

EMPLOYMENT APPLICATIONS AND THE FAIR CREDIT REPORTING ACT (FCRA)



Company employment applications are an often-overlooked piece of hiring a new employee. Without the proper attention, the company could be at risk for non-compliance with federal and applicable state law.

Disclosures within employment applications may violate the FCRA

- In 2017, the 9th Circuit Court of Appeals in *Syed*, (846 F.3d 1034 (9th Cir. 2017)) opined that a company violated the FCRA when they included a liability waiver on the Disclosure document contained *within* the job application
- “[A]n implied exception permitting the inclusion of a liability waiver on the same document as the disclosure does not comport with the FCRA’s basic purpose.” *Id.*
- “[A] liability waiver does just the opposite -- it pulls the applicant’s attention away from his privacy rights protected by the FCRA by calling his attention to the rights he must forego if he signs the document.” *Id.*

FCRA Compliance

- The Disclosure document discloses to the prospective employee that you intend to procure a consumer report.
- The Disclosure and Authorization should be stand-alone and separate from any other documentation.
- The Federal Trade Commission (FTC) has recommended to “Keep Disclosures Simple” (see their article: *Background checks on prospective employees: Keep required disclosures simple*).
- Do not include language that claims to release you from liability for conducting, obtaining, or using the background screening report.
 - This extraneous information not only makes it harder for the prospective employee to understand the main purpose of the document, it also may violate the FCRA.
 - Adding other acknowledgements or releases of liability is beyond the scope of what the FCRA permits in this document.
 - If you have additional waivers, authorizations, or disclosures you want to give to prospective employees, do it in a separate document.

State and Local law

- Fair Chance Hiring and “Ban the Box” laws continue to expand across the nation and eliminate the prior criminal history question from job applications.
 - “Ban the Box” laws currently affect 33 states and more than 150 cities.

Validity’s Recommendation

- We have established a best practice of separating the Disclosure and Authorization forms from one another to add clarity to the message of the documents and ensure that prospective employees understand them.
 - Validity’s Compliance Automation Software was designed to solve the largest problem facing employers’ background screening practices – non-compliant release forms. We offer this solution as an easy way to avoid the common pitfalls of non-compliant technical screening practices.

To learn more about Validity’s Compliance Automation Software, FCRA-compliant documents, or for a more detailed review, please contact us at 866.915.0792 or visit us at www.validityscreening.com.

EMPLOYMENT APPLICATIONS AND THE FAIR CREDIT REPORTING ACT (FCRA)



Sources:

Federal Trade Commission <https://www.ftc.gov/news-events/blogs/business-blog/2017/04/background-checks-prospective-employees-keep-required>

National Employment Law Project <https://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>

Additional Resources:

<https://www.littler.com/publication-press/publication/ninth-circuit-first-appellate-court-rule-%E2%80%9Cextraneous-text%E2%80%9D-fcra>

Disclaimer: This resource has been prepared by Validity Screening Solutions for general educational and informational purposes only and is not legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. Please seek professional counsel before acting upon this information. The material contained within should not be construed as legal advice or a legal opinion on any specific facts or circumstances. Please consult a lawyer concerning your own situation and any specific legal questions you may have.