

CALIFORNIA LEGAL COMPLIANCE

Employers requesting checks on California residents: In addition to the requirements of the Federal Fair Credit Reporting Act, the State of California has recently modified its Investigative Consumer Reporting Act (ICRA) in an effort to curtail identity theft. AB 655, which went into effect in January 2002, plus AB 1068 and AB 2868, which modify and clarify AB 655 and which went into effect September 28, 2002, impact the way employers in California conduct background investigations both internally and through a consumer-reporting agency (First Advantage).

Requirements include:

1. When requesting a background investigation, companies are required to provide applicants and/or employees with disclosures before the report is procured. The law as modified by the above referenced bills, covers all reports such as criminal searches, employment verifications, education verifications and references. This disclosure identifies the permissible purpose (i.e., employment screening); what information may be included in the report such as character, mode of living and/or general reputation; includes the name, address and phone number of the consumer reporting agency (First Advantage); the nature and scope of the investigation and a summary of how a consumer can contact a CRA (i.e. in person, via mail or phone) per Cal. Civic. Code Section 1786.22.
2. The consumer (employee or applicant) must authorize in writing the procurement of the report.]
3. Employers must also provide job applicants or current employees, who reside in the state of California, with an opportunity to elect to receive a copy of the report. The report must be sent within 3 business days of when the report is provided to the employer. This change does away with the burdensome requirement of sending every California resident a copy of their report regardless of whether or not adverse action was intended.
4. The September 2002 modifications clearly state that Employers may contract with a third party (i.e. First Advantage) to send the reports to the employee or applicant.
5. The copy of the report sent to the employee or applicant must include the name, address, phone number and how to contact the consumer reporting agency (i.e., First Advantage.).
6. Cal. Civ. Code Sec. 1786.29 requires that a disclosure must be provided on the first page of the investigative consumer report in bold face, 12-point font that includes the following: - "The report does not guarantee the accuracy or truthfulness of the information as to the subject of the investigation, but the information was accurately copied from public records, AND; - Information generated as a result of identity theft, including evidence of criminal activity, may be inaccurately associated with the consumer who is the subject of the report."

7. A separate summary of rights must be included with the background investigation report in both English and Spanish.

8. The requirement to obtain consumer (employee) authorization and to provide a disclosure is not necessary if the report is procured because the employer has a suspicion of wrongdoing or misconduct related to the subject of the report.

9. Employers, performing in-house background investigations (i.e., not using a consumer reporting agency) are only required to give an applicant a copy of the report that results from public records. Therefore, in-house reference checks and the like are not subject to disclosure under the ICRA, but in-house criminal or court record checks must be reported and disclosed in the same manner as if the report was prepared by a CRA.

10. AB2868 authorizes a current or former employer, or the employer's agent, to answer whether or not the employer would rehire a current or former employee. Social Security Number Legislation: California bill SB 168, effective July 1, 2002, modified the permitted use of Social Security Numbers and affected all companies employing California residents.

The implications to employment screening are as follows:

1. An employer may no longer transmit an applicant's social security number via an online application unless the connection is secure, or the social security number is encrypted.

2. Employers may not require a candidate's social security number to access an Internet web site unless a password, unique personal identification number or other authentication device is also required.

3. Employers may not print an individual's social security number on materials mailed to an individual unless required to do so by state or federal law. It is therefore our opinion that copies of background investigation reports, mailed to candidates residing in California, should no longer contain social security numbers after July 1, 2002.

4. Consumers may place a security freeze on their credit report prohibiting the distribution of the report without consent. This may impact the employment screening process by slightly delaying the receipt of the candidate's credit report. It should be noted that First Advantage and First Advantage's web-based technology are compliant with all the requirements above.

It is also important to note that the legislation permits employers to use social security numbers for internal verification and administrative purposes. As such, employers that use social security numbers for certain ordinary business purposes may not be required to modify their existing practices with respect to those uses. Pending California Legislation: Please note that the following bill is pending and has not been ratified; it is therefore subject to change. AB2161 will allow reporting of felony conviction information older than seven years on investigative consumer reports. However misdemeanor conviction information would still be subject to the seven-year restriction.