

Hot Topics in Background Screening Compliance

March 9, 2018

Angela Preston, SVP and Counsel for Corporate Ethics and Compliance

SCCE New York Regional Compliance and Ethics Conference



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Today's Presenter



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Corporate Ethics and Compliance
Sterling Talent Solutions

- 17 Years Background Screening Legal Compliance
- CCEP
- National Association of Professional Background Screeners (NAPBS) Board of Directors
 - Chair-Elect
 - Government Relations



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About Sterling Talent Solutions

- Sterling Talent Solutions, the world's largest background screening provider, provides hiring peace of mind by delivering a simpler, smarter background screening and onboarding experience for employers worldwide
- Sterling has 20 offices in nine countries with a team of more than 4,000 employees
- Sterling proudly serves over 30,000 customers worldwide including 25% of the Fortune 100
- Sterling is accredited by the National Association of Professional Background Screeners (NAPBS)

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Today We'll Cover...

Essential statutory compliance in the background screening process, FCRA and high risk areas for non-compliance

EEO law and considerations for background screening compliance, including the 2012 EEOC Guidance

Complying with ban the box laws and other state and local laws that impact your background screening program

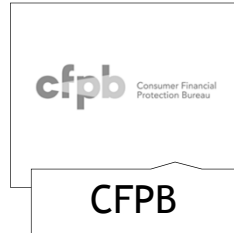
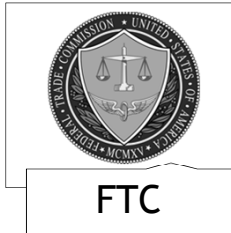


Introduction to FCRA

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FCRA: Enforcement



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Let's Start with Some General Information

- The Fair Credit Reporting Act (FCRA) 15 USC 1681 et. seq.
 - Dates back to the 1970's
 - Original Intent: Consumer protection from errors in credit reporting
 - Regulates "consumer reports"
 - Any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for—
 - (A) credit or insurance to be used primarily for personal, family, or household purposes;
 - (B) employment purposes; or
 - (C) any other purpose authorized under section 1681b of this title.

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Consumer Reporting Agencies

- What is a CRA?
 - Consumer Reporting Agency (background screening company, credit bureau): entity that, for a monetary fee, assembles or evaluates information on consumers for the purpose of furnishing consumer reports to third parties.
- The services that CRA background screening companies provide:
 - Criminal history searches, motor vehicle reports, employment and education verifications, etc. all fall under the FCRA

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Types of Background Checks



1. Consumer Reports:

A consumer report is a report prepared by a consumer reporting agency, whose information is used or expected to be used or collected for employment purposes, that consists of any written or oral or other communication of any information pertaining to the candidate's:

- Credit Worthiness
- Credit Standing
- Credit Capacity
- Character
- General Reputation
- Personal Characteristics
- Mode of Living

2. Investigative consumer reports:

These reports include reference verifications and personal references. When Sterling asks about performance, basis of separation, etc. rather than just confirming employment the report becomes an investigative consumer report



FCRA Class Litigation

“FCRA class action cases are the new wage and hour.”

- Fair Credit Reporting Act US 1681 et seq.
- Applies to background checks when conducted by a third party consumer reporting agency (CRA)
- 2014-2017 spike in litigation against employers for technical violations of the statute
- Statutory damages: fertile ground for class actions. \$100-\$1000 per violation, actual damages, punitive damages and attorneys fees for “willful” violation

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FCRA Class Litigation



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User (Employer) Responsibilities

- 4 Key User Requirements for FCRA compliance:
 - Certification of compliance and permissible purpose
 - Disclosure and authorization
 - Pre-adverse action
 - Adverse action



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End User Certifications

A CRA may not provide a report for employment purposes until it has obtained the following certifications from the end user of the report:

- a certification that the end user provided a "clear and conspicuous disclosure" to the consumer that a consumer report may be obtained for employment purposes
- a certification that the end user has obtained written authorization from the consumer,
- a certification of compliance from the user stating that the user will abide by Federal or State EEO and other applicable laws.
- A certification that before taking adverse action the user will comply with the requirement that it will provide a notice of pre-adverse action and will follow the process described in section 604.

This certification is typically part of a CRA contract, and may also be requested at the time an order is placed or periodically thereafter.

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Disclosure and Authorization

- **Disclosure:** clear and conspicuous, in writing, before report is procured, in a document consisting solely of the disclosure, that a consumer report may be obtained for employment purposes
- **Authorization:** must be in writing and signed. May be made on the same document as the disclosure, authorizing the employer to request a report

Any of the following may invalidate an FCRA disclosure:

- Release of Liability
- Combination with a job application
- Other extraneous information such as:
 - State disclosures
 - Applicant questions



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Disclosure and Authorization

- Many states and local jurisdictions, and the Federal FCRA, allow continuing (“evergreen”) consent with the exception of California, where courts have interpreted the law as not allowing continuous consent
- Federal Summary Of Consumer Rights should be distributed with the Disclosure and Authorization, prior to running the background check
- Any state specific Summary of Rights should be distributed with the Disclosure and Authorization



Disclosure and Authorization

State Specific Notice Requirements:

- California, Massachusetts, Minnesota, New Jersey and Oklahoma
- New York Article 23-A



State Law Notices Relating to Your Background Report

State Law Notices Relating to Your Background Report

Washington State Applicants only: You also have the right to request from the consumer reporting agency a written summary of your rights and remedies under the Washington Fair Credit Reporting Act.

☐ **California, Massachusetts, Minnesota, New Jersey and Oklahoma Applicants Only:** Please check the box to the left if you would like a free copy of any REPORT obtained by COMPANY from Sterling.

New York Applicants Only: By signing the authorization, you acknowledge that you have received a copy of New York Correction Law Article 23-A. You have the right, upon written request, to be informed whether an investigative consumer REPORT was requested. If such a REPORT was requested, you will be provided with the name and address of the consumer reporting agency that prepared the REPORT and you can contact that agency to inspect or receive a copy of the REPORT.



Summary of Rights Under the FCRA

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. For more information, including information about additional rights, go to www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
 - a person has taken adverse action against you because of information in your credit report;
 - you are the victim of identity theft and place a fraud alert in your file;
 - your file contains inaccurate information as a result of fraud;

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Disclosure and Authorization - Additional Issues

- FTC opinion letters indicate that electronic consent is acceptable under the FCRA
- Generally, an employer can make signing a disclosure and authorization form a condition of employment or continued employment

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Pre-Adverse Action

- Pre-adverse notice is the responsibility of the user (employer or decision maker).
- Pre-adverse action puts the applicant on notice that there is potentially adverse information in the background check that may be used in the hiring decision.
- The pre-adverse notice gives the applicant an opportunity to review the information and challenge the accuracy or completeness of the information in the report.
- The notice must include contact info for the CRA, and it must state that the CRA did not make the decision.
- Must attach:
 - Copy of the report
 - Federal Summary of Rights
 - State Summary of Rights



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Pre-Adverse Action

- After receiving the Pre-Adverse Action Letter, the employer must give the applicant a reasonable time to respond
 - The statute does not specify the days, but courts have opined 5 days is reasonable
- Applicants may file a “dispute” with a CRA
 - The FCRA mandates that a dispute must be reinvestigated and resolved by the CRA within 30 days
- A 15-day extension is permitted if a consumer provides additional information to the CRA during the process
- If the individual does not contest the accuracy of the report within 5 days, or if the re-investigation confirms the original findings, the User (employer) may take final adverse action.



Notice of Adverse Action (final notice of adverse action)

If the user/employer decides to take adverse action, i.e. to deny employment, the FCRA requires a second notice letter. This letter notifies the applicant that the User has made a decision to take adverse action based in whole or in part on the consumer report.



Policy Considerations for FCRA

- Review your consent forms. Consider having two separate forms--both a “disclosure” form and an “authorization” form, signed by the applicant.
 - Review online systems/workflows
- Confirm that the authorization and disclosure forms are signed prior to ordering the background check
- Don’t include extraneous information, like a disclaimer, release of liability, or acknowledgments with the disclosure form
- Provide state requirements on a separate document, so as not to be confused with the FCRA disclosure.
- Consult with legal counsel on what language can be included with the disclosure form.



Policy Considerations FCRA (Adverse Action)

- Timing of the second notice (reasonable amount of time)
- How is notice sent (e-mail or snail mail)
- Ban the box considerations for timing of the second notice (some BTB laws state a time frame)
- Notice of individualized assessment (and how it differs in scope and purpose from pre-adverse notice)
- Avoiding any automated decisions (i.e. providing an auto pre-adverse notice after grading of a report) without proper review

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EEOC Compliance

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Equal Employment Opportunity Commission (EEOC): General Guidance

- EEOC published guidance on the use of criminal history records in the background process in April, 2012
 - Eliminate policies or practices that exclude people from employment based on any criminal record
 - An employer should not consider an arrest record that did not lead to conviction in making employment decisions
 - An employer should not have a blanket denial policy based on a conviction record
 - An employer should conduct an individualized analysis and dialogue in utilizing conviction records in making employment decisions

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Green Factors + IA

- The nature and gravity of the offense or conduct;
 - The time that has passed since the offense, conduct and/or completion of the sentence;
 - The nature of the job held or sought.



- Individualized Assessment

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Equal Employment Opportunity Commission (EEOC): General Guidance

Considerations in an individualized assessment:

The facts and circumstances surrounding the offense	The length and consistency of employment history before and after the offense
The number of offenses for which the individual was convicted	Rehabilitation
Age at the time of conviction or release from prison	Whether the individual is bonded
Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, without incidents of criminal conduct	Employment or character references and other information regarding the individual's fitness for the particular position

**If an individual does not respond to the employer's inquiries, the employer may make its decision without the information.

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EEOC: Enforcement Activity

- EEOC v. Peplemark
 - Peplemark awarded \$752K in damages for the EEOC's pursuit of a "meritless" case
 - Original allegation that Peplemark had a blanket policy against hiring any individual with a felony record based on comments from a Peplemark executive
 - There was no such documented policy
- EEOC v. Freeman
 - EEOC alleged that Freeman's background check policies created a disparate impact in violation of Title VII
 - Court holds that background checks can be "important" and "essential" tools for employers
 - In a scathing rebuke of the EEOC, the court held that the EEOC's evidence was unreliable and granted summary judgment in favor of Freeman

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EEOC Enforcement Activity

- EEOC v. Kaplan
 - United States Court of Appeals for the Sixth Circuit issued a strong rebuke to the EEOC for suing Kaplan for implementing a credit check program after discovering that employees had stolen student's financial aid payments
 - Summary Judgment was granted in favor of Kaplan as the EEOC's evidence failed to show disparate impact
- EEOC v. Pepsi
 - Under Pepsi's former policy, job applicants who had been arrested pending prosecution were not hired for a permanent job even if they had never been convicted of any offense
 - Pepsi's former policy also denied employment to applicants from employment who had been arrested or convicted of certain minor offenses
 - Pepsi agreed to pay \$3.1M

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EEOC Enforcement Activity

- EEOC v. Dollar General
- EEOC v. BMW

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State EEO Law: Using A Criminal Record to Deny Employment

- Be careful of State limitations on the use of:
 - Criminal Convictions
 - Arrests that did not lead to conviction
 - Arrests pending disposition/open cases
 - Violations
- New York is a very strict State regarding job-relatedness
 - Article 23-A of the New York Correction Law.



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New York Article 23-A

- New York employers are required to engage in an individualized, fact-specific analysis before taking any adverse action based on an applicant or employee's criminal conviction history. Factors that must be considered as part of this analysis include the following:
 - The specific duties and responsibilities related to the employment sought
 - The bearing which the criminal offenses for which the person was convicted will have on their ability to perform one or more of the job duties or responsibilities
 - The amount of time which has elapsed since the commission of the criminal offense
 - The age of the person at the time of the offense
 - Any information produced either by the Individual, or on his/her behalf, regarding rehabilitation and good conduct
 - The employer's legitimate interest in protecting property and the safety and welfare of specific individual's or the general public

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Ban the Box and Other State Laws

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Ban the Box: Public Debate

THE NEW YORK TIMES

Should a Jail Record Be an Employer's First Impression?

DEBATE

Keep Families and Communities Together
By David Mervin
A former New York City police officer, Mervin argues that employers should not automatically disqualify applicants with criminal records, as this can lead to homelessness and further criminal activity.

San Francisco Gives All a Fair Chance
By David Mervin
San Francisco's Fair Chance Ordinance is a model for other cities, ensuring that employers must consider an applicant's criminal record in context and not as a disqualifier.

Employees Should Decide on Their Own Whether to Disclose
By David Mervin
Mervin argues that employers should not require applicants to disclose criminal records, as this can lead to discrimination and unfair treatment.

Ban the Box Ignorance Legitimate Concern
By David Mervin
Mervin argues that employers should not automatically disqualify applicants with criminal records, as this can lead to homelessness and further criminal activity.

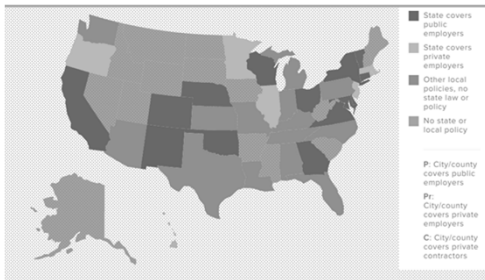
Employees Are Left Liable for Negligent Hiring Lawsuits
By David Mervin
Mervin argues that employers should not automatically disqualify applicants with criminal records, as this can lead to homelessness and further criminal activity.

Ban the Box Could Unintentionally Hurt Job Seekers
By David Mervin
Mervin argues that employers should not automatically disqualify applicants with criminal records, as this can lead to homelessness and further criminal activity.

READ THE DEBATE >

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Ban the Box Map (NELP)



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Ban the Box Laws

In their purest form:

- Ban the box laws prohibit employers from requesting, on an “initial written application form,” any information about an applicant’s criminal history
- Currently over 15 states and over 100 cities / counties have enacted ban the box legislation

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Ban the Box States

- 10 states have “banned-the-box” for private and public employers:
 - California
 - Connecticut
 - Hawaii
 - Illinois
 - Massachusetts
 - Minnesota
 - New Jersey
 - Oregon
 - Rhode Island
 - Vermont

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Ban the Box States

- **20 states** have “banned-the-box” for public employers and certain contractors only:

Arizona	Nevada
Colorado	New Mexico
Delaware	New York
Georgia	Ohio
Indiana	Oklahoma
Kentucky	Pennsylvania
Louisiana	Tennessee
Maryland	Utah
Missouri	Virginia
Nebraska	Wisconsin

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Ban the Box Municipalities

- Over 150 cities, municipalities and/or counties have “banned-the-box” for public and/or private employers
- *For example:*
 - **DC Metro Area** - Baltimore, Washington DC, Montgomery County and Prince George’s County
 - **California** - Berkeley, Carson, Compton, East Palo Alto, Oakland, Pasadena, Richmond, San Francisco, and Alameda and Santa Clara Counties
 - **Connecticut** - Bridgeport, Hartford, New Haven, and Norwich
 - **New York** - Buffalo, New York City, Syracuse, Rochester, ...
 - **Pennsylvania** - Lancaster, Philadelphia, Pittsburgh, ...

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Considerations for Ban the Box Laws

- Is there a “Ban the Box” state or local law?
- Does it apply to public *and* private employers?
- Is there a requisite minimum number of employees in the state or locality to be subject to the law?
 - If so, who counts in that calculation?
- If it is a local ordinance, is it preempted by state law?
- When is the inquiry permissible?
 - During the first interview?
 - After the first interview?
 - After conditional employment offer of employment has been made?

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Considerations for Ban the Box Laws

- What are the penalties for noncompliance?
 - Limited to fines?
 - Entitled to equitable relief?
 - Compensatory damages?
 - Punitive damages?
 - Attorneys' fees and costs?
- What are the exceptions, if any, to the law?

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Credit Reports

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Can a Credit Report be Used to Deny Employment?

- Be careful denying employment based on an employment credit report
- Consider whether credit history is job-related



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Credit Report Legislation

- Many states have restricted the use of credit reports. Exceptions may be based on:
 - Position
 - Industry
- These States/City include:
 - Hawaii, Washington, Oregon, Illinois, Connecticut, Maryland, California, Vermont, Colorado, Nevada, New York City, District of Columbia



New York Credit Report Prohibition: New York City Stop Credit Discrimination in Employment Act

- On 4/16/2015, the New York City council passed Intro No. 261-A, which amended the administrative code of New York City to prohibit most employers with four or more employees from running credit reports
- The amendment prohibits employers from using any information about an individual's credit history or credit worthiness or information obtained from the individual regarding details about credit accounts, bankruptcies, judgement or liens
- The law is stricter than other similar laws in other jurisdictions, restricting the types of positions in which an employer can obtain credit reports



New York City Credit Report Prohibition

Exceptions:

- Positions that are required by state or federal law or regulations or by a self-regulatory organization as defined in section 3(a)(26) of the securities exchange act of 1934, as amended to use an individual's consumer credit history for employment purposes
- Positions as a police officers or peace officer, or in a position with a law enforcement or investigative function at the department of investigation
- Positions that are subject to background investigation by the department of investigation, provided, however, that the appointing agency may not use consumer credit history information for employment purposes unless the position is an appointed position in which a high degree of public trust, as defined by the commission in rules, has been reposed
- Positions in which an employee is required to be bonded under City, State or Federal law



New York City Credit Report Prohibition

Exceptions:

- Positions in which an employee is required to possess security clearance under Federal law or the law of any State
- Non-clerical positions having regular access to trade secrets, intelligence information or national security information
- Positions having signatory authority over third party funds or assets valued at \$10,000 or more or that involves a fiduciary responsibility to the employer with the authority to enter financial agreements valued at \$10,000 or more on behalf of the employer
- Positions with regular duties that allow the employee to modify digital security systems established to prevent the unauthorized use of the employer's or client's networks or databases

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Pay Equity Laws (salary history)

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Pay Equity Laws: Massachusetts Salary History Law

- Massachusetts Salary History Law
 - Effective July 1, 2018, Massachusetts officially became the first state to prohibit employers from asking job applicants about their salary history.
- WHAT THE DOES THIS LAW MEAN?
 - The law prohibits employers in Massachusetts from asking job applicants about their salary history until after they make a job offer that includes compensation, unless the applicants voluntarily disclose the information.
 - Employers are only allowed to obtain a verification of income after a job offer that includes compensation has been offered.
 - The law bans salary secrecy, as it allows employees to freely discuss their salaries with co-workers.
 - The law was signed in order to ensure equal pay for comparable work for Massachusetts workers and equal opportunities to earn competitive salaries in the workplace.

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Pay Equity Laws: Massachusetts Salary History Law

▪ EMPLOYERS BEST PRACTICE CONSIDERATIONS

- Job applications that seek past salary information, interview notes, or guidance that include questions on salary history, must be revised to eliminate such questions
- For multi-state employers, applications should, at a minimum, be updated to indicate that Massachusetts applicants should not answer any salary history questions
- Company policies that prohibit employees from discussing compensation with their co-workers must be revised to clarify employees' rights to engage in such conversations

REMINDER: The new law goes into effect July 1, 2018.

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Pay Equity Laws: New York City Salary History Law

On April 5, 2017, the New York City Council approved the passage of a law, NYC 1253-A. This law makes it an unlawful discriminatory practice for an employer, employment agency or agent to do the following:

- Inquire about the salary history of an applicant in writing or any other manner, from a former employer or any other source
- To rely on salary history of an applicant in determining the salary or other compensation for an applicant in any stage of the employment process, unless the applicant willingly and without an inquiry discloses such information
- If an applicant voluntarily discloses their salary history, the employer may then use the information to determine the applicant's compensation and may then verify the information

This bill does not apply to the following:

- An employer, employment agency or agent that is authorized by law to request or verify the salary history of an employee
- Applicants with their current employer who are applying for an internal transfer or promotion
- Any attempt to verify non-salary related information or conduct a background check that reveals an applicant's salary history should not be relied upon for determining salary or other compensation
- Public employees for which salary and compensation are determined by collective bargaining
- The bill went into effect October 2017.

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Trends and Tips

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Trends in Background Screening

Ban the box legislation will continue to grow

- Companies should consider removing the criminal conviction question from their application altogether

Class Action Lawsuits

- Non-compliant Disclosure and Authorization forms
- National Criminal Database Records provided by a CRA without primary source confirmation or sending a 613 letter
- Scoring/Rating by using terms such as "Fail," "Ineligible," "Red," etc.
- Adverse Action - not following the proper process

Credit Check Ban or Restrictions

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Trends in Background Screening

Improved technology reducing turnaround times

- Screen Scraping
- ATS Integration

Employee monitoring

National Association of Professional Background Screeners

- Accreditation

Growth in International Background Checks

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Background Screening Policy Considerations

- Note that a conviction is not an automatic bar to employment
 - State that falsification of application is an automatic bar to employment
- Record retention policy
- Legal review
- Formal approvals
- Policy effective date
- Look for sample policy guidelines

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Thank you!



Contact Information

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APPENDICES

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Washington, DC: Fair Credit in Employment Amendment Act of 2016

- Effective on March 17, 2017, the District of Columbia will restrict the use of credit information in hiring. On February 15th, Mayor Muriel Bowser signed D.C. Act 21-673, the Fair Credit in Employment Amendment Act of 2016, prohibiting employers and employment agencies from taking an adverse action on an applicant or current employee based on their credit information
- The new law is broad in scope, limiting credit inquiries by employers whether they are made pre- or post-offer. The law applies not only to hiring, but also to decisions about compensation, promotions, or terms of employment
- The law provides exemptions for the following:
 - The employer is required by law to request or inquire into an employee's credit history
 - A police or law enforcement officer
 - The applicant is applying to the Office of the Chief Financial Officer of the District of Columbia
 - An employee is required to possess a security clearance
 - Disclosures by district government employees of their credit information to the board of ethics and government accountability of the office of the Inspector General
 - Financial institutions where the position involves access to personal financial information
 - Where an employer requests or receives credit information pursuant to a lawful subpoena, court order, or law enforcement investigation



New York Ban the Box: New York City Fair Chance Act

- On June 10, 2015, the NYC Council voted to "Ban the Box" which makes it a discriminatory practice for employers or employment agencies to inquire into an individual's arrest or conviction record or perform a criminal background check until an employer has extended a conditional offer of employment
- Prior to denying employment, the law places additional responsibilities on the employer that exceed the pre and final adverse action requirement of the Fair Credit Reporting Act
- The bill also restricts an employer's ability to issue any solicitation, advertisement or publication that directly or indirectly indicates any limitation or specification in employment based on a person's arrest or criminal conviction history



New York Fair Chance

- After extending an applicant a conditional offer of employment, the employer or employment agency may inquire about the applicant's arrest or conviction record. Prior to taking any adverse action they must perform the following:
 1. Provide a written copy of the report to the applicant.
 2. Perform an analysis of the applicant under New York Article 23-A of the correction law and provide a written copy of the analysis to the applicant in a manner which shall include any supporting documents that formed the basis for an adverse action and the employer's or employment agencies reasons for taking adverse action.
 3. After giving the applicant the report and analysis in writing, the employer or employment agency must allow the applicant a reasonable time to respond, which shall be no less than three business days and must hold the position open during this time period.



New York Fair Chance

- Applicants are not required to respond to impermissible inquiries and cannot be disqualified for not responding to such inquiries
- The law has exceptions for positions that require criminal background checks by Federal, State or Local law as well as positions as certain other city positions where a conviction prohibits employment



Los Angeles Ban the Box/Fair Chance Initiative for Hiring

- The ordinance took effect on January 22, 2017
- Employers located or doing business in the City of Los Angeles with 10 or more employees
- Eliminate questions in the employment application about criminal histories
- Multi-state employers can either completely remove any question pertaining to criminal history from the employment application or include a disclaimer such as "For jobs in the city of Los Angeles, you should not answer this question."
- Include language in all solicitations seeking applicants that you will consider qualified applicants with criminal histories in a manner consistent with the Los Angeles Fair Chance Initiative for Hiring
- Post a notice informing applicants for employment about the LA Fair Chance Initiative at each workplace, job site or location in LA under your control that job applicants will visit
- Put a "Fair Chance Process" in place
- After you make a conditional offer of employment, you may ask the applicant about criminal convictions but you may not withdraw the application based on the response without completing a written assessment that explains the link between the applicant's criminal history and the risks inherent in the position applied for. This assessment must include discussion of the nature of the offense or conduct that led to the conviction; the time that has passed since the conviction or release from incarceration; and the nature of the position sought.



LA Ban the Box/Fair Chance Initiative for Hiring continued

- If you are considering withdrawing a conditional offer of employment, you must first provide the applicant written notice, a copy of the written assessment, and any other documents or information supporting the decision
- Give the applicant five business days to provide any information regarding rehabilitation or other mitigating factors
- You must hold the position open during that time
- If the applicant provides information, you must consider it and complete a written re-assessment
- If you still decide to withdraw the offer, you must then notify the applicant in writing and provide a copy of the re-assessment
- All relevant records must be retained for three years after the receipt of the application for employment



Los Angeles Ban the Box/Fair Chance Initiative for Hiring

- **Exceptions:**
 - Employers who are required by law to perform background checks
 - Employers who are legally prohibited from hiring an applicant who has been convicted of a crime
 - The Ordinance also does not apply to an individual who, because of a criminal conviction, cannot lawfully hold the position, regardless of whether the conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation
 - The Ordinance also does not apply to an applicant required to possess or use a firearm in the course of employment.
 - Employers are required to keep an exception log of their use of the about exceptions for a period of three years following the receipt of an applicant's application.