

EEOC AND FTC ISSUE GUIDANCE ON EMPLOYMENT BACKGROUND CHECKS

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On March 10, 2014, the Equal Employment Opportunity Commission (EEOC) and the Fair Trade Commission (FTC) released joint guidance documents that explain respective duties and rights for employers and employees in regard to employment background checks. While the guidance documents merely reiterate existing law, they draw attention to the fact that the federal commissions intend to step-up their efforts to ensure that employers are in compliance with all aspects of the law when using background checks to make employment decisions.

The EEOC and FTC issued two separate documents—one for employers and one for employees—that explain the effect that the federal anti-discrimination laws and the Fair Credit Reporting Act (FCRA) have on employment background checks. Most notably, the document for employers draws attention to the following important reminders:

- Employers may require background checks or ask questions about an employee's or applicant's background, but the questions may not consider medical history or genetic information.
- Employers may not use background information to discriminate based on age, race, color, national origin, sex, religion, disability, genetic information, age, or other protected characteristics.
- Employers must apply the same standards to everyone and treat everyone equally. Specifically, employers may not base employment decisions on background problems that may be more common among people of a certain classification.
- When using a company in the business of conducting background searches, employers must follow a number of procedural requirements to ensure that employees and applicants are aware that the information may be used for employment decisions. The employer must also certify to the company conducting the investigation that the employee was notified and gave written consent to the search, the employer has complied with all requirements under the FCRA, and that the employer will not use the information in a discriminatory manner.

The guidance documents explain a number of other important issues to consider before employers conduct a background search or make any employment decisions based on the information. This joint guidance serves as a helpful and important reminder to employers to revisit and review their background check policies and practices to ensure that they are in full compliance with federal, state, and local law.