

## Publications

### *Labor and Employment Alert: Employers Must Now Update the Fair Credit Reporting Act Notices Used in Their Background Check Programs*

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#### CLIENT ALERT | 1.9.2013

Effective January 1, 2013, employers must use a new Fair Credit Reporting Act (FCRA) Summary of Rights form as part of their background check programs. The FCRA requires the Summary of Rights to be included: (1) as an enclosure with the pre-adverse action notice, which is sent when an employer decides to take an adverse action, based in whole or in part, on a consumer report; and (2) with the disclosure necessary to obtain "investigative consumer reports," which are consumer reports based on personal interviews conducted by a consumer reporting agency. [Click here](#) to read the new FCRA Summary of Rights.

The new Summary of Rights indicates that the responsibility for interpreting the FCRA has been transferred from the Federal Trade Commission (FTC) to the Consumer Financial Protection Bureau (CFPB). In particular, the new Summary of Rights replaces the FTC's contact information with the CFPB's contact information.

As a reminder, the FCRA generally applies to employers who obtain background checks for employees or applicants through a third party service for a fee. Prior to obtaining what the FCRA refers to as a "consumer report," an employer must fully disclose to the individual that the employer may seek to obtain such information. The employer's disclosure must be **clear and conspicuous**. Further, it must be on a **separate document** that consists of only the disclosure. The only other document that can be lawfully included on the disclosure form is the authorization.

The individual must provide **written** authorization to obtain the report. The authorization can be a) on a separate form; b) included on the standard employment application; or c) included on the FCRA disclosure form.

Subsequently, employers deciding to take adverse action based in whole or in part on the consumer report must comply with certain pre-adverse action requirements. In particular, the employer must provide the individual with: (1) a pre-adverse action notice; (2) the new FCRA

Summary of Rights discussed above; and (3) a copy of the consumer report.

If, after waiting the required amount of time, the employee or applicant has not notified the employer of any errors in the report, the employer may send an adverse action letter. If the employer actually takes adverse action against an applicant or employee, the employer is required to provide the individual with certain information, including, among other information, the contact information of the third party reporting service.

For more information regarding the FCRA, the new FCRA Summary of Rights, or any other employment-related issue, please contact your Vorys attorney or a member of the Vorys Labor and Employment Group by calling 614.464.6400.