

OVERVIEW OF FCRA



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WHAT IS THE FAIR CREDIT REPORTING ACT?

- The Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*, promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies.
- The law’s intent is to protect consumers from the willful or negligent inclusion of inaccurate information in their credit report.
- FCRA regulates the collection, dissemination and use of consumer information.

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EMPLOYER BACKGROUND CHECKS AND FCRA

- Employers must follow specific requirements when using consumer reports to screen job applicants or employees. Employers must:
 - Obtain Employee/Applicant's written permission;
 - Tell Employee/Applicant how Employer intends to use the credit report;
 - Not misuse Employee/Applicant's information;
 - Give Employee/Applicant a copy of the credit report if Employer decides not to hire or fires; and,
 - Give Employee/Applicant an opportunity to dispute or clarify the information contained within the credit report before making a final adverse decision.

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FCRA AND TITLE VII OF THE CIVIL RIGHTS ACT

- Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e.
- How is Title VII relevant to the use of criminal history information?
 - There are two (2) ways in which an Employer's use of criminal history information may violate Title VII:
 - Title VII prohibits Employers from treating job applicants with the same criminal records differently because of their race, color, religion, sex, or national origin ("disparate treatment").
 - Even where Employers apply criminal record exclusions uniformly, the exclusion may still operate to disproportionately and unjustifiably exclude people of a particular race or national origin ("disparate impact").

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DISCLOSURE TO EMPLOYEE/APPLICANT

- An Employer may not procure a consumer report, or cause a consumer report to be procured, for employment purposes unless:
 - a clear and conspicuous disclosure has been made in writing to the applicant at any time before the report is procured; and
 - the consumer has authorized in writing the procurement of the report by that person/Employer.

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CONDITIONS ON USE FOR ADVERSE ACTIONS

- In using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates:
 - a copy of the report; and
 - a description in writing of the rights of the consumer under the Fair Credit Reporting Act, as prescribed by the Consumer Financial Protection Bureau, under section 609(c)(3).

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CIVIL LIABILITY FOR WILLFUL NONCOMPLIANCE

- 15 U.S.C. § 1681n. Civil liability for willful noncompliance.
- Any person who willfully fails to comply is liable to that consumer in an amount equal to the sum of:
 - any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or
 - in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater; and
 - punitive damages as the court may allow; and
 - reasonable attorney's fees as determined by the court.
 - If bad faith or for purposes of harassment, the court shall award attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

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NEGLIGENT NONCOMPLIANCE

- 15 U.S.C. § 1681o. Civil liability for negligent noncompliance.
- Any person who is negligent in failing to comply is liable to that consumer in an amount equal to the sum of:
 - any actual damages sustained by the consumer as a result of the failure; and
 - in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court; and
 - If bad faith or for purposes of harassment, the court shall award attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

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JURISDICTION

- 15 U.S.C. § 1681p. Jurisdiction of courts; limitation of actions.
- An action to enforce any liability created under this title may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of:
 - 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or
 - 5 years after the date on which the violation that is the basis for such liability occurs.

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