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Updated Background Check Forms Required

Employers who use credit reporting agencies to conduct employee background checks must provide an updated Summary of Consumer Rights form to comply with their obligations under the Fair Credit Reporting Act (FCRA). The change was initiated by the Consumer Financial Protection Bureau (CFPB), which has replaced the Federal Trade Commission (FTC) as the primary enforcer of the FCRA.

Pursuant to the FCRA, an employer must provide a disclosure to, and obtain written authorization from, any applicant/employee prior to conducting a background check. Should the employer seek to take an adverse employment action (i.e., failure to hire, transfer, termination) based on the background check, it must first provide the individual a free copy of the report and a [Summary of Your Rights under the FCRA](#) form.

Additionally, credit reporting agencies must provide each user with an updated [Notice to Users of Consumer Reports](#) and an updated [Notice to Furnishers of Information](#).

Each of the updated forms make clear that information about consumer rights under the FCRA can now be obtained from the CFPB — not the FTC.

Employers who “negligently” or “willfully” fail to comply with any of the FCRA requirements may be subject to lawsuits by both applicants and employees. Negligent failure to comply with the requirements can lead to actual damages and attorneys’ fees, while willful failure to comply with these requirements can lead to statutory damages (\$100 - \$1,000 per violation) and punitive damages.

Employers should review their background check procedures to ensure that they are using the updated form. The attorneys at Hahn Loeser & Parks LLP are available to assist you with your background check procedures and related issues. Visit hahnlaw.com or call 877-424-6529 for more details.

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