

Credit Reports and Background Checks

YOUR LEGAL RIGHTS

1. Does an employer have the right to access my credit report?

Under the federal Fair Credit Reporting Act and California Consumer Reporting Agencies Act, anyone with a “legitimate business need” may access your credit report. Employers have a legitimate business need to see an applicant’s or employee’s consumer credit as part of their background check as long as the employer uses this report to evaluate the applicant for hire and to evaluate a current employee for promotion, retention, or reassignment.

2. Does an employer need to provide notice that it is accessing my credit report?

Yes. If an employer accesses an employee’s or applicant’s credit report, the employer must give written notice to the individual ahead of time. This notice must include the source of the report and should allow the applicant to receive a copy of the report at no charge. The written notice must be:

- Clear and straightforward so that the applicant or employee knows a credit report will be obtained for employment purposes; and
- A separate, stand-alone document that is not combined or “buried” with other documents or information.

Exception: Notice is not required if an employer uses a third party, such as an investigation agency, to conduct an investigation of an employee suspected of *wrongdoing* or *misconduct*, such as sexual harassment. In such case, the employers also not required to disclose the findings to the employee before any adverse action is taken.

3. Does the employer need my permission to access my credit report?

If an employer uses a *third party* to conduct a background check or to access the credit report of an employee or applicant, the employer must obtain written consent prior to beginning the investigation/accessing the credit report. If an employer conducts his or her *own* investigation or obtains their own credit report, the employer must obtain consent either verbally or by including it in a job application or other document.

Exception: Consent is not required prior to conducting a background check or prior to accessing an employee’s credit report, if the employer suspects an employee of wrongdoing or misconduct.

4. How long does my consent last?

If the employer wishes to conduct an additional background check from an employee in the future, it may do so for employment purposes only, by obtaining written consent from the employee. An employer does not need permission to run an additional check however, if they suspect the employee of wrongdoing or misconduct (CA Civil Code §1786.16(2)).

5. Are certain things from my past excluded from the credit report?

Under California law, a credit report MAY NOT contain any of the following:

- Medical information (unless you give your consent);
- Bankruptcies over 10 years old;
- Suits or judgments more than 7 years old;
- Unfavorable eviction actions;
- Tax liens more than 7 years old; and
- Records of arrest, indictment, misdemeanor complaint, or conviction more than 7 years old.

Under federal law however, a credit report MAY contain records of criminal convictions indefinitely.

6. Can an employer use my credit report against me?

An employer may take adverse action based on a consumer credit report, but it also has to:

- Give written notice to the individual;
- Furnish the employee with the name, address and phone number of the credit agency;
- Provide a statement that informs the employee that the adverse action was taken in whole or in part due to information in the report; and
- Inform the individual that s/he can receive a free copy of the report and that s/he has the right to dispute its accuracy or completeness.

If an employer takes adverse employment action based on a report obtained through an investigation of employee *wrongdoing* or *misconduct*:

- A copy of the report must be provided to the employee;
- The sources of the information, such as the name, address and phone number of the credit agency needn't be revealed; and
- A description of the employee's rights concerning that report.

7. Does the credit report contain information from the “Megan’s Law” sex offender database?

While a consumer credit report may contain information found in the “Megan’s Law” (registered sex offender database), the employer is not permitted to use this information for employment-related decisions unless the employer could reasonably believe that the information would put someone at risk. To determine this risk, the employer must perform a full assessment of the employee and the job to determine if disregarding the information would put someone at risk.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, please call:

The Workers’ Rights Clinic

415-864-8208 (SF Bay Area) or 866-864-8208 (Toll Free in CA)

The Workers’ Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

