

14.6: Employee Information

Learning Objectives

- Discuss laws related to employee information

Employee information is an area that is governed by federal, state and local laws. Key legislation includes the following:

- The Fair Credit Reporting Act (FCRA)
- The Drug-Free Workplace Act (1988)
- The Privacy Act (1974)
- The Worker Adjustment & Retraining Notification (WARN) Act
- Employee Polygraph Protection Act (EPPA)

Let's take a closer look at each of these.

The Fair Credit Reporting Act (FCRA)



FCRA is a federal law that regulates the collection of consumers' credit information and access to their credit reports.^[1] Specific provisions related to employers:

- An employer must obtain a candidate's written consent to request his or her credit report.
- An employer must notify a candidate if the information in his or her credit report was the basis of a negative decision. For additional notice details, refer to the Federal Trade Commission's publication [A Summary of Your Rights Under the Fair Credit Reporting Act](#).

The Drug-Free Workplace Act (1988)

This Act requires federal contractors and all federal grantees to agree that they will provide drug-free workplaces as a condition of receiving a contract or grant of \$100,000 or more.^[2] The Act does not apply to those that do not have, nor intend to apply for, contracts/grants from the federal government. The Act also does not apply to subcontractors or subgrantees.

The Privacy Act (1974)

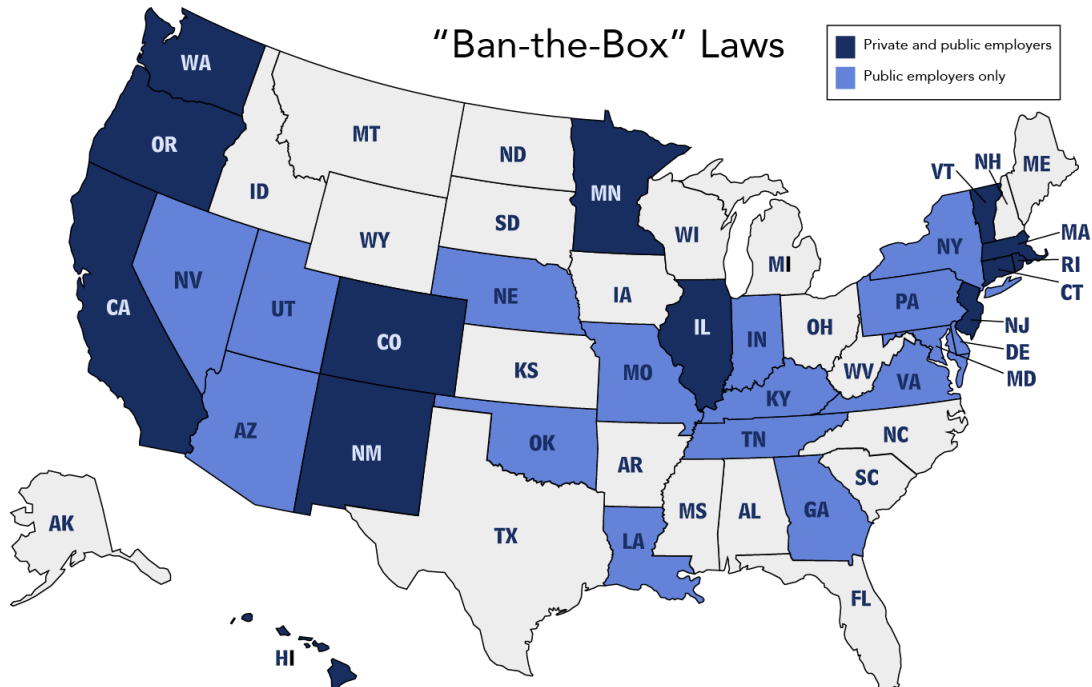
This act, which applies only to federal government agencies, requires employers to provide employees with access to their personnel file.

State law may provide private sector and state and local government employees rights similar to The Privacy Act. For example, attorney Lisa Guerin notes that California law gives both employees and former employees the right to inspect their personnel and payroll records, with some exceptions detailed in her "[Accessing Your Personnel File and Payroll Records in California](#)" article on legal publisher Nolo's website. One notable exception: Employers need not provide personnel records to a former or current employee who has filed a lawsuit against the employer based on an employment matter.^[3]

A number of states and localities (currently 17 states and 19 localities) prohibit employers from requesting a job applicant's salary history.^[4] Some states—California, for example—also prohibit an employer from using an applicant's pay history as a basis for compensation if volunteered.

Thirteen states have "ban the box" laws that prohibit private employers from asking about an applicant's criminal history on a job application and 30 states have laws that apply this ban to government employers.^[5] California's Assembly Bill (AB) 1008 which prohibits salary history inquiries also prohibits public and private employers with at least five employees from "inquiring into or considering" an applicant's criminal conviction history until after a conditional offer of employment has been made. Since a background check would reveal this information, that would also have to be deferred until a conditional offer is made. If an employer wants to revoke the offer based on the individual's criminal history, it must engage in a procedure referred to as a "fair chance" process, detailed in California employer law firm Fisher Phillips' article "[California Just Banned the Box!](#)"^[6] Perspective point: Approximately 1 in 3 California adults has an arrest or conviction record.

"Ban-the-Box" Laws



Alternative text for Ban-the-Box Laws by State can be accessed [here](#).

The Worker Adjustment & Retraining Notification (WARN) Act

This act doesn't protect employee information but rather creates a duty for employers to inform employees of a plant closure or significant layoff. Specifically, the Act requires employers to give employees 60 days notice of a planned closure or layoff affecting 50 or more workers.

Employee Polygraph Protection Act (EPPA)

The Act “prohibits most private employers from using lie detector tests, either for pre-employment screening or during the course of employment. Employers generally may not require or request any employee or job applicant to take a lie detector test, or discharge, discipline, or discriminate against an employee or job applicant for refusing to take a test or for exercising other rights under the Act.”^[7] For additional details, including permitted use and guidance, refer to the U.S. Department of Labor’s [Employee Polygraph Protection Act](#) page.

? Practice Question

<https://assessments.lumenlearning.co...essments/18205>

1. Kagan, Julia. "[Fair Credit Reporting Act](#)." Investopedia. May 14, 2019. Accessed September 12, 2019. ↵
2. "[Drug Free Workplace Act of 1988](#)." Guidelines & Principles for Nonprofit Excellence. Accessed September 12, 2019. ↵
3. Guerin, Lisa. "[Accessing Your Personnel File and Payroll Records in California](#)." Nolo. Accessed September 12, 2019. ↵
4. "[Salary History Bans](#)." HR Drive. August 13, 2019. Accessed September 12, 2019. ↵
5. Barreiro, Sachi. "[What is a Ban-the-Box Law?](#)" Nolo. Accessed September 12, 2019. ↵
6. Ebbink, Benjamin. "[California Just Banned the Box!](#)" Fisher Phillips. October 16, 2017. Accessed September 12, 2019. ↵
7. "[Employee Polygraph Protection Act \(EPPA\) Overview](#)." U.S. Department of Labor. Accessed September 12, 2019. ↵

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