BACKGROUND CHECKS & JOBS

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HOW IMPORTANT IS THIS?

As many as 47% of employers were checking credit reports in 2009, up from 19% in 1996.

As many as 95% of employers use criminal background checks for at least some of their employees.
FIVE TYPES OF BACKGROUND CHECKS

1. Criminal Background
2. Work History and Credential Verification
3. Employment Eligibility
4. Credit History
5. Drug Screening
1. CRIMINAL BACKGROUND

ALCOHOL USE

• Underage drinking, false ID, aiding and abetting underage drinking (i.e. hosting a party with alcohol infractions)
DRUG USE

- Possession of illegal drugs, drug paraphernalia, or prescription drugs without a doctor’s authorization; manufacturing or selling illegal drugs (determined by amount rather than intent to sell)
1. CRIMINAL BACKGROUND

THEFT/LARCENY

• Shoplifting, credit card fraud, property theft (i.e. road signs or symbols of a rival fraternity or college); employee theft.
1. CRIMINAL BACKGROUND

ASSAULT

- Fighting, domestic violence (applies to any current or former romantic relationship), date rape
1. CRIMINAL BACKGROUND

DRIVING RECORD

- Driver’s license suspended or revoked, driving under the influence (DUI), driving while intoxicated (DWI), traffic violations
1. CRIMINAL BACKGROUND

OTHER

• Violation of noise ordinance, hazing, public intoxication, disorderly conduct, indecent exposure (public urination), stalking.
1. CRIMINAL BACKGROUND

UNIQUE ISSUES

HARDER TO CHECK PREEMPTIVELY

• Too many companies
• Some do not start consumer file until customer request

HARD TO KNOW WHEN YOU HAVE BEEN DENIED EMPLOYMENT BASED ON CRIMINAL BACKGROUND

• Little compliance with FCRA by employers
Where do companies get their data?

- Bulk disseminators
- Resellers
- Subcontractors
- Courts, Repositories, FBI, Prisons, other Public Records
- Each other
SOME FACTORS CONSIDERED BY EMPLOYERS

• The seriousness of the offense
• How recently it occurred
• Whether you followed through with orders of the court
• Extenuating circumstances (IF the employer asks for details)
• Whether there is a pattern of deception or irresponsibility
• Whether the offense demonstrates unsuitability for a specific job opening
The Fair Credit Reporting Act (FCRA)

• An employer may use an outside agency called a “consumer reporting agency” to conduct criminal background checks

• The Fair Credit Reporting Act (FCRA) regulates the actions of “consumer reporting agencies,” but they do not regulate actions of in-house background checks by employers.

• FCRA governs employers’ use of “consumer reports”
The Fair Credit Reporting Act (FCRA)

The definition of “consumer report” includes criminal background check reports obtained from third-party consumer reporting agencies.

The consumer report cannot include the following:

- Bankruptcies after 10 years
- Civil Suits, Civil Judgments, & Arrest Records after seven years
- Paid Tax Liens after seven years
- Accounts placed for collection after seven years
- Any other negative information (except criminal convictions) after seven years
YOUR RIGHTS UNDER FCRA

Before obtaining a consumer report, the employer must obtain your written permission before they conduct background checks through an outside agency.

Before taking adverse action, if the employer uses information from the consumer report to

- deny your application
- terminate your employment
- invalidate a job offer or
- deny a promotion

You must be given a “pre-adverse action disclosure” which includes a copy of the report and explanation of rights. You must also be given an opportunity to correct any mistakes in the consumer report. They do not have to give you the opportunity to explain the negative information in the report.
YOUR RIGHTS UNDER FCRA

- After these actions are taken, you must be given an “adverse action notice” which includes:
  - the name, address, and phone number of the agency that conducted the background checks
  - a statement that the agency did not make these decisions, and
  - a notice that you have the right to dispute the information in the report.

- There must be a reasonable relationship between the nature of your employment and the criminal offense for an employer to take adverse action.
YOUR RIGHTS UNDER FCRA

In 2010 the Consumer Financial Protection Bureau (CFPB) became the overseeing agency responsible for enforcement of federal consumer protection laws, including the Fair Credit Reporting Act (FCRA).

Pursuant to its new authority, CFPB issued revised FCRA forms, which employers must start using beginning January 1, 2013.

The modified forms must reflect that consumers can obtain information pursuant to their rights under FCRA from the CFPB instead of the Federal Trade Commission.
YOUR RIGHTS UNDER FCRA

The three forms are:

1. Summary of Your Rights Under the Fair Credit Reporting Act

   Must be provided to an employer by a consumer reporting agency (CRA) when the employer requests an employee's consumer report. In turn, the employer must provide the employee with the notice when used to deny employment or to take any adverse employment action. The employer must provide the negatively affected employee with the name, address and phone number of the CRA that provided the information.
YOUR RIGHTS UNDER FCRA

Notice to Furnishers of Information: Obligation of Furnishers Under the FCRA

This notice requires furnishers of information to be familiar with applicable laws and comply with federal guidelines and regulations dealing with the accuracy of information provided to CRAs.

Notice to Users of Consumer Reports

Provided to users of consumer reports informing them of their legal obligations. For instance, users of consumer reports must have a permissible purpose under FCRA to obtain a consumer report (e.g., for employment purposes, including hiring and promotion decisions, where the consumer has given written permission).
YOUR RIGHTS UNDER FCRA

The rule remains that before the employer can request a consumer report, the employer must provide the employee with a FCRA Disclosure Notice and obtain the employee's written authorization. The Disclosure Notice and the written authorization forms are not changing other than to reflect that employees should contact the CFPB rather than the FTC for information regarding their rights under FCRA.
2. WORK HISTORY AND CREDENTIAL VERIFICATION

EMPLOYMENT

- Exaggerated level of job responsibilities
- Inaccurate job title
2. WORK HISTORY AND CREDENTIAL VERIFICATION

EDUCATION

- Degree not completed as claimed or institution is a “diploma mill”
- Honors claimed falsely or GPA inflated
- Inaccurately reporting major and/or minor
3. EMPLOYMENT ELIGIBILITY VERIFICATION

• Not a U.S. citizen, permanent resident, or sponsored by an employer for a work visa.

• Ineligible to work in the United States
3. EMPLOYMENT ELIGIBILITY VERIFICATION

- Lack of U.S. citizenship
- Ineligible for positions requiring security clearance (such as federal employer or defense contractor)
4. CREDIT History

FINANCIAL IRRESPONSIBILITY

• High indebtedness due to living beyond means; high debt to income ratio (credit card charges, not student loans)

• Filing bankruptcy or failing to comply with terms of credit agreement (such as a pattern of late payments)
OREGON SB 1045

• Went into effect July 1, 2010

• Prohibits employers from using credit histories in making employment-related decisions.

“an unlawful employment practice for an employer to obtain or use for employment purposes information contained in the credit history of an applicant for employment or an employee, or to refuse to hire, discharge, demote, suspend, retaliate or otherwise discriminate against an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the credit history.”

• The new law does not affect an employer’s ability to conduct criminal background checks or investigate a prospective employee’s employment history.
OREGON SB 1045

• The Oregon law differs from FCRA.

• Under the federal act, an employer can make employment-related decisions based on credit history but, prior to running a credit check, must notify prospective employees in writing and receive their consent.

• Additionally, if the employer decides not to hire because of the credit report, the employer has disclosure, notice and other obligations. In contrast, the Oregon law creates an outright ban on the use of credit history in employment-related decisions.
OREGON SB 1045

There are four exceptions to the prohibition:

• Bank and credit union employers

• Employers that are required by state and federal law to use credit histories for employment purposes

• Public safety officer employers

• Employers that can demonstrate that credit information is "substantially job-related” and that provide written disclosure of the reasons for the use of the credit check
OREGON SB 1045
The statute does not further define what “substantially job-related” means, nor has the Oregon Bureau of Labor and Industries (BOLI) adopted rules to inform employers on how it will be applied.

A violation of the new law is an unlawful employment practice, and an aggrieved individual can file a complaint with BOLI and a civil lawsuit for injunctive relief, reinstatement or back pay, and attorney’s fees.
5. DRUG TESTING

- Use of illegal drugs
- Urine Test
- Hair Test

- Five-panel test of “street drugs” (marijuana, cocaine, PCP, opiates, and amphetamines) Most can be detected within two to four days of use and up to 14 days after heavy use of marijuana or PCP

- Ten-panel test, which also checks for commonly abused prescription drugs

- Detects drugs for up to 90 days after use.
SO YOU HAVE A CONVICTION. . . .
WHAT NOW?

Are you eligible to expunge?

• In Oregon, the courts look at a 10-year period to determine your eligibility to expunge.

• If you have one conviction in the last ten years, and that conviction is at least three years old, you may be eligible to expunge.

• If you have more than one conviction in the last ten years, you must wait until the most recent conviction is over 10-years old.
WHAT TYPES OF CONVICTIONS CAN BE EXPUNGED?

In general, any class C felony, misdemeanor, or violation can be expunged except:

- Sex crimes
- State or municipal traffic offenses
- Criminal Mistreatment 1\textsuperscript{st} Degree, when child abuse
- Endangering the Welfare of a Minor, when child abuse
WHAT TYPES OF CONVICTIONS CAN BE EXPUNGED?

If you are not sure whether your conviction qualifies to be expunged and are a PSU student, please contact Student Legal Services to schedule an appointment. If you are not a student, our website has links to other community resources that can help.

****There are many exceptions, please consult with an attorney if you would like to double check****
IF YOU WERE CHARGED WITH A CRIME THAT WAS DISMISSED, OR YOU WERE ACQUITTED, OR WERE ARRESTED BUT NOT CHARGED:

You may be able to expunge the arrest or court records, subject to different rules. In general:

• **Acquitted/Dismissed Records**: can be expunged immediately, provided an individual does not have any convictions within ten years or arrests within the last three years.

• **Arrests**: can be expunged after one year if you have not been charged, have no convictions within the prior ten years, and have no arrests within the last three years.
EXPUNGMENT: WHAT’S THE CATCH?

It is ultimately up to a Judge to sign an Order requiring the Court clerks to seal your record.

Some violations, if criminal in nature, (examples include possession of less than an ounce of marijuana and non-payment of Trimet fare) can impact expungement eligibility despite the fact that they are not commonly viewed as “criminal.”

SLS does assist with expungment free of charge, but there are some costs to the expungment process. Costs include court filing fees, fingerprints, and an $80 fee which is paid to the prosecuting attorney’s office. These costs can add up to nearly $300 in cases where an individual is not approved for a waiver of court fees.
WHAT CAN YOU DO BEFORE YOU START YOUR JOB SEARCH?

FOR YOUR FREE REPORT [www.annualcreditreport.com](http://www.annualcreditreport.com)

You can contact Consumer Reporting Agencies (CRAs) to make sure the information they provide about you is correct.

P.O. Box 1000
Chester, PA 19022
(800) 916-8800

P.O. Box 740241
Atlanta, GA 30374-0241
(800) 685-1111

**Experian**  [http://www.experian.com/](http://www.experian.com/)
P.O. Box 2104
Allen, TX 75013
(888) EXPERIAN (888-397-3742)
YOU CAN RUN YOUR OWN BACKGROUND CHECK

CICS (City Investigations Corporate Security) charges $14. (https://www.criminalscreens.com/) They perform criminal history reports, past residence locations, motor vehicle reports, driving histories, credit reports, credential verification, employment verification, and other services.

The CICS website has a handy guide for employers to reference during interviews and when they do background checks. (https://www.criminalscreens.com/Resources/Docs/Guide%20To%20Employment%20Investigations.pdf) They also include a list of reports/notices that are used in hiring. (https://www.criminalscreens.com/Public/Resources.aspx)
YOU CAN RUN YOUR OWN BACKGROUND CHECK

To get a copy of your own record from the State of Oregon, you must provide a set of fingerprints (go to the police bureau, $20 for the fingerprint card), then send those and a $33 check to Or. State Police. They will mail you your record within 7-10 days.

http://www.oregon.gov/OSP/ID/docs/copy_own_or_record.pdf

To get a copy of your own record from the FBI, you must complete an application form, include a completed fingerprint card, include a cashier’s check, money order, or credit card payment for $18.00. Takes up to 12 weeks to receive.

http://www.fbi.gov/about-us/cjis/background-checks/background_checks
THE BOTTOM LINE

• Do your best not to put yourself in situations where you are committing criminal acts or around individuals who are.

  • If you have been arrested, charged, or convicted of any crime, this is especially important to protect your eligibility for expungement.
  • Bear in mind that many apparently common activities are illegal and can result in criminal prosecution. Try not to engage in those activities or be around those that are.

• Please visit our website: www.pdx.edu/sls for more information and contact us for an appointment to answer any specific questions about your case.
TRUE OR FALSE?

Before obtaining a consumer report, the employer need not obtain your written permission before they conduct background checks through an outside agency.
Questions?