

You can obtain blanket consent for employee credit reports at any time

Before you seek consumer credit or background reports on applicants, you must obtain their written consent and give them a clearly written disclosure form.

But what about when you investigate current employees? Can you require all your employees today to sign a blanket release that authorizes you to run such checks periodically if the need arises? Yes, you can, as the following case proves. But if you do need to run such a check, make sure you can show an employment-related reason why you need to access employee credit reports, such as probing theft or fraud incidents.

Also, make sure your blanket release for existing employees is broad enough. It should, for example, cover situations in which you use outside agencies to help conduct credit checks or background checks as part of an in-house investigation.

Recent case: Lisa Kelchner, a 19-year nursing-home employee, was fired after she refused to sign a form that allowed her employer to obtain consumer credit reports on her at any time. The company used the reports to investigate in-house theft or other forms of dishonesty, plus to update background checks for continued employment.

She sued, claiming that the Fair Credit Reporting Act (FCRA) prohibited such one-time, blanket authorizations to obtain credit checks. She argued that employers must get employees' approval each time they seek a report.

A federal appeals court sided with the employer, saying nothing in the FCRA specifically prohibits employers from obtaining blanket authorizations ahead of time. The FCRA simply states that employers must obtain employees' authorization "at any time prior to procuring the report," which can mean days, weeks, months or years.

Final note: This ruling marks the first decision on this issue. It gives you the flexibility to decide when to seek credit or background report authorizations on current employees. The court reasoned that "it would be inconsistent to permit an employer to refuse to hire a prospective employee who would not consent to the authorization, while at the same time leaving the employer with no recourse when a current employee refuses to provide authorization." (Kelchner v. Sycamore Manor Health Center, No. 04-2552, 3rd Cir., 2005)