

Kansas Legal Services

A non-profit law firm and community education organization helping low and moderate income people in Kansas



www.kansaslegalservices.org

Break down barriers to employment and housing with legal help

Some employers and landlords check into your background before deciding whether to hire you or keep you on the job, or rent to you.

When they do a background check, you have legal rights under federal law. This page talks mostly about legal rights when applying for jobs.

It's important to know whom to contact if you think someone has broken the law related to background checks.

Learn about your housing rights under the Fair Housing Act.

Questions About Your Background

An employer might ask you questions about your background during the hiring process. For example, some employers might ask about your job history, your education, your criminal record, your financial history, your health history, or your use of online social media.

It's legal for employers to ask questions about your background or to call for a background check — with certain exceptions. They're not allowed to ask you for

- health information until they offer you a job, and
- they're not allowed to ask for your family health history.

When an employer asks about your background, they must treat you the same as anyone else.

- It doesn't matter what your race is, or national origin, color, sex, religion, disability, health history, or age if you're 40 or older.
- An employer isn't allowed to ask for extra background information because you are, say, of a certain race or ethnicity.

If an employer treats you differently because of your race, national origin, color, sex, religion, disability, health history, or older age, or asks you questions about your health status and history, or family health history, **contact the Equal Employment Opportunity Commission (EEOC).**

How to get an expungement of your criminal record

Go to this page to read all about expungements in Kansas.

KLS offers a **free legal form** to expunge records:

- **Expungement of Criminal Records**



Some

employers try to find out about your background by hiring someone to do a “background report” on you. Among the most common are criminal background reports and credit reports. But special rules apply when an employer gets a background report about you from a company that is in the business of compiling background information.

Before getting the report, the employer must tell you that they might use the information to make a decision related to your employment. They must also ask for your written permission.

- You don't have to give your permission, but if you're applying for a job and you don't give your permission, the employer may reject your application.
- If an employer gets a background report on you without your permission, **contact the Federal Trade Commission (FTC).**

If the employer thinks they might not hire, keep, or promote you because of something in the report, they must give you a copy of the report. They must also give you a “Summary of Rights” that tells you how to contact the company that provided the report.

- That’s because background reports sometimes have mistakes.
- If you see a mistake in your background report, ask the background reporting company to fix it. Ask them to also send a copy of the corrected report to the employer. Tell the employer about the mistake, too.

Before you apply for a job, it’s a good idea to order a free copy of your credit report. That way, you can fix any mistakes before an employer sees it.

- To get your free credit report, visit www.annualcreditreport.com or call **1-877-322-8228**. You don’t have to buy any products they offer, and you don’t have to pay to get mistakes corrected.

If the Employer Finds Something Negative in Your Background

If your background report has some negative info, be prepared to explain it — and the reason it shouldn’t affect your ability to do the job. Here is a description of your rights, depending on what kind of negative info the employer finds:

Criminal History or Other Public Records

If you don’t get hired or promoted because of info in your criminal history or other public records, the employer must tell you orally, in writing, or electronically:

- the name, address, and phone number of the company that supplied the criminal history or public records report;
- that the company that provided the info didn’t make the decision to take the adverse action and can’t give you specific reasons for it;
- that you have the right to dispute the truth and fullness of any info in the report; and
- another free report from the company that supplied it, if you ask for it within 60 days of the employer’s decision not to hire or retain you.

The company that provided the employer with negative info from a criminal history or other public records has certain obligations: it has to tell you that it provided the information and it has to take certain steps to make sure the information is accurate.

Some employers might say not to apply if you have a criminal record. That could be discrimination. If that happens to you, contact the EEOC. Find more information on:

- arrest and conviction records in employment decisions

- arrest and conviction records as an automatic bar to all employment

Credit Report/Financial Information

If an employer decides not to hire, keep, or promote you based on financial information in a background report, it must tell you — orally, in writing, or electronically. Specifically, the employer must:

- give you the name, address, and phone number of the company that supplied the credit report or background information;
- give you a statement that the company that supplied the information didn't make the decision to take the adverse action and can't give you any specific reasons for it; and
- give you a notice of your right to dispute the truth or fullness of any info in your report; and
- to get another free report from the company that supplied the credit or other background info if you ask for it within 60 days.

Race, National Origin, Color, Sex, Religion, Disability, Genetic Information, Age



Sometimes, it's legal for an employer not to hire you or keep you on because of info in your background, and sometimes, it isn't.

- **For example**, it's illegal when the employer has different background demands depending on your race, national origin, color, sex, religion, disability, genetic information (including

family medical history), or age, if you're 40 or older.

- It's also illegal for an employer to reject applicants of one ethnicity with criminal records for a job, but not to reject other applicants with the same criminal records.

Even if the employer treats you the same as everyone else, using background information still can be illegal discrimination.

- **For example**, employers shouldn't use a policy or practice that excludes people with certain criminal records if it significantly hurts people of a certain race, national origin, or another protected characteristic, and doesn't accurately predict who will be a responsible, reliable, or safe employee.
- In legal terms, the policy or practice has a "disparate impact" and is not "job related and consistent with business necessity."

If you think an employer discriminated against you based on information in your background report, **contact the EEOC**.

Medical Condition

If the employer makes a decision based on information about a medical condition, you can ask for a chance to show that you still can do the job. Find specific information on:

- pre-employment medical inquiries
- medical inquiries during employment
- genetic inquiries, including inquiries about family medical history

Where to Go For Help

The FTC enforces the Fair Credit Reporting Act (FCRA), a federal law that regulates background reports for employment. The EEOC enforces federal laws against employment discrimination.

FTC

If an employer got your background report without asking your permission, or rejected you without sending you the needed notices, contact the FTC at **ftc.gov**, **1- 877-FTC-HELP (1-877-382-4357)** or 1-866-653-4261 (TTY).

- **Why report it to the FTC?** Because the FCRA allows the FTC, other federal agencies, and states to sue employers who don't follow the law's provisions.
- The FCRA also allows people to sue employers in state or federal court for certain violations.

EEOC

If you think that a background check was discriminatory, you may contact the EEOC by visiting its website at www.eeoc.gov, or calling **1-800-669-4000** or 1-800-669-6820 (TTY).

- The EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee for certain reasons.
- Those reasons are because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information.
- The EEOC investigates, conciliates, and mediates charges of employment discrimination, and also files lawsuits in the public interest.

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