



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Employers Should Be Careful When Obtaining Authorization for Background Checks

Many nonprofit employers conduct background checks on potential employees and volunteers. The process for conducting such checks is regulated by the Fair Credit Reporting Act (“FCRA”). Recently a court clarified one important aspect of the FCRA.

Employers must obtain a signed “Disclosure and Authorization” form from an applicant before conducting a background check. This form is often referred to as a “Release”, as in a “release of information”, but this description is misleading. As the name suggests, the intent of the form is to disclose to the applicant that, as part of the hiring process, an employer may obtain a consumer report, and to obtain the applicant’s written authorization to do so. The types of information that may be obtained in the consumer report include, but are not limited to: social security number verifications, credit reports, educational and employment history verifications, driving records, and personal and professional reference checks.

FCRA requires that the Disclosure and Authorization form be a completely standalone document, without any additional information. Since the form includes the authorization to conduct a background check, it may include a request for certain identifying information needed to do so (i.e., name, date of birth, social security number, etc.). Some states require “check the box” language that a consumer can initial to receive a copy of his or her report. This information is permitted in the Disclosure and Authorization form, but nothing else.

The form may not be a part of boilerplate language at the end of a job application, nor may it be any part of the employment application. Company policy language, drug screen information, or other miscellaneous items may not be included on the form. A recent court decision addressed the question of whether an employer may include language asking the applicant to release the company and others from any liability and responsibility in connection with the consumer report. The court ruled that employers may not include this “release of liability” and it must be a separate, standalone document. Failure to present the Disclosure and Authorization form as a separate document makes the employer potentially liable for significant damages and court costs.

For more information on the Fair Credit Reporting Act’s requirements and forms, including a sample Disclosure and Authorization form, please visit our website for the webinar and materials on [Background Checks](#).

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