

State Rules Register Alert

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New Jersey Disclosure & Authorization Forms

As we all are aware there is much litigation over proper disclosure and authorization of consumer reports for employment purposes. Many of these suits are brought on the basis of very small technical issues. What is clear in §604(b)(2)(A) is the disclosure can be combined with the authorization. Such a combination is often seen to be necessary in a "paper process" to increase the likelihood that the consumer sees both the disclosure and the authorization because the employer cannot forget one of the forms. With an online process it is easy to separate these two forms which better protects the end-user and the CRA.

A recent review of New Jersey's FCRA law disclosed that the state law, which is a "mini-FCRA", does not contain the language that the disclosure can be combined with the authorization. N.J. Stat. §56:11-31(b)(2). Thus for consents obtained in New Jersey it appears to be better practice to separate the two forms.

Virginia Ban-the-Box

On April 3, 2015, Governor McAuliffe signed an executive order regarding when state agencies and state contractors can inquire about the criminal background of applicants. This law DOES NOT affect private employers that do not contract with the state. However there are bills pending in their legislature to adopt ban-the-box for all employers. Unfortunately the point in time when the background check can be conducted is vague: "after a candidate has (a) signed the appropriate waiver authorizing release, (b) been found otherwise eligible for the position, and (c) is being considered for a specific position."

The conditions b & c seem to basically repeat themselves because you cannot determine if someone is "eligible for a position without knowing the position in question. This provision is comparable to the laws that provide that records can be checked if the person meets the basic qualifications for the job. This is the earliest stage where ban-the-box laws allow the check of criminal history.

Best Wishes,
Larry Henry