



Recruiting & Hiring

Courtesy of Meridian Benefits Consulting

Q

How does the Fair Credit Reporting Act (FCRA) apply to job applicants? Can I reject a candidate based on his or her bad credit check or history of bankruptcy?

A

The FCRA only applies to background checks conducted by an outside agency. The FCRA is not applicable if the employer conducts the background check in-house.

Background checks, or consumer reports, include criminal records, driving records, civil lawsuits and reference checks. Employers may hire a consumer reporting agency (CRA) to gather this information. The FCRA offers privacy protection for individuals whose information is contained in the consumer report. Employers who use a CRA for pre-employment background checks must verify the following:

- Information provided in the consumer report will be used only for employment purposes.
- Information will not be used in violation of any federal or state equal employment opportunity law.
- All necessary releases and consents will be obtained.
- Appropriate notices will be provided if action is taken against a candidate due to the contents of the consumer report.
- Additional, legally required information will be provided if requesting an investigative consumer report.

The FCRA requires that an applicant complete and sign a written release and disclosure form before an employer may obtain a consumer report. This release and disclosure form should include a statement verifying that the candidate is not only aware that a report will be requested, but also that he or she consents to it. It is important to note that this release and disclosure form should be a stand-alone document and not attached to any other documents, such as an employment application.

If an employer decides to take adverse action based on the information obtained in a consumer report (like not hiring the applicant), it must include a Summary of Consumer Rights form along with a pre-adverse action notice. Providing an incomplete or out-of-date form may result in substantial fines.

According to the federal Bankruptcy Act, it is illegal to discriminate against a candidate because he or she filed for bankruptcy (11 U.S.C. Section 525(b)). While employers may ask about the cause of the bankruptcy, they may only base hiring decisions on reasons relevant to the position that is being applied for.

Employers should be aware that the FCRA has implications for current employees as well. In addition, many states have laws that restrict when and how the criminal history of an applicant may be taken into consideration for employment decisions.

