



Background Checks Revisited

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In light of increased lawsuits against employers for violations under the Fair Credit Reporting Act (“FCRA”), every employer should ensure it is performing employment background checks correctly. **This law covers both credit and criminal background checks.** A successful claim can recover statutory damages between \$100 and \$1000 per violation, attorney’s fees, and costs, punitive damages as well as actual damages to the employee.

An employer must have written authorization and disclosure from a job applicant or employee prior to conducting an employment background check. **The authorization and disclosure must stand alone**, and cannot be combined with other forms or hidden within the job application. Many employers get the authorization and disclosure requirement wrong. Waiver forms or liability disclaimers cannot be added to the authorization form.

Another essential requirement of the FCRA is the adverse action notification. The Adverse Action is a **two-step process** that must be followed strictly. Many employers get tripped up by skipping one or even **both** steps: **Step one, the “pre-adverse action” notice** is sent to the applicant prior to making a “no hire” decision based on the background check. You have to provide the applicant with a notice, send a copy of the report, and attach a Summary of Rights under the FCRA. **Step two, the “adverse action” notice**, is sent *after* the final decision has been made and must contain information on how to dispute the background check.

Colombo Kitchin can provide you with the proper authorization and disclosure forms as well as proper adverse action notices. If you would like an evaluation of your employment background process, please contact our firm. We will be glad to help.