



Thompson Coburn LLP | One US Bank Plaza | St. Louis, MO 63101

Background Checks: Updated “Summary of Consumer Rights” Required Under Fair Credit Reporting Act

Start the new year out right by using the updated “Summary of Consumer Rights” form, required as of January 1, 2013, to comply with the Fair Credit Reporting Act (“FCRA”). Even if you updated your form earlier in 2012, you should note that the Consumer Financial Protection Bureau (“CFPB”) re-revised the form in November 2012.

Under the FCRA, employers who obtain and use consumer reports, including background checks, from consumer reporting agencies (third parties) have specific duties:

- Provide a separate, clear and conspicuous written disclosure to the individual, before the report is obtained, that a consumer report may be obtained.
- Obtain prior written authorization from the individual.
- Certify to the consumer reporting agency that the above steps have been taken, the information obtained will not be used in violation of federal or state equal opportunity law or regulation, and, if any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the individual.
- Prior to taking an adverse action, the employer must provide a copy of the report and a **summary of the consumer's rights**.
- If an adverse action is taken, the employer must send the individual a formal adverse action notice.

The CFPB revised the “Summary of Consumer Rights” to be provided by employers to applicants/employees prior to taking an adverse action. The revised form, which must be used after January 1, 2013, advises consumers that they can contact the

CFPB or visit the website at <http://www.consumerfinance.gov/learnmore> to obtain more information about their rights. The CFPB issued corrected model forms in November 2012. Visit <http://www.thompsoncoburn.com/images/newsletters/2013-Revised-Summary-of-Your-Rights-11-29-12.pdf> for the corrected "Summary of Consumer Rights" form.

It is important for employers to update their background check processes to include the revised "summary of rights," as employers that "negligently" or "willfully" fail to comply with any of the FCRA's requirements face potential lawsuits by applicants or employees. Negligent failure to comply can result in actual damages and attorneys' fees. Statutory damages (\$100-\$1,000 per violation), attorneys' fees and punitive damages are available for willful non-compliance.

If you have further questions regarding the FCRA, or other labor or employment issues, please contact your Thompson Coburn attorney or the Labor and Employment attorney listed below.

Timothy J. Sarsfield 314-552-6432 tsarsfield@thompsoncoburn.com

Thompson Coburn LLP

Chicago | St. Louis | Southern Illinois | Washington, D.C.

www.thompsoncoburn.com

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