



Navigating Background Check Laws: Essential Guidance for Construction and HR Professionals

The construction industry relies heavily on background checks to ensure workplace safety, protect company assets, and comply with client requirements. However, conducting these screenings requires careful attention to both federal and state laws. Human resource professionals and construction employers must understand three critical legal frameworks: Texas' ban the box law, the Fair Credit Reporting Act, and the Equal Employment Opportunity Commission's guidance on the use of criminal records in employment decisions.

Texas's Ban the Box Law

Texas, in late 2025, passed a Ban the Box Law which prohibits many employers from asking applicants about their criminal history on an initial job application. This doesn't mean that they will never ask, but with this law in place, they can only ask about a criminal background after the candidate has been found to be "otherwise qualified" for the job and has been invited to an interview or given a conditional job offer. This gives everyone, even those with a criminal record, a chance to show that they are qualified for a job.

Here are some of the main details of this new law:

- The law applies to public employers (state and federal) and applies to private employers with 15 or more employees.
- Gig workers, independent contractors, and freelancers are not covered, so employers can still, technically, use conviction records in employment decisions and get background reports at any time.
- There are also some exemptions to this law - those in law enforcement, childcare, healthcare, and financial services may still have criminal background checks from the start.

The Fair Credit Reporting Act

The Fair Credit Reporting Act establishes critical procedural requirements that apply to virtually all employers who use third-party consumer reporting agencies to conduct background checks. When a construction company engages an outside vendor to perform criminal background screenings, the FCRA imposes several mandatory obligations.

First, employers must provide clear and conspicuous written disclosure to the applicant, in a standalone document, that a consumer report may be obtained for employment purposes. The applicant must then provide written authorization before the background check is conducted. If an employer intends to take adverse action based on information in the report, such as rescinding a job offer or terminating employment, the FCRA requires a two-step process. The employer must first provide the applicant with a pre-adverse action notice, a copy of the consumer report, and a summary of rights under the FCRA. After allowing reasonable time for the applicant to respond or dispute inaccuracies in the background report, the employer may then proceed with the final adverse action notice explaining the decision.

Under the FCRA, non-conviction information such as arrests, liens, collections, civil judgments, or bankruptcies older than seven years generally cannot be reported by the third-party agents, except for positions with salaries over \$75,000.

Failure to comply with these procedural requirements can expose employers to significant liability, including statutory damages and attorneys' fees in class action litigation.

EEOC Guidance on Criminal Background Checks

The Equal Employment Opportunity Commission has issued guidance asserting that blanket policies excluding all applicants with criminal records may violate Title VII of the Civil Rights Act of 1964 if they result in disparate impact discrimination against protected groups. The general concern is that some background check policies will have a more significant impact on the applications of racial minorities.

The EEOC recommends that employers conduct an individualized assessment when considering criminal history, weighing factors such as the nature and gravity of the offense, the time elapsed since the conviction, and the nature of the job in question.

For construction employers, this means that a conviction for financial fraud may be highly relevant for a position involving access to company funds but less pertinent for a general laborer role. The EEOC guidance encourages employers to consider whether the specific offense poses a demonstrable risk related to the duties of the position being filled.

Conclusion

Construction and human resource professionals should develop comprehensive background check policies that account for applicable ban the box restrictions, strictly adhere to FCRA procedural requirements, and incorporate individualized assessments consistent with EEOC guidance. By doing so, employers can mitigate legal risk while maintaining effective screening practices that support workplace safety and organizational integrity.

For further information on these developments, please contact [Tony Stergio](#).