

Electronic Alert

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Updated “Summary of Rights” Notice Required for Employers Conducting Background Checks

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Employers who conduct background checks on employees or applicants take note: the Consumer Financial Protection Bureau (the “CFPB”) has released an updated version of the required “Summary of Your Rights” notice that must be provided to subjects of employment background checks. The updated versions of “Summary of Your Rights Under the Fair Credit Reporting Act” can be found [here](#).

As organizations that routinely conduct background checks know, the federal Fair Credit Reporting Act (the “FCRA”) contains a number of strict requirements for employers obtaining and using background checks on applicants and employees. Importantly, the FCRA requires that prior to obtaining a “consumer report” (broadly defined and interpreted to include all of the criminal background, employment, and personal reference checks that an outside investigation agency provides to an employer), the subject of the report must be provided a “clear and conspicuous” disclosure that a report may be obtained for employment purposes, and this disclosure must be in a document that consists *solely* of this disclosure. (Importantly, the document cannot contain any form of waiver of liability or rights.) Additionally, the subject of the report must authorize in writing the procurement of the report.

Additionally, the FCRA requires that both a copy of the report and a specific notice published by the CFPB be provided to applicants and employees prior to taking an adverse action against an employee based in whole or in part on the results of the report.

The CFPB has updated its required notice, titled “Summary of Your Rights Under the Fair Credit Reporting Act.” Although no substantive changes were made (the CFPB largely updated contact information and made corrections to formatting), the updated document must be used for all required disclosures moving forward. There is a lengthy grace period for compliance, with the agency stating that enforcement for the use of the updated disclosure will not begin until March 20, 2024, but employers should transition to the updated form as soon as possible to avoid an accidental violation.

It is important to remember that in many states, including Oregon, there are other limitations on an employer’s ability to obtain or use some of the information that falls under the purview of the FCRA. For example, in Oregon, employers may not use or obtain credit history information of an applicant or employee, unless the employer is a bank or credit union, hiring certain public safety officers, are

required by law to consider credit history, or otherwise is hiring for a position where credit history is “substantially job-related.” Similarly, employers in Oregon may not conduct a criminal background check or require an applicant to disclose a criminal conviction prior to an initial interview, or prior to making a conditional job offer, if no interview is conducted or the employer is located in Portland and has six or more employees.

For questions on background checks or for any other employment-related inquiries, contact Amy Angel at 503-276-2195 or aangel@barran.com, or Wilson Jarrell at 503-276-2181 or wjarrell@barran.com.