

# Disclosure And Authorization

## What You Must Know Before Running A Background Check



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It's important to run background checks on candidates, employees, contractors, volunteers and anyone else who might represent your business or organization. When you do, you must comply with a federal law called the Fair Credit Reporting Act (FCRA). An essential part of compliance is to always disclose the intent to run a background check and receive authorization before you begin.

Employers that fail to do this are commonly hit with costly class action lawsuits.

### Disclosure

Before ordering a background check, employers must inform the person by providing a disclosure. This must be a standalone document. It cannot be included within a job application and it may not contain any additional content.

A disclosure explains the nature and scope of the intended background investigation. It informs the applicant that you wish to run a consumer report on them and lists what types of information would be included. The text must be clear, easy to understand and include contact information for the Consumer Reporting Agency (CRA) that would compile the report.

### Authorization

In addition to the disclosure, employers must provide an authorization document. It is illegal to run a background check on any person, including criminal or social media searches, without first obtaining their authorization.

Like a disclosure, the authorization must be a standalone document. It should request consent for a background check, include contact information for the CRA that would compile the report and any relevant state laws. Beyond that, it may not contain any additional content.

### Why Are These Documents Required?

Aside from being mandated by federal law, these documents inform individuals that an employer wishes to run a background check on them. The employer must have a permissible purpose, like confirming a person is qualified and eligible for a position, and consent before a background check can be run.

### What Content Should Be Excluded?

Both the disclosure and authorization should exclude content that is not relevant to their specific purposes. Liability waivers, job requirements and other content may not be included. Anything that detracts from the purpose of these documents, including unnecessarily verbose or confusing language, is prohibited.

### State Laws

Some states have laws employers must follow during the background screening process. For example:

- People in California, Minnesota and Oklahoma must have the option to check a box that indicates they would like to receive a free copy of their background check report.
- New York requires a copy of Article 23-A be provided to applicants before background checks are run.

Consult with your legal counsel to find out if any state laws apply where you operate.

### How Do I Ensure My Documents Are Compliant?

If you have questions or concerns about your current disclosure and authorization documents, stop using them immediately. Using non-compliant documents is an unnecessary and easily avoidable risk.

Backgrounds Online provides compliant sample documents that you can download from our Resource Center. Review them with your legal counsel and customize as needed. Our sample packet includes other necessary documents such as A Summary Of Your Rights Under The FCRA.

Please note that laws occasionally change. If any relevant updates occur, we will revise our sample documents accordingly. We recommend that you download them periodically to ensure everything you have is up-to-date. If major changes are made to any document we offer, we will notify our clients via email.

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## What Do I Do With These Documents After They Are Signed

Once an individual agrees to the disclosure and authorization documents, you can order a background check. Backgrounds Online provides a convenient Applicant Self-Submittal flow to simplify the process. It empowers our clients to have people send the information we need directly to us and ensures each person electronically agrees to all relevant federal and state documents. In some cases, we may require additional documentation to complete a background screening, such as to run a credit report.

If you have physical copies of the required documents, best practice is to keep them for 5 - 7 years, even if the person was not hired. They must be stored in a secure location. After that time, the documents may be disposed of in a manner which complies with the Federal Trade Commission's Disposal Rule.

## In Summary

The FCRA protects consumer rights and provides simple guidelines to help ensure consumer information is handled appropriately. When reviewing your background screening process, remember:

Disclosure and authorization documents must be clear, conspicuous and not contain any additional content.

These must be standalone documents.

The subject must agree to both documents and give consent before a background check can be run.

Our Applicant Self-Submittal flow ensures the people you screen authorize the required documents and that they are saved electronically.

Keep physical copies of your disclosure and authorization documents secure confidential.

Dispose of them properly when the time arrives.

Make sure you are compliant with state laws where you operate.

Have legal counsel confirm your hiring and background screening policies are up-to-date and compliant.