



# **The Fair Credit Reporting Act And Criminal Background Checks: A Trap for the Unwary**

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## **Mission of Pro Bono Partnership of Atlanta:**

To maximize the impact of pro bono engagement by connecting a network of attorneys with nonprofits in need of free business legal services.

## **Pro Bono Partnership of Atlanta Eligibility & Other Information**

- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
  - ✓ Be a 501(c)(3) nonprofit.
  - ✓ Be located in or serve the greater Atlanta area.
  - ✓ Serve low-income or disadvantaged individuals.
  - ✓ Be unable to afford legal services.
- *Visit us on the web at [www.pbpatl.org](http://www.pbpatl.org)*
- We host free monthly webinars on legal topics for nonprofits
  - ✓ To view upcoming webinars or workshops, visit the **Workshops Page** on our website
  - ✓ Join our mailing list by emailing [rla@pbpatl.org](mailto:rla@pbpatl.org)

## **Legal Guidelines**

**This webcast presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.**

## Overview of the webcast

- Do I have to comply with the FCRA?
- Who is protected?
- What are the basic procedures for compliance?

## **Do I have to comply with the FCRA?**

- The short answer is “YES.”
- The FCRA is not limited to credit reports, but extends to “consumer reports.”
- The definition of “consumer reports” is very broad.
- If you are running criminal background checks on prospective or current employees, you must comply.

## Who is protected by the FCRA?

- Prospective employees/job applicants.
- Current employees.
- Others who may not technically be employees, e.g. volunteers, independent contractors, etc.



## **What are the procedures for compliance?**

- Disclosure
- Authorization
- Pre-Adverse Action Notice
- The Waiting Period
- Post-Adverse Action Notice



## The Disclosure Requirement

- The employer must give the applicant a “clear and conspicuous” disclosure that it intends to conduct a criminal background check.
- The disclosure must be in writing.
- The disclosure must be “in a document that consists solely of the disclosure.”
- The disclosure must be given before the background check “is procured or caused to be procured.”

15 U.S.C. § 1681b(b)(2)

# Examples of Non-Compliant Disclosures

**CONSUMER REPORT/INVESTIGATIVE CONSUMER REPORT DISCLOSURE**

In connection with your employment or application for employment (including independent contractor assignments, if applicable) and in accordance with pertinent laws, \_\_\_\_\_ may obtain or assemble consumer reports and/or investigative consumer reports (collectively, "Reports") related to information concerning your: previous employment (including employers, dates of employment, salary information, reasons for termination, etc.); academic history, verification of references and verification of other information supplied by you, professional credentials, drug/alcohol use in violation of law and/or company policy, driving record, accident history, workers' compensation claims, credit history, creditworthiness, credit capacity, bankruptcy filings, criminal history records and information about your character, general reputation, personal characteristics and mode of living (collectively, "Information"). Information may be obtained from government agencies, educational institutions, \_\_\_\_\_ clients, personal references, personal interviews and other information sources (collectively, "Suppliers").

Upon providing proper identification and subject to applicable legal requirements and restrictions, you have the right to request the nature and substance of all Information in \_\_\_\_\_ files pertaining to you, as well as information including, but not limited to: (i) whether any Reports have been provided by \_\_\_\_\_ to other parties; (ii) identification of any Suppliers utilized by \_\_\_\_\_ in compiling such Reports; and (iii) identification of any recipients of Reports furnished by \_\_\_\_\_ within certain statutorily-prescribed time periods preceding your request. \_\_\_\_\_ may be contacted by mail at P.O. Box 33181, Tulsa, Oklahoma, 74153, or by phone at (800) 361-0645.

- Check this box if you are applying for employment in **California** and/or you are a California resident and, in either case, you wish to receive a copy of your **consumer credit report or investigative consumer report** if one is obtained or assembled by \_\_\_\_\_. Pursuant to the California Civil Code, during normal business hours you may view the file maintained on you by \_\_\_\_\_. You may also obtain a copy of this file by submitting proper identification and paying any statutorily-prescribed costs for such file by contacting \_\_\_\_\_ in person, by mail or by phone. \_\_\_\_\_ is required to have personnel available to explain your file to you and must explain to you any coded information appearing in your file. If you appear in person, a person of your choice may accompany you provided that this person furnishes proper identification.
- Check this box if you are applying for employment in **Oklahoma** and/or you are an Oklahoma resident and, in either case, you wish to receive a copy of your **consumer report** if one is obtained or assembled by \_\_\_\_\_.
- Check this box if you are applying for employment in **Minnesota** and/or you are a Minnesota resident and, in either case, you wish to receive a copy of your **consumer report** if one is obtained or assembled by \_\_\_\_\_.

If you are a **Maine, Massachusetts, New York or Washington State** applicant, employee or contractor, please also refer to the additional state law notices attached herewith.

**AUTHORIZATION FOR RELEASE OF INFORMATION**

I hereby authorize \_\_\_\_\_ to obtain information and disclose information to its customers ("Customers"), if applicable, for the purpose of making a determination as to my eligibility for employment (including independent contractor assignments), promotion, retention or other lawful purpose. If hired or contracted, I authorize \_\_\_\_\_ and \_\_\_\_\_ Customers, if applicable, to retain this document on file to act as ongoing authorization for the procurement and assembly of Reports at any time during my employment or contract period. As permitted by law, I fully release \_\_\_\_\_ and Suppliers from all claims of damages related to the investigation of my background and provision of information as set forth in this document. I agree that information in \_\_\_\_\_ possession and my employment history with Customers if I am hired or contracted may be supplied by \_\_\_\_\_ to other \_\_\_\_\_ Customers for legally permissible purposes.

By signing below, I certify that: (i) all information provided herein is complete and accurate; (ii) I have read and fully understand this disclosure and authorization for release; (iii) prior to signing I was given an opportunity to ask questions and to have those questions answered to my satisfaction; (iv) I execute this authorization voluntarily and with the knowledge that the information obtained pursuant to this authorization could affect my eligibility for employment, independent contractor status, promotion, retention or other lawful purpose; (v) I understand I may review this document with legal counsel prior to signing; (vi) I authorize \_\_\_\_\_ and any person or entity contacted by \_\_\_\_\_ to furnish the above-mentioned information; and (vii) facsimile or e-mail copies of this authorization are as valid as an original.

Print Applicant Name: \_\_\_\_\_ Social Security #: \_\_\_\_\_

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Applicant Address: \_\_\_\_\_ Applicant Phone Number: \_\_\_\_\_

# Examples of Non-Compliant Disclosures

**FAIR CREDIT REPORTING ACT DISCLOSURE**

In connection with your application for employment/lease with \_\_\_\_\_ and/or its affiliates and subsidiaries \_\_\_\_\_ may obtain a Consumer Report and/or an investigative Consumer Report regarding your character, general reputation, mode of living, motor vehicle record, criminal background record and/or other appropriate public record information from a Consumer Reporting Agency, as those terms are defined in the Fair Credit Reporting Act and amendments ("FCRA"). These reports may also include the names and dates of your previous employer/lessor, reasons for the termination of your prior employment/lease, work experience and any other type of information authorized under the FCRA or other applicable laws. Such reports may come from federal, state, local and/or any other agencies which contain and/or maintain such records. You may request in writing a complete disclosure of the nature and scope of the investigation to be performed.

**FAIR CREDIT REPORTING ACT AUTHORIZATION**

I hereby authorize \_\_\_\_\_ to obtain consumer reports and/or investigative consumer reports, ("Consumer Reports") from any appropriate Consumer Reporting Agency and understand that such Consumer Reports may be used by \_\_\_\_\_ in the determination of whether or not to offer me employment/lease.

I understand that I have the right to make a request of such Consumer Reporting Agencies, upon proper identification, of the nature and substance of all information in such files on me, including the source of information and recipients of any reports on me which have been previously furnished by the Consumer Reporting Agencies within the two year period preceding my request.

I hereby consent to allowing \_\_\_\_\_ to obtain such Consumer Reports from any and all appropriate consumer reporting agencies and agree that such information maintained by such consumer reporting agencies will be supplied to and/or any other companies which subscribe to said services. I therefore authorize the procurement of said Consumer Reports by \_\_\_\_\_ and, if hired/leased by \_\_\_\_\_ understand that this authorization shall remain on file and shall serve as on-going authorization for \_\_\_\_\_ to procure additional Consumer Reports on at least an annual basis, or at any other time during my employment/lease (this consent can be provided verbally as well).

**For California Residents Only:**  
 You may request a free copy of your Consumer Report ordered from \_\_\_\_\_ by calling their toll free number (1-800-331-9175) during normal business hours or writing to: \_\_\_\_\_ S. 129th E. Avenue, Suite 200, Tulsa, OK 74134. You may also dispute the accuracy or completeness of any information in the Consumer Report with \_\_\_\_\_.

Please check the box & complete the following if you would like to receive a copy of your Consumer Report from \_\_\_\_\_ (Print this form - complete the information below - send form to your Recruiter).

Name (print): \_\_\_\_\_

Signature: \_\_\_\_\_

Social Security Number: \_\_\_\_\_ Date: \_\_\_\_\_

## The Authorization Requirement

- The applicant must “authorize” the employer to procure a criminal background check.
- The authorization must be in writing.
- The authorization can be on the disclosure statement.
- Employers can obtain blanket authorization to conduct criminal background checks on current employees at the time they apply for the job.
- Electronic applications must comply with E-Sign.

15 U.S.C. § 1681b(b)(2)

## **Pre-Adverse Action Notice**

- Notice of possible adverse action.
- A copy of the background check.
- A summary of the applicant's rights under the FCRA in the form prescribed by the FTC.

15 U.S.C. § 1681b(b)(3)



## The “Waiting Period”

- Before taking adverse action based on the background check, the employer must wait a “reasonable” period of time.
- The purpose of this requirement is to allow the applicant to challenge the accuracy of the report.
- What is “reasonable” depends. The absolute minimum is five (5) days. Ten (10) days or two weeks is better.

## Post-Adverse Action Notice

- Notice of the adverse action.
- The name, address and telephone number of the background screening company that provided the consumer report.
- A statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken.
- Notice of the applicant's rights under the FCRA.

15 U.S.C. § 1681m(a)



## **For More Information:**

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

**Phone: 404-407-5088**

**Fax: 404-853-8806**

**Info@pbpatl.org**

**www.pbpatl.org**