

EEOC And FTC Team Up To Offer Guidance On Employee Background Checks

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The U.S. Equal Employment Opportunity Commission (“EEOC”) and the U.S. Fair Trade Commission (“FTC,” the commission responsible for enforcing the Fair Credit Reporting Act) have co-published two technical assistance publications – one [aimed at employers](#) and one [aimed at employees and applicants](#) – explaining how their rules apply to background checks used for hiring, retention, promotion, or reassignment purposes. The EEOC confirmed that it is legal to ask questions about an applicant’s background as long as the questions do not discriminate on the basis of that person’s race, color, national origin, sex, religion, age, disability, or genetic information (and state and local agencies might include additional protected classifications). An employer’s background check process would run afoul of the EEOC’s rules if only applicants of particular protected classes were asked certain questions. The EEOC’s example of a discriminatory process is asking only applicants of one particular race about their financial history or criminal records. The guidance documents also explain the steps an employer must take to conduct a background check. If an employer wishes to obtain a background report from a company in the business of preparing background reports, the Fair Credit Reporting Act requires certain steps to be followed. First, the employer must give the applicant a written document stating that information from the background check might be used in employment decisions. The document must stand alone and be separate from the application. Next, the applicant must give his or her consent to the background check in writing. Finally, the employer must certify to the company performing the background check that the applicant has been notified and has given consent, that the employer has complied with the Fair Credit Reporting Act’s requirements, and that the background check will not be used for discriminatory purposes. Further, once the background check has been conducted, the employer must give the applicant notice that the adverse employment decision was made in part on the results of the background check, give the applicant a copy of the background check, and grant the applicant the right to review the information for accuracy and to provide an explanation.

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