

December 28, 2012

New Notice Requirements Under the Fair Credit Reporting Act

Effective January 1, 2013, employers must use a revised form to comply with their notice requirements under the federal Fair Credit Reporting Act ("FCRA").

By way of background, FCRA requires employers who use third-party consumer reporting agencies to conduct background checks on their applicants and/or employees to notify such individuals of their rights under FCRA. Despite its name, FCRA addresses not only third-party consumer reporting agencies' gathering and reporting of information about an individual's credit, but also about other background information, including but not limited to criminal and motor vehicle records, education, licenses, and employment history.

Under FCRA, employers have several notice requirements, including that they must: 1) provide applicants/employees with a clear written disclosure that a consumer report may be obtained for employment purposes; 2) certify to consumer reporting agencies that they have fully complied with FCRA's disclosure requirements; 3) provide notice to applicants/employees of contemplated adverse action based on a consumer report, together with a description in writing of the applicant's/ employee's rights under FCRA ("Summary of Rights Under the Fair Credit Reporting Act"); and 4) provide notice to applicants/ employees of an adverse action determination (such as rejection of an applicant or discharge of an employee) based on a consumer report, with various additional information.

The above-referenced "Summary of Rights Under the Fair Credit Reporting Act" form has now been revised. The essence of the revision is to reflect the shift in responsibility for interpreting FCRA from the Federal Trade Commission ("FTC") to the newly created Consumer Financial Protection Bureau ("CFPB")-- specifically that information about rights under the FCRA can be found at www.consumerfinance.gov/learnmore or by contacting the CFPB instead of contacting the FTC. Two additional forms required of consumer reporting agencies-- "Notice to Users of Consumer Reports," which is given by consumer reporting agencies to employers, and "Notice to Furnishers of Information," which is given by consumer reporting agencies to others providing information to them-- were similarly revised.

The revised forms may be found in Appendices K, M and N to 12 C.F.R. part 1022, the regulations interpreting FCRA. The form applicable to employers may be found at the following link: <http://ecfr.gpoaccess.gov/graphics/pdfs/er21de11.019.pdf>.

Employers who need assistance with the complex requirements of FCRA should contact one of Day Pitney's Labor and Employment attorneys.