

Does the applicant have a right to be told when a background check is requested?

Yes. Amendments to the Fair Credit Reporting Act (FCRA, 15 USC §1681), in effect September 30, 1997, increase the disclosure and consent requirements of employers who use "consumer reports." Such reports might consist only of a credit check. More extensive reports might include criminal histories, driving records and interviews with neighbors, friends and associates.

To be covered by the FCRA, the Federal Trade Commission says that a report must be prepared by a "consumer reporting agency," a business that "for monetary fees ... regularly engages in ... assembling ... information on consumers for the purpose of furnishing consumer reports to third parties." (FCRA Section 603f) Before the employer obtains a consumer report on a job applicant or existing employee, it must notify the individual in writing. The employer must also obtain the applicant's written authorization before the background check is conducted. If the employer uses information from the consumer report for an "adverse action" – that is, denying the job applicant, terminating the employee or denying a promotion – it must take the following steps, which are explained further in the Federal Trade Commission's web site.

- **Before** the adverse action is taken, the employer must give the applicant a "pre-adverse action disclosure" that includes a copy of the report and an explanation of the law.
- **After** the adverse action is taken, the individual must be given an "adverse action notice." This document must contain the name, address and phone number of the background check company; a statement that this company did not make the adverse decision, rather that the employer did; and a notice that the individual has the right to dispute the accuracy or completeness of any of the information in the report.