

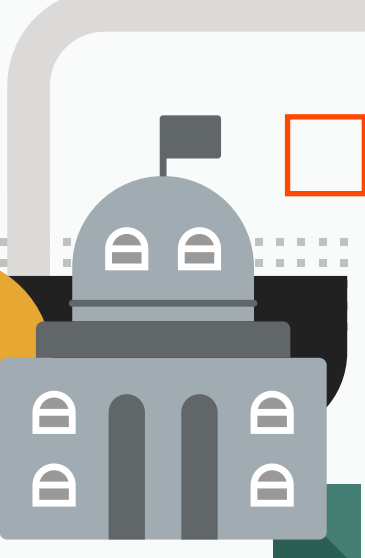


# Must-Knows to Manage Background Check Compliance

Sterling is here to help you navigate complicated and evolving compliance regulations, including those related to Covid-19. Our goal is to help you have confidence to take the next step with your workforce while creating an environment of trust and safety.

## Key Compliance Components

You can build compliance controls into your organization's background screening program by addressing federal regulations, state and local laws, and internal policies and procedures.



## FEDERAL REGULATIONS

### Fair Credit Reporting Act (FCRA)

Prior to conducting any background check, employers have to provide the candidate with the appropriate disclosure and obtain a written authorization. Periodic review of these documents with your counsel can help ensure compliance.

If employers are considering taking adverse action based (in whole or in part) on adverse information in a background check, they must follow a process for pre-adverse and final adverse action (see the three steps at right).

- STEP 1

Send pre-adverse notice
- STEP 2

Wait for the required amount of time (at least 5 days, but can vary by jurisdiction) and address any fair-chance or individualized assessment issues
- STEP 3

Make a final decision, and send final adverse action notice if needed

## EEOC

The U.S. Equal Employment Opportunity Commission (EEOC) is a federal agency that administers and enforces civil rights laws against workplace discrimination. The EEOC issued Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions. View that guidance [here](#) to learn more about using criminal records in employment decisions, developing screening and onboarding policies, and protecting applicant and employee confidentiality.

### Considerations Regarding a Candidate's Criminal History

According to the EEOC, individualized assessments regarding whether a candidate's criminal history is relevant should include:

- The nature and gravity of the offense
- The time that has passed since the offense, conduct, and/or completion of sentence
- The nature of the job held or sought
- The facts or circumstances surrounding the offense or conduct
- The number of offenses for which the individual was convicted
- Older age at the time of conviction, or release from prison
- Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct
- The length and consistency of employment history before and after the offense or conduct
- Rehabilitation efforts (e.g. education/training)
- Employment or character references and any other information regarding fitness for the particular position
- Whether the individual is bonded under a federal, state, or local bonding program

## STATE & LOCAL LAWS AND REGULATIONS

In some jurisdictions, there are laws that limit inquiries about a candidate's prior criminal convictions, restrict timeframes for which records may be reported, or require additional steps to be taken.

### Get to Know "Ban the Box" Laws

(aka "Fair Chance" or "Fair Opportunity" laws)

#### These laws generally do the following:

- Prohibit companies from asking about a job candidate's criminal history on an application
- Allow for inquiry later, typically after a conditional job offer or after the interview stage

#### These laws may also require additional steps to protect applicants from discrimination, such as:

- Additional adverse action notification requirements for applicants regarding the reason for potential disqualification
- Individualized assessment similar to what is required by the EEOC Guidance

## POLICIES AND PROCEDURES

### Top tips to successfully maintain or manage your screening program:

- ✓ Have and follow policies and procedures that promote consistency and compliance in the workplace.
- ✓ Document your company's processes for requesting, receiving, and evaluating background checks, including your hiring matrix, individualized assessment process, standard state notices, adverse action and fair-chance, and compliance with state and local laws.
- ✓ Engage your legal counsel to periodically review your policies and procedures in order to guide you in meeting your compliance obligations.
- ✓ Seek best-practice insights and guidance on regulatory updates from your background screening partner.

## YOUR NEXT STEPS

Making your way through the constantly shifting landscape of regulatory compliance can be daunting, especially amid a global crisis like the one we're facing now. You don't need to tackle it alone.

We're here to help, with compliance experts like Angela Preston, Sterling's Associate General Counsel, Corporate Ethics and Compliance, who keeps her finger on the pulse of federal, state, and local regulatory changes to help guide and advise clients along their own journeys.

“We constantly keep our customers informed about changes in employment laws and enable them to seek legal advice to help them stay ahead of the competition as well as minimize uncertainty and risk.”



**Angela Preston**  
Associate General Counsel, Corporate Ethics and Compliance

We're here to help you get ahead of the curve when it comes to leveraging organizational intelligence with a partner who is an expert in local cultures, practices, and legal sanctions.

[Click here](#) for more information about Sterling's global compliance expertise and how we help clients hire with confidence.

SOURCES  
FCRA - 15 U.S.C. § 1681 et seq.  
Title VII - Title VII of the Civil Rights Act of 1964

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