

# OREGON

*Disclaimer: The resources provided here are for educational purposes only and do not constitute legal advice. You should consult with your own counsel if you have legal questions related to your compliance with applicable laws, company policies and practices.*

## **Oregon Employer Guide to Background Checks [2021]**

Background checks are an essential part of the hiring process. The Fair Credit Reporting Act **FCRA** exists to protect employers and applicants. It promotes accuracy, fairness and privacy of information contained in consumer reporting agency files. The FCRA is the national standard for employment background checks.

It guarantees applicants certain rights:

- The right to informed consent before a pre-employment background check is performed.
- The right to review information in their background check and correct mistakes.
- The right to be informed when information from a pre-employment background check is used to make decisions that adversely affect them.
- The right to appeal adverse decisions made based on the information in their background checks when they believe inaccurate information was used to make the decision.

Oregon does not have any statewide or local laws that impact employers and their use aside from the Fair Credit Reporting Act. However, there are a variety of state and local laws that regulate the **use** of criminal and credit information.

# EMPLOYER REQUIREMENTS

## Consent Disclosure

- Make a **clear and conspicuous disclosure in writing** to the individual in a **document which consists solely of the disclosure** that you may obtain a consumer report for employment purposes.
  - **The disclosure must be on its own page.** It should not be part of an employment application or include any liability waivers.
  - It must identify the name, address, telephone number, and privacy policy of the company compiling the report.
- Obtain the applicant's written authorization. (The applicant authorization may be included in the disclosure).
- If the background check will include an investigative report (interviews with former employers, co-worker's etc.) Note that the investigation may include information on the "consumer's character, general reputation, personal characteristics, and mode of living."

***The only exception to the above is suspicion of wrongdoing or misconduct. Then no notice or consent is required.***

## EMPLOYMENT CREDIT REPORTS

Oregon state employers may not access the credit reports of employees or job applicants.

There are exceptions which include.

- Federally insured banks or credit unions.
- Employers who are required by law to use credit history for employment purposes.
- Applicants for public safety officers who enforce criminal laws or laws related to airport security.
- Applicants for positions where credit history is "substantially job related" Employers must disclose the reason in writing to the applicant.

Credit history information may be considered "substantially job-related" if:

- An essential function requires access to financial information beyond that typically required in a retail transaction. Meaning if the employee would

- have access to information beyond credit card numbers, checking accounts or debit card numbers; or
- The employer is required to obtain credit history information as a condition of bonding or insuring the employee.

It is good practice to review with your legal counsel regularly to identify and clearly document categories of employees for whom credit information is related to their job responsibilities to justify why credit checks are necessary.

## **ADVERSE ACTION**

If an employer decides not to hire a candidate based on information contained in their background report, it is an **adverse action**. Before taking this action, employers should review EEOC guidelines for the use of arrest and conviction information.

[Taking an adverse action is a two-step process.](#)

### **Pre-Adverse Action – Employer must notify the applicant in writing.**

- The notice must identify the information in the report being used to make the decision.
- An unredacted copy of their report and a summary of their rights.
- Give the applicant time to correct or change any false or incorrect information on their background report.
- Review any additional information provided by the candidate.

### **Adverse Action – Employer must notify the applicant in writing.**

If an employer still decides not to hire the applicant based on information in their report, the applicant must be sent an **Adverse Action Notice**. The Notice must include:

- The contact information for the consumer reporting agency which prepared the report.
- Provide the applicant with a summary of rights and their right to file a dispute.
- Include a statement that the consumer reporting agency did not make the decision to take adverse action.

## **BAN THE BOX/FAIR CHANCE**

**Statewide** employers may not exclude an individual from an initial interview based solely on the existence of a past criminal conviction. Employers cannot require applicants to disclose criminal conviction information on employment applications, prior to an initial interview. If no interview is conducted, then prior to extending a conditional offer of employment. This does not apply to non-employee volunteers.

Nothing prevents an employer from considering an applicant's conviction history when making a hiring decision.

**Portland** applies to employers within the City that have six or more employees were the position is performed most of the time within the City. This does not apply to volunteers.

Employers may rescind a conditional offer of employment based upon an applicant's criminal history if an employer determines that a specific offense or conduct is job related and consistent with business necessity. Employers must conduct an individualized assessment taking into consideration:

- The nature and gravity of the criminal offense.
- The time that has elapsed since the criminal offense took place.
- The nature of the employment held or sought.

Employers shall not consider:

- Arrests that did not lead to conviction, unless a crime is unresolved, or charges are pending.
- Convictions that have been judicially voided or expunged.
- Charges that have been resolved through the completion of diversion or deferral of judgment program for offenses not involving physical harm or attempted physical harm to a person.

If rescinding a conditional job offer, employers must follow adverse action procedures.

## **SALARY HISTORY**

**Statewide** employers are prohibited from seeking salary history of an applicant from current or former employers or from the applicant. Employers can request written authorization from applicants to confirm prior compensation only after extending an employment offer to the applicant that includes compensation.

Employers or agencies are prohibited from screening job applicants and determining compensation for a position based on current or past compensation. Compensation includes wages, salary, bonuses, benefits, fringe benefits and equity-based compensation.

Employers may not discriminate between employees based on their status as a member of a protected class in the payment of wages or other compensation for work of comparable skills.

## **SOCIAL MEDIA**

It is unlawful for an employer to:

- Require or request an applicant or employee to establish or maintain personal social media accounts, or to disclose or to provide access through the applicant's or employee's username and password, password or other means of authentication that provides access to personal social media accounts.
- Require an employee or applicant to authorize the employer to advertise on their personal social media accounts.
- Compel an employee or applicant for employment to add the employer to the employee's or applicant's list of contacts.
- Compel an employee or applicant to access a personal social media account in the presence of the employer and in a manner that enables the employer to view the contents of the personal social media account that are visible only when the account is accessed by the account holder's username and password, password, or other means of authentication.
- Take, or threaten to take, any action to discharge, discipline or otherwise penalize an employee for the employee's refusal to comply with an employer's request that violates this law.

An employer may require an employee to disclose any username and password information for accessing an account provided by, or on behalf of, the employer.

Employers may access social networking account information if it is related to an investigation or other factors related to compliance.

Employers can view publicly available information.

## **CRIMINAL REPORTING HISTORY**

Oregon is subject to the FCRA regulations in respects to the reporting of Criminal History. The regulation is seven years. Reports cannot include records of arrest for a crime which did not result in a conviction that is more than seven years old. The reporting period runs from the date of the reported event. This time limit does not apply to the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal \$75,000 or more.

Criminal convictions can be reported without limitation as to the length of time

that they antedate the report.

## COMPLIANCE MADE EASY

Understanding the FCRA and Oregon state and local screening requirements can be complicated. Bay Area Background Checks screening tools make delivering the right documents to your candidates easy and consistent.

- Our background checks are designed to suit you and your business.
- The screening platform is easy to use across all your mobile devices.
- Our **quick app** tool delivers all required federal, state and city notices to your candidates electronically based on their work location via email or text.
- Automated adverse action support includes all the forms you need.
- No set-up or monthly fees make it easy to get started.

If you'd like to learn more visit us at [www.bayareabackgroundchecks.com](http://www.bayareabackgroundchecks.com) or call for a complimentary consultation: 888-551-8360.

### Sources:

- [Credit history Oregon Public Law Statute 659a.320](#)
- [Criminal Conviction History ORS 659A.360](#)
- [Removing Barriers to Employment | Portland.gov](#)
- [Restricting salary history inquiries ORS 659A.357](#)
- [Compensation ORS 652.210 Amended](#)
- [Employee Social Media ORS 659A.330](#)
- [The Fair Credit Reporting Act](#)