



ATTORNEYS AT LAW

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Recent Changes for Employers under the Fair Credit Report Act

Background

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act signed into law in 2010, Congress recently transferred rulemaking authority for the Fair Credit Reporting Act (FCRA) from the Federal Trade Commission to the Consumer Financial Protection Bureau (CFPB). In connection with this transition, as of January 1, 2013, employers are now required to amend three forms used when conducting background checks that are subject to the FCRA.

How the FCRA Applies to Employers

The FCRA is relevant to employers in the context of background checks performed by third party credit-reporting agencies. Employers typically request consumer reports from these agencies on prospective employees which trigger certain notification requirements under the FCRA. Before requesting a consumer report, employers are required under the FCRA to notify the prospective employee, in writing, that information contained in their consumer reports may be used when making employment related decisions. The employer must also get the prospective employee's written permission to gather a consumer report. These written notices vary from employer to employer.

January 1, 2013 Changes

Although the new versions of the three affected forms are provided below, the form entitled "Summary of Your Rights Under the Fair Credit Reporting Act" is most relevant for employers and prospective employees.

- Summary of Your Rights Under the Fair Credit Reporting Act
- Notice to Furnishers of Information: Obligations of Furnishers under the FCRA
- Notice to Users of Consumer Reports: Obligations of Users under the FCRA

The new regulations do not change any employer responsibilities related to notifying the prospective employee prior to requesting a consumer report, but they do have implications for hiring decisions made from those reports. When an employer requests a consumer report for a prospective employee, the employer may elect to reject that prospective employee based on information contained in that prospective employee's consumer report.¹ Prior to taking such adverse action, the FCRA requires the employer to (1) provide a copy of the consumer report relied upon in making the adverse employment action and (2) provide a copy of a "Summary of Your Rights Under the Fair Credit Reporting Act." The primary change to this form directs prospective employees to contact the CFPB instead of the FTC for more information about their rights under the FCRA.

How to Comply

This change is easy for employers to make at a minimum cost. Simply provide prospective employees a copy of the updated "Summary of Your Rights under the Fair Credit Reporting Act" if you are making any adverse employment decision based upon information contained in their consumer report.

Why Should Employers Care?

Although the CFPB has not provided for specific penalties for failing to utilize the new form after January 1, 2013, failing to comply with the FCRA's requirements in general can subject an employer to fines and fees. Additionally, and more importantly, class action lawsuits brought under the FCRA by prospective and former employees are on the rise. The use of outdated Summary of Rights notices has been the basis for such suits in the past. It is recommended that employers minimize the risk for such suits by swapping out their Summary of Rights to comply with the new requirements that went into effect on January 1, 2013.

¹ The FCRA is not limited to prospective employees. It requires employers to adhere to the same requirements before reassigning, terminating, or denying a promotion to any current employees.

Please contact Ross Hamilton at (336) 271-5279, Denis Jacobson at (336) 271-5242 or Alan Felts at (336) 271-5215 if you have questions about the recent changes for employers under the FCRA.

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