

## BLOGS

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# FTC Advises Simplicity for Background Check Disclosure and Authorization Form

On April 28, 2017, the Federal Trade Commission (FTC) published [a post on its business blog](#) advising employers to keep it simple when it comes to employment background check disclosure and authorization forms. While the blog post is not legally binding, it provides some useful guidance on how to comply with federal background check requirements.

Employment background checks done by an outside vendor for a fee are considered consumer reports under the federal Fair Credit Reporting Act (FCRA). Pursuant to FCRA, employers are required to make a specific written disclosure to prospective and current employees and obtain their written authorization before obtaining a background check for employment purposes. Against the backdrop of a growing number of lawsuits around what the FCRA statute provides that disclosure and authorization forms may contain, the FTC's blog post clarifies that the disclosure and authorization may be in a single document as long as clear and understandable wording is used. The FTC also advises keeping the form simple, however, and excluding extraneous information. The following are examples of what the FTC blog post states should not be in a combined disclosure and authorization form:

- Language that claims to release the employer from liability for conducting, obtaining, or using the background screening report
- Certification by the prospective employee that all information in his or her job application is accurate
- Wording that purports to require the prospective employee to acknowledge that the employers hiring decisions are based on legitimate non-discriminatory reasons
- Overly broad authorizations that permit the release of information that the FCRA doesn't allow to be included in a background screening report for example, bankruptcies that are more than 10 years old

The FTC blog post notes that a satisfactory combined disclosure and authorization form consists of a few sentences that include a notification that the employer will obtain a background check, a short explanation of what will be included in the background check report, and the employers request for authorization to run the report.

While the FTC's advice is helpful, the agency could have gone further in addressing the compliance debate underlying countless lawsuits around the country around what disclosure and authorization language complies with the language of FCRA. Also, a model disclosure and authorization form sanctioned by the FTC would be helpful, but has never been issued. If you are running criminal background checks in the workplace, be mindful of the FTC's push for simplicity, but it is also a good idea to check with legal counsel on whether your forms satisfy the hyper-technical requirements of FCRA and potentially applicable state and local laws.

The FTC's blog post can be found at: <https://www.ftc.gov/news-events/blogs/business-blog/2017/04/background-checks-prospective-employees-keep-required>