

What are my rights during the background check process?

Me? I have rights?

Yes. People who have background checks, credit checks, or tenant screenings run on them as part of an application process (for example, employment, housing, or credit) are called consumers under the Fair Credit Reporting Act (FCRA). The FCRA provides consumers with certain protections and rights, especially in the context of pre-employment screening. Below is a brief summary of some of your rights when you are the subject of a background check as part of an employment application process:

1. Right to receive a clear notice and the right to consent

- You are entitled to a **standalone written disclosure**, notifying you that a background check report (or “consumer report”) will be performed on you for employment purposes
- No background check can be run on you without your **prior consent** in writing

2. Right to an accurate, complete, and up-to-date background check report

- The information contained in your report should be accurate

3. The information contained in your report should also be up-to-date, meaning that if you were

charged with an offense that was subsequently dismissed, then the charge should be reported as dismissed

4. Right to not have outdated information included in your report

- Under the FCRA, certain information is considered “obsolete” and should not be included on your report. Examples include non-conviction information (arrests, dismissals, etc.) that is more than 7 years old
- Some states have also passed laws restricting the reporting of outdated information, and these laws vary by state

5. Right to dispute the accuracy and completeness of information contained in your report with the Consumer Reporting Agency (CRA)—for example, Checkr—that prepared your report

- Once you notify a CRA of inaccurate information in your report, the CRA is required to conduct a reasonable reinvestigation to check the accuracy of the disputed information
- The reinvestigation must be completed within **30 days**
- If the CRA is unable to confirm the accuracy of the disputed information within 30 days, the information must be removed

6. Right to be notified if an employer or company denies you employment or engagement based on information in your background check report (note that this covers both independent contractors and volunteers). This is called the Adverse Action process, which happens in 2 parts:

- Before any action is taken, the employer/company must provide a **Pre-Adverse Notice**, along with a copy of your background check report and a Summary of Rights under the FCRA. They must also provide you with a reasonable opportunity to dispute the accuracy of the information before final action is taken
- Once an employer/company decides to take final action, they must provide you with a **Post-Adverse** notice

7. If adverse action is taken based on information included in your background check report, you have the right to a free copy of the report for up to 60 days after notification of adverse action

- If your report was run by Checkr, you can access your report through the Checkr website for **up to six months** after the completion date
- If your report was run by another CRA, a free copy is available for **up to 60 days** after you receive notification of adverse action

8. Right to obtain your file (free of charge) from the CRA running your report

- This is your right to all of the information currently in your file maintained by the CRA

What are my rights regarding how a potential employer considers information included in my background check report?

Title VII of the Civil Rights Act (Title VII) is a federal law, which prohibits employment discrimination on the basis of race, gender, religion, etc. The U.S. Equal Employment Opportunity Commission (EEOC) has provided guidance to employers on how best to comply with Title VII when considering criminal record information in employment decisions.

So what does that mean for me, if I have a criminal record and have applied for a job?

As a best practice, the EEOC encourages employers to conduct an individualized assessment to determine whether the criminal record information is relevant to the position for which you applied.

An **Individualized Assessment** means your background check is reviewed by the employer as it relates to you and the specific job you're applying for. Under this assessment, the employer/company takes into account the nature of the job, the time that has passed since the offense, the nature of the crime, and any rehabilitative efforts that have been undertaken by the individual.

Additional factors that are relevant to an individualized assessment include:

- a. The number of offenses for which an individual was convicted.
- b. Evidence that the individual has worked similar jobs without incident since conviction.
- c. Evidence of rehabilitation efforts or job training.
- d. Consistency of employment pre- and post-conviction.
- e. Character or Employment references that bring context to an individual's work history.
- f. Any information provided by an applicant that consists of rehabilitation efforts that demonstrates personal growth or self improvement can be considered evidence of rehabilitation. This evidence of rehabilitation may provide more insight into the eligibility of the individual than the information included in a background check report.

In addition to the EEOC guidance, some states and localities have passed laws **mandating** that employers/companies conduct an individualized assessment before taking an adverse employment action.