Current Trends



Basic Background Check

Social Security Association

Alias & Maiden Name Research

Full Address History

Court Docket Level Criminal History

Federal Criminal Court Check

Criminal Background Checks:
Current Trends

Mistakes to Avoid

Instant 'National' Checks (database checks)

These databases, compiled by large data brokers, contain limited information from a few counties and state criminal records repositories and often miss more records than they find. They are also notorious for associating records to the wrong people.

FCRA section 613 (2) states that CRA's must ensure that the information is (among other things) accurate & complete

Criminal Background Checks:
Current Trends

Database Checks

If a screening firm locates a criminal hit, then the screening firm has an obligation under the FCRA Section 613 (a)(2) to search the court of record. This section requires that a Consumer Reporting Agency must:

"...maintain strict procedures designed to insure that whenever public record information, which is likely to have an adverse effect on a consumer's ability to obtain employment, is reported, it is complete and up-to-date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up-to-date if the current public record status of the item at the time of the report is reported."

FCRA section 613(a)(1) provides an alternative procedure. Instead of going to the courthouse, a Consumer Reporting Agency (CRA) can notify the consumer that public record information is being reported by the consumer reporting agency and give name and address of the requester. However, some states, such as California, do not allow for this alternative. This is a potential compliance issue for employers who operate in states that do not allow the "notification" procedure to be used instead of the "strict procedure" method of double-checking at the court of record.


Criminal Background Checks:
Current Trends

Database Checks

FCRA section 607(b) also applies under the 613 letter option, so even if a CRA uses the letter option, there is still an obligation under FCRA section 607(b) to use "reasonable procedures to assure maximum possible accuracy." That means that so-called letter option is not open ended and data sellers still have a general accuracy obligation. FCRA Section 607(b) sets forth in no uncertain terms the duty of a CRA to be accurate. The section reads:

(b) Accuracy of report. Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

Criminal Background Checks:
Current Trends



What is a National Criminal Check?

**THERE IS NO SUCH
THING AS A
'NATIONAL' CRIMINAL
CHECK**



Criminal Background Checks:
Current Trends





Mistakes to Avoid

Instant 'National' Checks (database checks)


You incomplete me.



your cards
someecards.com

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 **Mistakes to Avoid**

State Checks

- Most states do not verify the provided Social Security Number
- Does not search all names associated with SSN
- May only provide convictions
- Does not contain information from other states
- Does not contain information from Federal Courts

Criminal Background Checks:
Current Trends




 **Mistakes to Avoid**

FBI Fingerprints

- Many locations do not fingerprint all convictions (misdemeanor and/or felony)
- Many locations do not have time or personnel to send information to the FBI
- Locations can take 6 months to 2 years to report to the FBI
- Delays in getting fingerprint results

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Current Trends



Compliance



Criminal Background Checks:
Current Trends



FCRA in the news

Background Check Firm To Pay \$16M To End FCRA Claims

Class Action Lawsuit against Background Firm Alleging Fair Credit Reporting Act Violations Demonstrates Importance of Legal Compliance

— November 21, 2013

Federal Jury in Oregon Awards \$16.4 Million Judgment in FCRA Lawsuit

Employers Must Comply with FCRA or Risk Class Action Lawsuits

Criminal Background Checks:
Current Trends

FCRA in the news

Federal Trade Commission
Protecting America's Consumers

For Release: 05/07/2013

FTC Warns Data Broker Operations of Possible Privacy Violations

Letters Issued As Part of Global Privacy Protection Effort

The Federal Trade Commission sent letters to ten data broker companies warning that their practices could violate the Fair Credit Reporting Act (FCRA) after a class shopping operation by the FTC indicated the companies were willing to sell consumer information without abiding by FCRA requirements.

The test shopping operation was part of a worldwide privacy protection effort. FTC staff members posed as individuals or representatives of companies seeking information about consumers to make decisions related to their creditworthiness, eligibility for insurance or suitability for employment.

Data broker companies that collect, distribute or sell this information are considered consumer

Related Items:

- FTC Warns Data Broker Operations of Possible Privacy Violations
- Warning Letter to Affirmans
- Warning Letter to Brokers Data
- Warning Letter to Case Brokers

FCRA Basics
Presented by Ryan Brewer

FCRA in the news

Whole Foods Hit With FCRA Class Action For Background Screening Process


Published on 12 February 2014 by Angela Preston in [By: The Way \(BTV\)](#), [Compliance](#), [Legislation & Litigation](#)

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Tweet

Whole Foods Market was just inducted into a growing club where no one wants to be a member. The giant food retailer is the latest target of a class action law suit for alleged violations of the Fair Credit Reporting Act (FCRA). Whole Foods is in good company, joining other reluctant club "members"—national companies like Disney, Domino's Pizza, CVS, Kikstart. One of the big trends we are following in 2014 is the deluge of FCRA-related employment background screening lawsuits. This week the trend continues.

FCRA Basics
Presented by Ryan Brewer


 **THE FCRA**


FCRA defined:

The Fair Credit Reporting Act (FCRA) is designed to regulate the use of consumer report information and other background information received about individuals from consumer reporting agencies (CRAs). The FCRA also puts in place procedures to guarantee that the background information reported is as accurate as possible.

CRA is any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer or other information on consumers for the purpose of furnishing consumer reports to third parties.

FCRA Basics
Presented by Ryan Brewer





 **THE FCRA**

Governed by the FCRA

Consumer Reporting Agencies
End Users
Consumer Reports
The Pre Employment Process

Criminal Background Checks:
Current Trends





 **THE FCRA**

Employer = End User

Background Investigator = CRA

Criminal Background Checks:
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 **THE FCRA**


There are 2 types of reports defined by the FCRA:

Consumer reports: are written, oral or other communications of a consumer reporting agency which bear upon a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which are used (or expected to be used) as a factor in establishing eligibility for employment purposes or for obtaining credit or a loan. These reports include items such as credit history, driving record, criminal record, etc.

Investigative consumer reports: include information on a consumer's character, general reputation, personal characteristics or mode of living obtained through personal interviews with neighbors, friends or associates of the consumer or acquaintances of the consumer.

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 **THE FCRA**


Employers are defined as 'end users' by the FCRA

End-users
End-users are the individuals or entities that buy consumer reports to use for business or employment purposes. For example, a department store that buys credit reports about customers who apply for store credit cards is an end-user, as is a company that orders background checks about job applicants.

Reports provided to an end-user from the CRA must have a 'permissible purpose' (i.e. part of a background check for pre employment purposes)

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 **THE FCRA & Credit Checks**


The use of credit checks for employment purposes also falls under the FCRA.


There have recently been more restrictions put on the use of credit checks in the pre-employment process. Several states have greater restrictions on the use of credit reports than the Federal FCRA defines.

The following is required for an employer to run credit checks:

- On-site inspection
- Permissible purpose

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Current Trends




 **FCRA & State Laws**


State Laws work in conjunction and sometimes in addition to the FCRA requirements.


Laws can vary from State to State and even in certain cities and municipalities


- Ban the Box
- Industry requirements
 - DSHS
 - DOT
 - DOE

Criminal Background Checks:
Current Trends 

EEOC Guidance's Impact on Background Checks





Criminal Background Checks:
Current Trends 

 **The EEOC**

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex, age or national origin.

The EEOC also states that it is illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.


Criminal Background Checks:
Current Trends 


 **The EEOC**

The EEOC has the authority to investigate charges of discrimination against employers who are covered by the law. Their role in an investigation is to assess the allegations in the charge and then make a finding.


If they find that discrimination has occurred, they will try to settle the charge. If not successful, they have the authority to file a lawsuit to protect the rights of individuals and the interests of the public. The EEOC does not, however, file lawsuits in all cases where they find discrimination.

Criminal Background Checks:
Current Trends




 **The Application**

The "Ban the Box" Movement has been gaining traction across the country



■ States where localities have banned the box

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Current Trends



 **The Application**


Cities and counties that have "banned the box":

Alameda County, CA	Memphis, TN	Atlantic City, NJ	Minneapolis, MN
Austin, TX	Multnomah County, OR	Baltimore, MD	Muskegon County, MI
Berkeley, CA	New Haven, CT	Boston, MA	New York, NY
Bridgeport, CT	Norwich, CT	Cambridge, MA	Oakland, CA
Chicago, IL	Philadelphia, PA	Cincinnati, OH	Providence, RI
Cleveland, OH	San Francisco, CA	Cumberland County, NC	Seattle, WA
Detroit, MI	St. Paul, MN	Hartford, CT	Travis County, TX
Jacksonville, FL	Washington, DC	Kalamazoo, MI	Worcester, MA

Legislation is pending in many areas and organizations are lobbying for further government action to remove arrest and conviction questions from the initial employment application. [Stay informed of the trends in your area.](#)

Criminal Background Checks:
Current Trends






The Application


The EEOC has weighed in on Ban the Box also

The Guidance issued in April, 2012 takes a cue from these state laws and recommends that employers do not ask about convictions on an application. If and when they are made, they should be limited to those that are job related.


According to the EEOC, the consideration of criminal convictions should come later in the hiring process, not during the pre-interview process.

Criminal Background Checks:
Current Trends







The Offer



So, Clair looks like the stand-out candidate and you have decided to extend her an offer contingent on a background check;
what now?

Criminal Background Checks:
Current Trends





Disclosure and Authorization


FCRA § 604 States that:


B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless –

(i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and

(ii) the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person.

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 **Disclosure and Authorization**

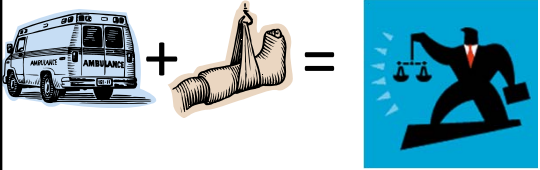
Do not include extraneous information in the disclosure. Any company specific disclosures or confidentiality statements must be addressed in a separate document.

Dominos faced a class action suite last year for a violation of FCRA §604 when it was discovered that they included a paragraph releasing Dominos from liability in regards to the information found in the background check.


How do these lawsuits get started?


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 **Disclosure and Authorization**





Plaintiff's attorney's are digging for class action suits. A call to discuss personal injury will often bring questions of employment and specifics about background checks.


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 **Disclosure and Authorization**


- This authorization must be signed by applicant prior to performing a criminal background check
- Form must be used in a uniform and consistent manner
- Authorization from should be reviewed and approved by legal counsel
- Should be kept in personnel file


Criminal Background Checks:
Current Trends 

 **The Results**

 Clair has a past, her background has come back with "hits" on it, what is the next step?

As an employer, do you have the right to say "you have a criminal record so you can't work here"?

Criminal Background Checks:
Current Trends 


 **The Results**


According to the EEOC, that would be a mistake.

The guidance is not law, but employers are advised to consider adjusting their use of criminal records in accordance with the EEOC's guidance.

EEOC is currently investigating "hundreds" of cases involving illegal use of criminal history in the employment process (allegedly, according to the EEOC)

EEOC Sending a Message: EEOC's high profile \$3.13 million settlement with Pepsi last year in a hiring discrimination case over the use of criminal backgrounds attempted to set a precedent. Major lawsuits are pending against BMW and Dollar General for use of bright line policies regarding criminal records.


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 **The Results**

Why does the EEOC discourage bright line policies?

The guidance cites studies that show African Americans and Hispanics are arrested and convicted at a rate disproportionately higher than the general population.

- Approximately 1 in 17 White men will serve time in prison, 1 in 6 Hispanic men and 1 in 3 African American men.
- In 2010, 28% of all arrests were of African Americans, even though they only comprised about 14% of the general population.
- Hispanics were arrested for federal drug charges at a rate of 3 times their proportion to the general population

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The Results

Disparate Treatment


When an employer treats criminal history information differently for different applicants or employees based on their race or national origin.


Disparate Impact

An employer's neutral policy or practice has the effect of disproportionately screening out individuals in a protected class, and the employer fails to demonstrate that the policy is job related.

Griggs v. Duke Power Company

Criminal Background Checks:
Current Trends





The Results


What steps can be taken to ensure compliance and fair treatment?


The FCRA §615 states:

(a) Duties of users taking adverse actions on the basis of information contained in consumer reports. If any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person shall

- (1) provide oral, written, or electronic notice of the adverse action to the consumer;
- (2) provide to the consumer written or electronic disclosure

Criminal Background Checks:
Current Trends






The Results


Pre-Adverse Action Notice

Upon receiving adverse information from a CRA that could affect the decision to hire, ALL employers must provide applicant with this document.

An applicant must be notified that adverse information has been reported and is being considered in the hiring decision. This notification gives the applicant a chance to explain or dispute the findings.

Criminal Background Checks:
Current Trends






The Results

Pre-Adverse Action Notice

Included with this notice:


- Copy of the background report
- Contact information for the CRA who provided the report
- Statement that the CRA did not make the decision
- Right to dispute inaccurate information on the report
- Summary of Rights under the FCRA


Criminal Background Checks:
Current Trends 


The Results


The FCRA designates that disputes from the consumer be directed to the CRA and not the end user:


- Conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate or incomplete – free of charge – , and
- Record the current status of the disputed information, or
- Delete the item from the file.

Criminal Background Checks:
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The Results

CRA's are required to "clearly and accurately" disclose certain information to consumers upon request. 15 U.S.C. § 1681g. If a consumer disputes the accuracy or completeness of the information about himself or herself contained in a consumer report, the CRA has rigorous and time-sensitive obligations to reinvestigate the disputed information, inform the furnishers of the information about the dispute, make deletions or corrections to the report if necessary, and inform the consumer about the results of the reinvestigation.

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 **Individualized Assessment**


Now that the Pre-Adverse Action letter has been sent, it is time to follow EEOC guidance and perform the Individualized Assessment.

The Individualized Assessment suggests that the Pre-Adverse Action and Adverse Action procedures defined by the FCRA may not be enough.

Employer should wait 5 days after sending the Pre-Adverse Action notice, before actually taking adverse action, so an individual can contest or explain the conduct.


The EEOC Guidance suggests employers take a more proactive role.


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Current Trends 

 **Individualized Assessment**

Relevant evidence to be considered:


- The facts or circumstances surrounding the offense or conduct;
- The number of offenses for which the individual was convicted;
- Older age at the time of conviction, or release from prison;
- Evidence that the individual performed the same type of work, post conviction with the same or a different employer, with no known incidents of criminal conduct;


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 **Individualized Assessment**

Relevant evidence to be considered:

- The length and consistency of employment history before and after the offense or conduct;
- Rehabilitation efforts, e.g., education/training;
- Employment or character references and any other information regarding fitness for the particular position; and
- Whether the individual is bonded under a federal, state, or local bonding program.


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 **Individualized Assessment**

If a tight nexus is established between criminal conduct and a particular position, an employer could justify a screen based entirely on the *Green* factors, so the individualized assessment isn't required in all circumstances.

However, individualized assessments can help employers avoid Title VII liability by allowing them to consider more complete information on an individual.

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 **Individualized Assessment**

JRBN
Job Relatedness and Business Necessity

El v. SEPTA (2007) introduces "business necessity" when making adverse hiring decisions.

The employer needs to show that their policy operates to effectively link specific criminal conduct and its dangers with the particular job position.

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 **Individualized Assessment**

There are 2 circumstances in which the EEOC believes an employer will consistently meet the JRBN defense.

1. Validation of criminal conduct
Validation studies are "rare at the time of this drafting"


2. Individualized Assessments
Targeted screen considering the three *Green* factors, followed by an individualized assessment for those excluded by the screen.

Criminal Background Checks:
Current Trends

 **Individualized Assessment**

Relevant evidence to be considered:

- The facts or circumstances surrounding the offense or conduct;
- The number of offenses for which the individual was convicted;
- Older age at the time of conviction, or release from prison;
- Evidence that the individual performed the same type of work, post conviction with the same or a different employer, with no known incidents of criminal conduct;

Criminal Background Checks:
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 **The Decision**

Despite her qualifications, it has been determined that Clair's history of bank fraud, assault, and resisting arrest make her the wrong choice to work in this particular position at this particular organization. Even after an individualized assessment and her having a chance to dispute the findings.



We're not done with Clair yet.

Criminal Background Checks:
Current Trends 

 **The Decision**


Adverse Action Notice


When the decision regarding employment is made based on adverse information in the consumer report, the Adverse Action Notice must be sent to the applicant.

"There is no specific time period an employer must wait after providing a pre-adverse action notice before taking adverse action. Some reasonable period of time must elapse..." however,

Congress and the FTC recommend waiting a minimum of 5 days.

-FTC Staff Report, July 2011, p. 52


Criminal Background Checks:
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 **The Decision**

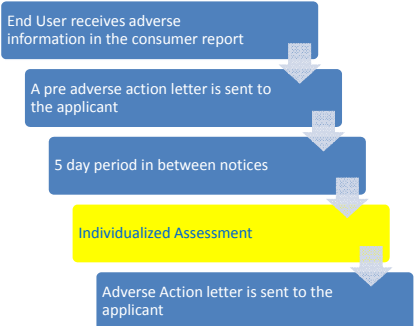
Adverse Action Notice

Included with this notice:


- Notification that adverse action has been taken
- Contact information of the CRA who prepared the report, including a toll-free phone number
- Right to request a free copy of the report and dispute inaccurate information
- Summary of Rights Under the FCRA


Criminal Background Checks:
Current Trends 

 **The Decision**




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graph TD; A[End User receives adverse information in the consumer report] --> B[A pre adverse action letter is sent to the applicant]; B --> C[5 day period in between notices]; C --> D[Individualized Assessment]; D --> E[Adverse Action letter is sent to the applicant];
```

Criminal Background Checks:
Current Trends 

 **The Paperwork**

- Keep records of the process and document everything
- Maintain Employment files on every employee and those who have been ruled out after a background check
- Make certain that employee files are secure with access by authorized personnel only
- Create written Policies and Procedures and train all HR personnel to follow them

Criminal Background Checks:
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The Paperwork

FACTA Disposal Rule (Fair & Accurate Credit Transactions Act, 2003)

Reasonable measures for disposing of consumer report information could include establishing and complying with policies to:

burn, pulverize, or shred papers containing consumer report information so that the information cannot be read or reconstructed; destroy or erase electronic files or media containing consumer report information so that the information cannot be read or reconstructed; or conduct due diligence and hire a document destruction contractor to dispose of material specifically identified as consumer report information consistent with the Rule.

Criminal Background Checks:
Current Trends





The Paperwork



Criminal Background Checks:
Current Trends






Marijuana in the Workplace

Although marijuana is still illegal under Federal Law, recently Colorado and Washington have legalized it for recreational use and thrust it back into the employment spotlight. There are a few things employers should note:

- Employers can still maintain a drug free work environment and do not have to accommodate those that use for recreationally or medicinal purposes
- Colorado (Amendment 64) specifically allows employers to have policies restricting the use of marijuana and Washington (Initiative 502) makes no provisions concerning possession or use by employees


Criminal Background Checks:
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 **Marijuana in the Workplace**

- Review substance abuse policies to ensure restrictions concerning illegal drug use include “recreational and medical marijuana.” Employers can still have zero tolerance drug policies.
- Pre-employment, post-accident and reasonable suspicion drug testing, are permissible, as long as the employer is complying with all applicable federal, state and local laws concerning drug testing.
- Employers should educate their employees concerning their perception of their legal right to use marijuana versus the employer’s expectations concerning marijuana use

Criminal Background Checks:
Current Trends



 **Creating Policies and Procedures**

Develop your written policies to reflect the rules of the FCRA, the guidance of the EEOC and the culture of your company.


Make sure your policies are clear and easy to understand and that everyone in the hiring process has been trained on them.


Construct your procedures to cover the entire onboarding process from posting a job opportunity to the background screening to the decision to offer or deny employment.

Consult with legal counsel to ensure your policies and procedures are compliant.

Reach out to HR organizations for guidance. SHRM is a fantastic organization with great resources – use them.

Criminal Background Checks:
Current Trends





 **Creating Policies and Procedures**

What to Include in Your Policy Manual for Background Screening

- Job Posting process
- Initial application or resume submission
- Reviewing applicants & determining job qualifications
- Scheduling interviews
- Interview questions - Legally compliant
- Proceed with hiring or not hiring

Criminal Background Checks:
Current Trends





 **Creating Policies and Procedures**

What to Include in Your Policy Manual for Background Screening

- Conducting the Background Report
- Creation of a decision matrix to consult if applicant has “disqualifying” criminal offenses (JRBN)
- Conducting individualized assessments if necessary
- Pre-Adverse & Adverse Action Process and Notices
- Protection of Consumer Information

Criminal Background Checks:
Current Trends



 **Creating Policies and Procedures**


Develop your written policies to reflect:

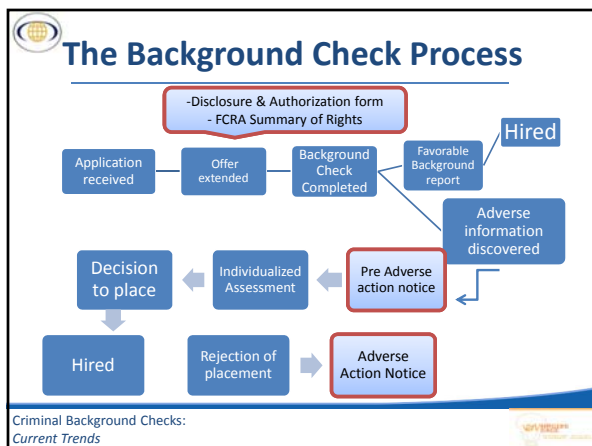
- ✓ the rules of the FCRA
- ✓ the guidance of the EEOC
- ✓ the culture of your company


Make sure your policies are:

- ✓ written down and on file
- ✓ clear and easy to understand
- ✓ that everyone in the hiring process has been trained

Criminal Background Checks:
Current Trends





 **PINNACLE**
Investigations

QUESTIONS ANSWERED

SIMPLE	50¢
GUESSES	\$1.00
INTELLIGENT	\$2.00
HONEST	\$5.00

**DUMB LOOKS
ARE STILL FREE**

Questions & Answers



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