Background Checks:

What Job Applicants and Employees Should Know

Some employers look into your background before deciding whether to hire you, or before deciding whether you can keep your job. When they do, you have legal rights. The Federal Trade Commission (FTC) enforces a federal law that regulates background reports for employment, and the Equal Employment Opportunity Commission (EEOC) enforces federal laws against employment discrimination. This publication explains these laws, and how to contact the FTC and EEOC if you think an employer has broken the law. There might be other rules in your city or state, so it's a good idea to check with someone who knows the laws of your area.

Questions About Your Background

An employer may ask you for all sorts of background information, especially during the hiring process. For example, some employers may ask about your employment history, your education, your criminal record, your financial history, your medical history, or your use of online social media.

Unless the employer is asking for medical or genetic information, it's not illegal to ask you questions about your background, or to require a background check. (Employers aren't allowed to ask for medical information until they offer you a job, and they aren't allowed to ask for your genetic information – including family medical history – except in very limited circumstances.)

However, when an employer asks about your background, it must treat you the same as anyone else, regardless of your race, national origin, color, sex, religion, disability, genetic information (including family medical history), or older age (40 or older). For example, an employer is not allowed to ask for extra background information because you are of a certain race or ethnicity.

If an employer treats you differently because of your race, national origin, color, sex, religion, disability, genetic information (including family medical history), or older age, or asks you inappropriate questions about your medical status, medical history, or family medical history, contact the EEOC (see below).

Background Reports

Some employers also will try to find out about your background by hiring someone to do a "background report" on you. Two of the most common are credit reports and criminal background reports.

Special rules apply when an employer gets a background report about you from a company in the business of compiling background information. First, the employer must ask for your written

permission **before** getting the report. You don't have to give your permission, but if you're applying for a job and you don't give your permission, the employer may reject your application.

> If an employer gets a background report on you without your permission, contact the FTC (see below).

Second, if the employer thinks it might not hire or retain you because of something in the report, it must give you a copy of the report and a "notice of rights" that tells you how to contact the company that made the report. This is because background reports sometimes say things about people that aren't accurate, and could even cost them jobs. If you see a mistake in your background report, ask the background reporting company to fix it, and to send a copy of the corrected report to the employer. You also should tell the employer about the mistake.

> You can get your credit report and fix any mistakes before an employer sees it. To get your free credit report, visit www.annualcreditreport.com or call 1-877-322-8228. You don't have to buy anything, or pay to fix mistakes.

If the Employer Finds Something Negative in Your Background

If there is something negative in your background, be prepared to explain it and why it shouldn't affect your ability to do the job.

Also, if the problem was caused by a medical condition, you can ask for a chance to show that you still can do the job.

Sometimes it's legal for an employer not to hire you or to fire you because of information in your background, and sometimes it is illegal. An example of when it is illegal is when the employer has different background requirements depending on your race, national origin, color, sex, religion, disability, genetic information (including family medical history), or older age (40 or older). For example, it would be illegal to reject applicants of one ethnicity with criminal records for a job, but not reject other applicants with the same criminal records. This is true whether or not the information was in a background report.

Even if the employer treated you the same as everyone else, using background information still can be illegal discrimination. For example, employers shouldn't use a policy or practice that excludes people with certain criminal records if the policy or practice significantly disadvantages individuals of a particular race, national origin, or another protected characteristic, and doesn't accurately predict who will be a responsible, reliable, or safe employee. In legal terms, the policy or practice has a "disparate impact" and is not "job related and consistent with business necessity." (It doesn't matter whether or not the information was in a background report.)

> If you think an employer discriminated against you based on background information, contact the EEOC for further information (see below).

Where to Go For Help

EEOC

If you think that a background check was discriminatory, you may contact the EEOC by visiting its website at www.eeoc.gov, or by calling 800-669-4000 (voice) or 800-669-6820 (TTY). The EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. The EEOC investigates, conciliates, and mediates charges of employment discrimination, and also files lawsuits in the public interest. For specific information on—

- **Preemployment medical inquiries:** see *Preemployment Disability-Related Questions and Medical Examinations* at www.eeoc.gov/policy/docs/preemp.html.
- **Medical inquiries during employment:** see *Questions and Answers: Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA)* at www.eeoc.gov/policy/docs/qanda-inquiries.html.
- **Genetic inquiries, including inquiries about family medical history:** see *Background Information for EEOC Final Rule on Title II of the Genetic Information Nondiscrimination Act of 2008* at www.eeoc.gov/laws/regulations/gina-background.cfm.
- **Using arrest and conviction records to make employment decisions:** see *Questions and Answers about EEOC's Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII* at www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm.
- **Whether arrest and conviction records act as an automatic bar to all employment:** see *Reentry Myth Buster: On Hiring/Criminal Records Guidance* at csgjusticecenter.org/wp-content/uploads/2012/11/Reentry_Council_Mythbuster_Employment.pdf.

FTC

If an employer got your background report without asking your permission, or rejected you without sending you the required notices, contact the FTC at www.ftc.gov, or by calling 877-FTC-HELP (1-877-382-4357) (voice) or 866-653-4261 (TTY). For further information see—

- **What To Know When You Look For A Job** at www.consumer.ftc.gov/articles/0269-what-know-when-you-look-job.
- **Employment Background Checks** at www.consumer.ftc.gov/articles/0157-employment-background-checks.
- **Employee Background Checks** at www.consumer.ftc.gov/media/video-0026-employee-background-checks.

- **Reentry Myth Buster: Criminal Histories and Employment Background Checks** at csgjusticecenter.org/wp-content/uploads/2012/11/Reentry_Council_Mythbuster_FCRA_Employment.pdf.
- **Disputing Errors on Credit Reports** at www.consumer.ftc.gov/articles/0151-disputing-errors-credit-reports.
- **Free Credit Reports** at www.consumer.ftc.gov/articles/0155-free-credit-reports.

The FTC works to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them.

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