

California Employment Background Check Fact Sheet

Federal Background Check Laws Fair Credit Reporting Act (FCRA-15 USC §1681 et seq.)

The **FCRA** outlines the Federal Rules for Background Checks. It applies **only** when employers use **outside** screening company to conduct background checks.

When an outside company prepares the report, the FCRA requires the employer to:

- Give you notice on a separate document that a report *may* be required.
- Get your permission for the background check.
- Get your specific permission if medical information is requested.
- Give a specific notice if your neighbors, friends, or associates will be interviewed about your "character, general reputation, personal characteristics, or mode of living." This is called an "investigative consumer report" under the **FCRA**.

Under the FCRA, negative information usually cannot be reported after seven years.

Exceptions apply for bankruptcy information (10 years) and jobs or insurance policies over a certain dollar amount. **The FCRA says that criminal convictions can be reported indefinitely.**

The employer must give you a "pre-adverse action notice" along with a copy of the background report before an adverse action is taken. For job applicants, an "adverse action" means the employer has decided not to hire you based on the information in the report. For existing employees, an adverse action might be termination. Or it could be a decision to not promote you, or to demote you.

You should get a second notice *after* an adverse action, telling you how to dispute inaccurate or incomplete information.

CA Background Check Laws Investigative Consumer Reporting Act (ICRAA- CA Civil Code §1786)

California law was amended in 2001 to give job applicants and current employees greater rights to see the results of background checks. This gives California job applicants and employees a better chance to find out about inaccurate or incomplete information which might be reported about them.

The California law is broader in scope than the federal FCRA. It also covers employers who conduct background checks themselves, which the **FCRA** does not. Applicants and employees in California have all the rights of the **FCRA** and some additional rights. There are some differences between the **FCRA** and the **ICRAA**.

In California, an employment background check is called an "Investigative Consumer Report" (ICR). Your rights and an employer's obligations are included in the Investigative Consumer Reporting Agencies Act (**ICRAA**- CA Civil Code §1786). Under California law, a

company that collects information for employers and compiles reports is called an **Investigative Consumer Reporting Agency (ICRA)**.

Under the federal FCRA, an "Investigative Consumer Report"(an ICR) is limited to personal interviews with your friends, neighbors or business associates.

In California, an ICR covers your "character, general reputation, personal characteristics, or mode of living" obtained through "any means." The term ICR does **not** include credit reports. If an employer in California wants to see your credit report as part of an employment background check, that report is also governed by the **Consumer Credit Reporting Agencies Act (CCRAA-CA Civil Code §1785)**

The ICRAA does not apply if another law requires a government agency or employer to conduct a certain type of background check. Many jobs require an employer to check for criminal convictions far beyond the seven-year limit included in the ICRAA. There are many occupations that require a state license and often require an extensive criminal background check for all job applicants and employees.

RULES WHEN AN OUTSIDE COMPANY DOES YOUR BACKGROUND CHECK FOR THE EMPLOYER

A job applicant or a current employee in California gets a more extensive notice than the one required under the FCRA. In California, before a background check is conducted by an outside screening company (an **ICRA**), you should receive a notice that:

- States the purpose of the report.
- Gives the name, address, and telephone number of the screening company.
- Includes a summary of your rights to see and copy any report about you.
- Includes a box to check if you want a copy of your report.

You must give your authorization in writing before an employer can start the investigation process through a screening agency. Your written permission is required by the **FCRA** as well as the **California ICRAA**.

If an employer is going to obtain your medical history, California law and the **FCRA** require your specific authorization.

If you indicate you want a copy of your report, it should be sent within three business days of the date the employer receives it. The report may come from the employer or from the screening company.

RULES WHEN THE EMPLOYER DOES YOUR BACKGROUND CHECK

If the employer conducts a background check itself, without using an outside ICRA, the job application form or a related document should include a box to check indicating that you want a copy of public records obtained in the investigation. California law does **not** require an employer who conducts a background check to give you the same detailed notice that is required when an outside agency does it.

You do have the right to receive a copy of the public records compiled in the report (CA Civil Code §1786.53). You should *always* indicate to the employer that you want to see the public records report.

For employer-conducted background checks, the permission and notice requirements are less rigid. An employer **may** ask for your consent, even to do an in-house investigation. However, the only real indication that a background check will be conducted may come in an application or other document. **A California employer that conducts its own investigation must give the subject an opportunity to give up the right to get a copy of public documents.**

There is one exception in California. Your permission is not required and you are not entitled to notice if your employer suspects you of wrongdoing or misconduct.

WHAT TO DO IF THERE ARE INACCURACIES IN YOUR REPORT

If you find that the report contains inaccurate or incomplete information about you, you can dispute the inaccurate or incomplete information by doing the following:

- You file a dispute in writing and provide evidence.
- The employment screening agency must investigate your dispute.
- If the agency cannot verify the information you disputed, the information must be removed.
- The agency does not have to continue an investigation if it decides your complaint is "frivolous or irrelevant."
- The agency has 30 days to notify you of the results of the investigation.
- You have to be notified if negative information is deleted but later reinserted.
- If the agency will not remove negative information, you can include your own statement in the file.

If the inaccuracy is a result of identity theft in which someone committed a crime under your name, visit the California Attorney General's web site for information on how register that inaccuracy. <http://ag.ca.gov/idtheft/packet.php>

WHAT CANNOT BE INCLUDED IN YOUR CALIFORNIA BACKGROUND CHECK

In California, criminal convictions can only be reported for seven years unless another law requires employers to look deeper into your background. The FCRA says that criminal convictions *can* be reported *indefinitely*. California and the FCRA impose a ten-year limit for reporting bankruptcies. In California, a conviction cannot be reported if a full pardon has been granted.

Remember: the ICRAA does not apply if another law requires a government agency or employer to conduct a certain type of background check. Many jobs require an employer to check for criminal convictions far beyond the seven-year limit included in the ICRAA. There are many occupations that require a state license which often require an extensive criminal background check of all job applicants and employees.

In California, a background checking agency *cannot* include public record information in an employment check unless it has verified the accuracy of the information during the 30-day period before the report is issued. This applies to such information as arrests, indictments, convictions, civil actions, tax liens, and outstanding judgments.

An arrest that did not result in a conviction cannot be reported in California unless the matter is currently pending. However, the formal charges shown in an indictment, information or complaint that result from an arrest can be reported for up to seven years in California if a conviction did result. **Arrests can be reported pending judgment.** This means if you were arrested and the matter has not come to trial or has otherwise not been resolved, it can still be reported in an employment background check.

<p style="text-align: center;">WHAT AN EMPLOYER CANNOT ASK YOU ABOUT OR SEEK INFORMATION ABOUT</p>

California law places restrictions on the prospective employer's ability to ask about certain criminal records and cannot require the applicant to disclose certain arrest information.

The Fair Employment and Housing Commission restricts employers from inquiring or seeking information on any applicant concerning any:

- Arrest or detention which did not result in conviction;
- Conviction for which the record has been judicially ordered sealed, expunged, or statutorily eradicated;
- Misdemeanor conviction for which probation has been successfully completed or otherwise discharged and the case has been judicially dismissed; or
- Arrest for which a pretrial diversion program has been successfully completed.

The CA Labor Code further prohibits employers from:

- **asking** an applicant to disclose;
- **seeking** from any source; or
- **utilizing** as a factor in hiring,
any information concerning an arrest or detention that did not result in conviction.

Exceptions: Employers *may* ask about:

- Arrests where the applicant is out on bail or his own recognizance while awaiting trial.
- Certain arrests when the applicant will be employed at a health facilities and have access to patients, drugs, or medication.

In the areas of public recreation, education, healthcare, and childcare, several state laws mandate fingerprint identification and criminal records inquiries from the California Department of Justice before hiring. (*CA Education Code; Health and Safety Code; and Welfare and Institutions Code; and Financial Code.* (Due to the complexity of these laws, specific citations are intentionally not provided.)

<p style="text-align: center;">Penalties for Violations of ICRAA</p>

Violations of the ICRAA can result in stiff penalties for the company that issued the report and for the user of the report (the employer). (CA Civil Code 1786.50) Under the ICRAA you can sue for actual damages or \$10,000, whichever is greater. Class action lawsuits are allowed. Court costs and

attorney fees can also be awarded. And the court can award punitive damages if it finds the violation was grossly negligent or willful. The right to sue for privacy invasions or defamation is not affected.

Can I sue an employer and/or employment screening company?

Yes. Both California and federal law enable individuals to sue (CA Civil Code §§1786.20, 1786.1786.50; FCRA 15 U.S.C. §§1681n, 1681o).

Before seeking legal help or contacting a mediator, remember that both California law and the FCRA have built-in measures for resolving disputes. In most situations, the dispute procedures spelled out in the law should be followed before taking the next step.

To determine if your specific situation would fall under the provisions of California or federal law, it is advised that you talk with an attorney who specializes in employee rights.

- The web site of the National Employment Lawyers Association provides a directory of member attorneys, www.nela.org. Search box is in upper left hand corner.
- The web site of the California Employment Lawyers Association provides a member directory, www.celaweb.org/MemberList.pdf.
- Most local bar associations provide free or low-cost attorney referral services. You can find the nearest bar referral service in the "attorneys" section of the phone book's Yellow Pages.

Please note: This Fact Sheet is intended only as a general overview of applicable law in the field of Employer-Employee Rights and Responsibilities as they pertain to background checks for job applicants and employees. For assistance with your individual claim or to address specific questions you might have about possible legal action, you should consult with an attorney who specializes in employment law.

Sources:

California Code of Regulations, 2 CCR §7287.4

California Labor Code, § 432.7

California Civil Code, § 1786 *et seq.*

California Department of Fair Employment & Housing, www.dfeh.ca.gov

Federal Trade Commission, ftc.gov/bcp/conline/pubs/buspubs/credempl.shtm

Fair Credit Reporting Act, www.ftc.gov/os/statutes/031224fcra.pdf

Les Rosen, Esq. Privacy Rights Clearinghouse, www.privacyrights.org