

Charging applicants for background check costs

Question:

Is it legal for an employer to charge an applicant for a background check?

Response & Analysis:

As states increase background check regulations within certain industries, several employers seek to pass along background check costs to respective applicants (employees).

While some states permit this practice, multiple states have strict laws restricting an employer's ability to require an applicant to pay for a background check.

These states include: **California, District of Columbia, Iowa, Kansas, Kentucky, Louisiana, Minnesota, and Vermont.** It is noteworthy that there is no Federal law that prohibits employers from charging a potential employee for a background check.

California (Labor Code Section 450-452)

The California Labor Code specifies that "No employer, or agent or officer thereof, or other person, may compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value." For the purpose of this statute, value includes any "instances where an employer requires a payment or fee" used for "(1) an individual to apply for employment orally or in writing, (2) an individual to receive, obtain, complete, or submit an application for employment, or (3) an employer providing, accepting, or processing an application for employment."¹

¹ See Labor Code, Division 2, Part 1, Article 4. Purchases (450) (b) (1-3)

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Even though the law does not specifically mention background checks, a background check would likely fall under “value” and remain an expense the employer must cover while “processing an application for employment.”

[District of Columbia \(D.C. Code § 44-552\)](#)

This statute permits a facility to “obtain a criminal background check from the Metropolitan Police Department, the U.S. Department of Justice, or from a private agency.” The statute requires for the facility to pay fees “established and charged by the entity that provides the criminal background check results.” However, nothing “precludes the facility from seeking reimbursement of the fee paid for the criminal background check from the applicant for employment or contract work.”²

[Iowa \(Code §692.2\(6\)\)](#)

The Iowa Code clearly specifies that the department may charge a fee to any non-law-enforcement person or agency conducting a criminal history data check. The law states that “the fee for conducting a criminal history data check for a person seeking release of a certified copy of the person’s own criminal history data to a potential employer, if that employer requests the release in writing, shall not be paid by the person but shall be paid by the employer.” This law mentions “criminal history data checks,” so employers conducting any criminal background check are automatically subject to the law and must cover expenses. Please note, this law only applies to costs associated with conducting a state or national criminal history record check and do not include county court checks.³

[Kansas \(K.S.A. §22-4710\)](#)

In Kansas, “it is unlawful for any employer or prospective employer to require a person to inspect or challenge any criminal history record information relating to that person for the purpose of obtaining a copy of the person’s record in order to qualify for employment.” This law only includes criminal records obtained by a “criminal justice agency” within the state; county and statewide searches outside of Kansas are not included.⁴ While the law only speaks to requiring an applicant to request a record rather than charging an applicant for a criminal check, employers must exercise caution and note that this law might extend to include charging applicants for a background check.

² § 44-552 (h)

³ 661—11.2(17A,690,692) *Definitions-- Fees*

⁴ 22-4701. Definitions

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[Kentucky \(Statute 336.220\)](#)

Under the Kentucky statute it is “unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records required by the employer as a condition of employment.” A record check might include any criminal background checks, driving record checks, or civil record check. Additionally, the statute only refers to the “furnishing” of records; however, in this context, furnishing refers to supplying an employer with all requisite information to offer an individual employment. This statute does not specify whether the restrictions strictly limit state-wide searches, therefore, it is likely that these requirements apply to any search conducted by an employer.

[Louisiana \(R.S. §23:897A\)](#)

In Louisiana, “it is unlawful for any public or private employer to require any employee or applicant for employment to pay or to, in any manner, pass on to the applicant or to withhold from an employee’s pay the cost of fingerprinting, a medical examination, or a drug test, or the cost of furnishing any records available to the employer or required by the employer as a condition of employment.” This statute exempts individuals who resign within “ninety working days from his first day of work.”⁵ In addition to furnishing records, this statute explicitly mentions that fingerprint based criminal background check costs cannot be passed on to an applicant. This statute does not specify whether the restrictions strictly limit state-wide searches, therefore, it is likely that these requirements apply to any search conducted by an employer.

[Minnesota \(Sec. 181.645\)](#)

Minnesota law clearly mandates that employers must bear the burden of background check fees, stating that “a prospective employer may not require an employee or prospective employee to pay for expenses incurred in criminal or background checks, credit checks, or orientation.” This statute covers “expenses” generally, therefore, it is likely that these requirements apply to any search conducted by an employer.

[Vermont \(20 V.S.A. §2056c\(c\)\(10\)\)](#)

Vermont specifies employers as persons “entitled to receive a criminal conviction record.” The law states that employers shall not require “an applicant to obtain, submit personally, or pay for a copy of his or her criminal

⁵ See Exception in R.S. 23:634(B)

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conviction record.” This language specifically covers state-wide searches from the Vermont Crime Information Center.⁶ The only exception to this law is when a “local governmental entity with respect to criminal conviction record checks for licenses or vendor permits required by the local governmental entity.”

A chart detailing these state-by-state restrictions can also be found [here](#).

NOTE: The following states prohibit employers from charging applicants the cost of a medical examination for screening purposes.⁷ Please reference the state’s respective statute for further information on employer restrictions on charging for medical examinations.

- California (Cal. Lab. Code Sec. 222.5)
- Colorado (Colo. Rev. Stat. § 82-118(1))
- Illinois (820 Ill. Comp. Stat. 235/1)
- Louisiana (R.S. §23:897A)
- Ohio (Ohio Rev. Code Ann. § 4113.21)
- Oklahoma (OK 40 O.S. §191)
- Pennsylvania (PA. Cons. Stat. § 1002)
- Vermont (21 V.S.A. §301)

⁶ 20 V.S.A. § 2056c (a)(1)

⁷ Please caution that these listed states do not provide a clear definition of “medical examination;” drug screening may be considered a “medical examination” and restrict an employer’s ability to charge applicants under state law. Employer should also note that in order for a drug test to be a medical examination, per the EEOC, (1) the drug test in question must not be administered to determine the illegal use of drugs, and (2) the drug test must not, in fact, return a positive result for the illegal use of drugs.

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