

WASHINGTON

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.

Washington 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 an applicant the right to obtain a copy of their background check report and allows them to file a dispute if the report contains inaccurate or incomplete information.

Washington has requirements like the Fair Credit Reporting Act along with local and state requirements. Generally, these laws apply to any applicant applying for employment in Washington. If an applicant lives in a different state, but will be working in Washington, they are still protected. Employers may not request a **consumer report** without first notifying the applicant and obtaining their authorization. When obtaining **investigative consumer reports** employers have three days to notify the applicant.

EMPLOYER REQUIREMENTS

Consumer Reports

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 applicants written authorization.
 - ❖ The applicant authorization may be included in the disclosure.

Investigative Consumer Reports

- Make a **clear and conspicuous disclosure** to the individual in a **document which consists solely of the disclosure** that you may obtain a consumer report for employment purposes. Note the investigation includes information on the “consumer’s character, general reputation, personal characteristics, and mode of living.”
- The disclosure must be in writing either mailed or otherwise delivered to the consumer not later than three days after the date on which the report was first requested.
- Include a statement informing the applicant of their right to request additional disclosures and provide a written summary of their rights; or
- That the report is to be used for employment purposes for which the applicant has not specifically applied.
- If the applicant requests further information, the employer must provide, in writing a complete and accurate disclosure of the nature and scope of the investigation requested within five days.

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

EMPLOYMENT CREDIT REPORTS Washington state employers may not access the credit reports of employees or job applicants unless such information is substantially related to the individual's current or potential job responsibilities. 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

Employers may not advertise employment openings in a way which excludes individuals with criminal records from applying. Employers may not have any

policies or practices which would automatically exclude individuals with criminal records.

Under Washington State Law, employers with one or more employees may not inquire about criminal history either verbally or in writing (job application), until the applicant is determined to be “otherwise qualified” defined as: The applicant meets the basic criteria for the position as set out in the advertisement or job description without consideration of a criminal record.”

Inquiries concerning convictions can be justified for business necessity if the crimes reasonably relate to the job duties and if these convictions or release from prison occurred within the last ten years.

Aside from State law, Seattle and Spokane have legislation which impact criminal record inquiries.

Seattle applies to employers with one or more employees. Employees are covered by the law when the physical location of services performed is in whole or part, at least 50 percent of the time, within the geographic boundaries of the City.

Employers may not perform criminal background checks or inquire about criminal history until after eliminating unqualified applicants.

Employers may not take adverse action based solely on an individual’s arrest record. However, they may act based on conduct related to the arrest if there is a legitimate business reason. Notice must be given to the applicant of the conviction and the basis for the decision. Employers must hold the job open for two business days.

Additional requirements for Seattle which should be reviewed in the sources section below.

Spokane applies to employers that are acting directly or indirectly within the city limits of Spokane and the applicant will be performing most of their duties within the City.

Employers cannot inquire into criminal history on job applications. Employers are prohibited from inquiring orally or in writing about criminal history or obtaining a criminal background report until after there is an in-person or video interview or the applicant has received a conditional offer of employment.

In addition to the statewide laws, employers cannot disqualify an applicant because of an arrest or conviction unless it significantly relates to job duties. Employers cannot reject or disqualify an applicant for failure to disclose a criminal record prior to initially determining the applicant is otherwise qualified for the position.

Additional requirements for Spokane which should be reviewed and can be found in the sources section below.

SALARY HISTORY

Statewide employers are prohibited from seeking the wage or salary history from an applicant or require that the applicant's salary history meet certain criteria. Employers can confirm wage or salary history if it is volunteered by the applicant or after an offer is extended to the applicant which includes compensation details. Employers with fifteen or more employees must provide the minimum wage or salary for a position upon an applicants or employees request when offered an internal transfer to a new position or a promotion. If there is no wage scale or salary range, employers must provide the minimum wage or salary expectation prior to posting a position, making a position transfer, or making the promotion.

SOCIAL MEDIA

An employer may not request, require, or otherwise coerce an employee or applicant to:

- Disclose login information for an applicant's or employee's personal social networking accounts.
- Access their personal social networking account in the employer's presence.
- Add a person, including the employer, to the list of contacts associated with personal social networking accounts.
- Take adverse action against an individual because they refuse to comply with an employer's request prohibited under this law.

Employers may access social networking account information if it is related to an investigation or other factors related to compliance. The law does not apply to employer-issued devices or accounts. More information about these laws can be found in the sources section below.

CRIMINAL REPORTING HISTORY

Washington restricts the reporting of arrest records, indictment, or criminal

convictions that, from the date of disposition, release, or parole, predate the report by more than 7 years for applicants that have an expected salary of \$20,000 or less per year. If the salary is reasonably expected to be more than \$20,000 the 7-year restriction does not apply. While some screening agencies may report infractions, Bay Area Background Checks does not.

COMPLIANCE MADE EASY

Understanding Washington screening requirements and keeping up with the changes in recent years is not easy. 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 or call for a complimentary consultation: 888-551-8360.

Sources:

- [Washington Consumer report—Furnishing—Procuring](#)
- [Washington Investigative Consumer Reports](#)
- [Disclosures to consumer—Procedures. \(wa.gov\)](#)
- [Washington-CCRA Summary of Rights](#)
- [EEOC Consideration of Arrest and Conviction Records](#)
- [SB1298 WA Fair Chance Act](#)
- [Preemployment Inquiries Convictions](#)
- [Seattle Fair Chance Ordinance](#)
- [Spokane Fair Chance Hiring](#)
- [Wage and Salary Information](#)
- [Social Media Restrictions](#)
- [Consumer Report Prohibited Information](#)