

Background Checks: Stepped-Up Enforcement of Fair Credit Reporting Act "FCRA"

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By this time, most employers realize that the [Fair Credit Reporting Act](#) governs all types of **employment-related background checks**, not just credit checks. If and to the extent there was ever any **question whether Google searches or searches of various social media sites constitute “background checks” subject to the FCRA**, that question has been put to rest with an \$800,000 settlement with Spokeo, Inc. Further, if and to the extent there was ever a question about whether the FTC was serious about enforcing the FCRA, that question, too, has been put to rest with a \$2.6 million dollar settlement between the Federal Trade Commission and HireRight Solutions, Inc.

Employers who use a “**consumer reporting agency” (CRA)** to compile information that “is used or is expected to be used” as a factor in establishing an individual’s eligibility for employment must comply with the FCRA. Among other things, the employer must obtain written authorization to conduct the background check, and must provide the individual with notice of his or her rights under the FCRA along with information about the CRA. If the information contained in the “consumer report” summarizing the background check is factored into the employer’s decision to take an adverse action (such as declining to make an employment offer or to grant a promotion), the employer must provide advance notice of its intent to take the adverse action and must provide the individual the opportunity to dispute the accuracy or completeness of any information in the report.

The FCRA also imposes certain requirements on CRAs. Specifically, among other things, a CRA must take reasonable steps to ensure that the consumer report information would be used for a permissible purpose and that the information it compiles is accurate. A CRA must also allow consumers to access their information and dispute inaccuracies, and to conduct timely investigations of disputed items in the files.

In the *Spokeo* case, [according to the FTC](#), Spokeo violated the FCRA by collecting and compiling personal information from both online and offline data sources, including social networks, to create detailed personal profiles which it then marketed as an employment screening tool. In doing so, the FTC alleged, Spokeo failed to take reasonable steps to verify that the consumer report information would be used for a permissible purpose and to ensure accuracy of its consumer reports. As to [HireRight](#), the FTC alleged that it violated the FCRA by failing to take reasonable steps to ensure that the information it compiles is accurate, to give consumers copies of their reports, or to investigate disputes over the accuracy or completeness of the information.

The FTC's recent stepped-up enforcement of the FCRA, together with the EEOC's recent focus on challenging the [use of arrest and conviction records](#) in making employment decisions, make it clear that these agencies paying close attention to employers that use background checks to help make employment decisions. Now, more than ever before, employers who use background checks must pay strict attention to the nuances of the FCRA and to EEOC perspectives.

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