



New Requirements Under the Fair Credit Reporting Act for Employers Conducting Background Checks

Are you an employer that conducts background checks on job applicants and employees? If so, you must be sure to comply with the new requirements of the Fair Credit Reporting Act (“FCRA”), which became effective on September 21, 2018.

The FCRA regulates employers in their use of background checks, including credit and criminal background reports. When an employer wishes to obtain a background check for a job applicant or existing employee from a third-party consumer reporting agency, it must strictly adhere to the requirements set forth in the FCRA. One of the requirements is to provide written disclosures to and obtain express consent from an applicant and employee before obtaining a background check report.

Another requirement is to provide an applicant or employee with a “Summary of Rights” form under certain circumstances, such as when the employer decides not to hire the applicant or to terminate the employee. The Summary of Rights form advises the individual of his or her rights including, but not limited to, the right to: (1) be notified if the information disclosed in the background or credit check was used against him or her; (2) disclosure of the information contained in his or her file; (3) obtain his or her credit score; and (4)

dispute incomplete or inaccurate information.

On September 21, 2018, a new Summary of Rights form became effective under the FCRA. Employers using third-party consumer reporting agencies to conduct background checks must use the [updated “Summary of Rights” form](#).

Notably, the new form notifies individuals of the right to obtain a “security freeze” on their credit report. This security freeze prohibits consumer reporting agencies from releasing information in credit reports without the individual’s express authorization. This is intended to prevent credit, loans, and services from being approved in the individual’s name without his or her consent. In the alternative, individuals have the right to place a fraud alert on their credit file at no cost.

Employers should be aware of this amendment to the FCRA and update their forms accordingly. A misstep in this regard could subject the employer to a lawsuit, including a claim and possible judgment for damages. This is evidenced by the recent decision by the Federal Court of Appeals for the Seventh Circuit in *Robertson v. Allied Solutions, LLC*, 17-3196 (7th Cir. 2018), in which the court revived an action against an employer for rescinding a job offer without first providing the applicant with a copy of the background check

report and denying her the chance to review it and present her side of the story. As the court noted, this was the “very reason” the FCRA obligated employers to produce such reports before taking adverse action. Although the court has yet to determine whether the employer is liable for damages, it could conceivably be deemed liable if the applicant proves her case.

What Employers Should Know

1. If employers intend to conduct background checks on job applicants or employees, they must comply with the FCRA.
2. The new provisions of the FCRA became effective on September 21, 2018. Employers that conduct background checks are advised to immediately utilize the updated Summary of Rights form.

3. If employers fail to comply with the FCRA, they could be subject to a lawsuit and even a judgment for damages.

If you have any questions about this Alert, or if you would like assistance in complying with the FCRA, please contact the authors listed below or the [Aronberg Goldgehn attorney](#) with whom you work.

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