
Criminal Background Screening Overview

PART II

Employers that do not know how to evaluate a screening process may end up with a report that is either inaccurate or incomplete, or both. Many companies also perform criminal background checks on current employees, either as a matter of course or prior to a promotion, transfer or other change in the terms and conditions of employment.

This update will review some of the major considerations for employers that wish to use third parties to obtain criminal background screening information on applicants and employees.

Legally Accessing Criminal Background Information

As explained in the previous Technical Update: *Criminal Background Screening Overview Part One*, the federal Fair Credit Reporting Act (FCRA) defines screening companies as “consumer reporting agencies” (CRAs) and the background screening reports they prepare as “consumer reports. Employers using consumer reports for employment purposes must adhere to a number of legal requirements before they can obtain or use a criminal background check on an employee or job applicant.

Under the FCRA, employers obtaining consumer reports are required to:

- Make a clear and conspicuous written disclosure to the applicant or employee that a consumer report may be obtained. This disclosure must be made before the consumer report is obtained or caused to be obtained. The disclosure must consist of a separate document, that is, it may not be incorporated into an employment application.

- Obtain the written authorization of the applicant or employee prior to requesting the report.

If any adverse employment action is taken based in whole or in part upon the consumer report, the employer must provide two notices to the subject of the report. Before taking the adverse action, the employer has to provide the applicant or employee with both of the following:

- A copy of the consumer report obtained from the CRA.
- A summary of the consumer’s rights under the Act.

After providing this information, the employer must wait for a period of time (approximately five days) before actually taking the adverse action. They should make sure no letter is sent saying the applicant did not get the job until after the five day period has passed. This waiting period allows the applicant or employee to identify any inconsistencies or inaccuracies in the consumer report.

What This Means For Counties

Counties, if they are going to pursue a background screening, will want to know what sources of information are reliable and where to search. Consult the information that will follow in the next Technical Update.

For more information, contact CTSI at 303-861-0507.