

# Alan B. Pearl & Associates, P.C.

## The Fair Credit Reporting ACT (FCRA): *How it affects background checks*

.....  
The Fair Credit Reporting Act (FCRA) prescribes detailed procedures employers must follow in obtaining and using consumer reports for employment purposes. Its application is not limited to traditional credit reports, as the Act was drafted; instead it is interpreted rather broadly. The Act also applies to consumer reports used for any employment purpose and to investigative consumer reports. The latter are really consumer reports that were prepared by interviewing third parties, whether done in-house or by engaging an outside contractor.

The notification procedures are rather basic and they provide for advance notification and post-notification especially if adverse employment decisions are made.

New York employers have to be reminded that there is a mini FCRA in New York. The FCRA is modeled after the federal counterpart, but incorporates strict standards of Article 23(a) of the New York Corrections Law concerning the use of a criminal conviction record. The Correction Law requires that a posting of Section 23(a) be maintained by the employer next to the time clock where notices are customarily placed.

The Corrections Law in New York requires that a seven factor test be analyzed in order for the conviction of a person of a criminal offense to be considered in the denial or granting of employment. Absent certain limited circumstances, an employer is prohibited from taking adverse action against an employee or applicant because of information the employer obtains with respect to any criminal accusation not then pending that resulted in the favor of the individual. Simply stated, arrest records and acquittals cannot be considered.

Background checks are used extensively in the industry and now with these prohibitions in place they have to be done "by the book". Compliance is easy, but it cannot be overlooked.

For more information concerning the interplay between the mini FCRA Law in New York and the federal counterpart, please feel free to contact Alan B. Pearl & Associates.

With over sixty years combined experience, the attorneys at **Alan B. Pearl & Associates** are prepared to assist with labor negotiations, grievances, arbitration, and opposing union organization efforts. Services also include preparation and review of employment agreements and restrictive covenants.

**Alan B. Pearl & Associates** prides itself on the exceptional and personalized service it provides to clients. There is no "voice mail" - instead, phone calls are returned promptly. The attorneys are well aware that time is critical in labor relations and employment matters.

Alan B. Pearl and Associates, P.C. is celebrating our 35<sup>th</sup> Anniversary!  
516-921-6645 [www.pearl-law.com](http://www.pearl-law.com) [info@pearl-law.com](mailto:info@pearl-law.com) Copyright © 2011