FCRA Relationship to State Laws

The FCRA was amended in 1996 to specifically pre-empt state laws that deal with the content of a consumer report, see §625. Under this provision, states are prohibited from enacting laws governing the content of consumer reports after September 30, 1996. However, at least three states have enacted such legislation: California, Colorado and Texas. As such these statutes should be pre-empted by the federal law.

Even if a state has a pre-September 30, 1996 law with a salary cap exception, that law may have little impact because the salary cap figure may be very low in today's economic times. Many of these state laws contain annual salary caps of $20,000 or about $9.62 per hour (using 2,080 hours per year). Thus many consumer reports will not be affected by these state laws.

But when reviewing any state restriction, not only must the Employer and/or CRA identify the restriction, but also the salary cap on that restriction must be applied.

Proper Use of the Salary Cap

The proper use of the salary cap exemption is to obtain needed information on salary figure when the order is placed by an employer with a CRA. A CRA may not ask the employer, once the report request is received by the CRA, whether the applicant will earn more than the cap because that suggests to the employer that there is adverse information that the CRA is not providing. It is not necessary to release the actual report to create a violation. The asking of the question creates a statement containing adverse information that can be in violation of the FCRA.