

Third-Party Employment Background Checks:

A Summary of California Employer Requirements

This Summary Combines the
FCRA Requirements for Consumer Reports, FCRA Requirements for Investigative Consumer Reports, and
CA Investigative Consumer Reporting Agencies Act (CA ICRA) Requirements for Investigative Consumer Reports.
Revised 3/14/2008

Before A Report Is Requested From An Agency:

- In a document that is separate from the job application, provide
 - A clear and conspicuous written disclosure to the applicant/employee that an investigative consumer report may be obtained for employment purposes and that the report may include information on his/her "character, general reputation, personal characteristics, and mode of living."
 - The name, address, and telephone number of the agency.
 - The nature and scope of the requested report.
 - A checkbox by which the applicant/employee may indicate that he/she wishes to receive a copy of any report that is prepared.
 - A summary of the applicant's/employee's rights (under CA ICRA) to view any files the agency maintains on him/her.
- You must provide a summary of the applicant's/employee's rights (FCRA version).
- You must obtain a written authorization from the applicant/employee.

After A Report Is Received:

- If the applicant/employee indicated by the checkbox (mentioned above) that he/she wishes to receive a copy of the report, the recipient of the report shall send a copy of the report to the applicant/employee within three business days of the date that the report is provided to the recipient. The recipient may contract with any other entity to send the copy. The report shall contain the name, address, and telephone number of the agency who issued the report.
- The recipient shall use the report only for employment purposes and only for the employer's own use.
- If a report contains a notice of address discrepancy, the recipient should employ reasonable policies and procedures to know the identity of the person to whom the report pertains.

If Any Adverse Action Is To Be Taken:

Before taking any adverse action, based at least in part on information obtained from an agency,

- You must provide the applicant/employee a copy of the report.
- You must provide the applicant/employee a summary of the applicant's/employee's rights (FCRA version).

After any adverse action under circumstances in which a report regarding the applicant/employee was obtained from an investigative consumer reporting agency, the user of the investigative consumer report shall advise the applicant/employee against whom the adverse action has been taken and supply the applicant/employee a written notice of the adverse action, including

- The name, address, and telephone number of the agency.
- A statement that the agency did not make the adverse decision and is not able to explain why the decision was made.
- A statement of the applicant's/employee's right to obtain from the agency, at no charge, the information in the applicant's/employee's file if the applicant/employee requests the report within 60 days.
- A statement of the applicant's/employee's right to dispute directly with the agency the accuracy or completeness of any information provided by the agency.
- If the only interaction between the applicant and the user has been by mail, telephone, computer or similar means, see FCRA sec 604 (b) (3) (B).

Employer Required To Certify Compliance:

Before requesting a report, the employer is required to certify to the agency that

- The employer has followed and will follow all of the above disclosure, authorization, and copy distribution requirements.
- The information obtained will not be used in violation of any federal or state equal opportunity law or regulation.
- The information will only be used for employment purposes.

A Matter of Fact's agreement and request forms include this certification. Please be sure you are using the most current forms.

Restrictions On Reporting Adverse Information:

With few exceptions, agencies cannot provide employers with adverse information that is older than seven years. (Seven years is determined from the date of last activity.) Criminal cases that did not result in a conviction or were fully pardoned cannot be reported. (Criminal cases still in process can be reported.)

Exception When Investigating Possible Employee Wrongdoing or Misconduct:

The advance notice, written authorization, and copy requirements do not apply if the report is sought for employment purposes AND due to suspicion held by an employer of wrongdoing or misconduct by the subject of the investigation. NOTE: After taking adverse action based at least in part on information obtained from an agency, the FCRA does require the employer to disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action was based.

Liability Protection:

Under the FCRA, an applicant/employee cannot bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against an agency, its customers, or any person who furnishes information to the agency if they are in compliance with the FCRA (except as to false information furnished with malice or willful intent to injure).

Substantial Penalties:

Under the CA ICRA, any user of information that fails to comply with any requirement of the CA ICRA is liable to the consumer who is the subject of the report for actual damages or \$10,000 (whichever is greater) plus costs and attorney's fees. Also, if the court determines that the violation was grossly negligent or willful, the employer may be liable for punitive damages.

Resources:

- Sample documents for the above requirements are available on our website at <http://www.amof.info> (click Client Resources).
- The full text of the FCRA and associated notices can be found at <http://www.ftc.gov/os/statutes/fcrajump.shtml>
- The full text of the California Investigative Consumer Reporting Agencies Act (CA Civil Code Section 1786) can be found at <http://www.leginfo.ca.gov/calaw.html> (select Civil Code, Click Search, then scroll down to Section 1786).

NOTE: This document is for educational purposes only and cannot be relied upon as legal advice. The document has been prepared with the understanding that the authors are not engaged in rendering legal advice. Although prepared by professionals, this document should not be utilized as a substitute for professional legal services.