

EMPLOYERS MUST UPDATE THEIR SUMMARY OF RIGHTS NOTICE FOR BACKGROUND CHECK SCREENINGS

Insights
Mar 30, 2023

Employers should promptly update their Summary of Consumer Rights notice provided to applicants and workers before taking adverse employment action based on their background check reports, thanks to a new rule about to take effect. On March 17, the Consumer Financial Protection Bureau (CFPB) released an updated "Summary of Your Rights Under the Fair Credit Reporting Act" notice for consumer reporting agencies and background check users to incorporate into their screening processes. While the CFPB's final rule is set to take effect on April 19, the agency has provided a grace period for mandatory compliance until March 20, 2024. What should employers do in order to get into compliance?

Quick Background on the Summary of Consumer Rights Notice

Most employers are aware that they need to comply with certain legal requirements when obtaining background checks and when taking an adverse employment action (such as rejecting an applicant, revoking a conditional offer of employment, or terminating a worker), in response to negative information obtained on a background check. Before employers can take an adverse employment action, based in whole or in part, on information in a

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background check report, the Federal Fair Credit Reporting Act (FCRA) requires employers to follow a pre-adverse/adverse action process. During this process, employers are required to provide applicants and workers with: (1) a copy of their report, (2) a summary of their rights under the FCRA, and (3) other FCRA information.

The CFPB, the federal agency that oversees procedures used in background screening processes, maintains a standardized summary of consumer rights notice titled, "A Summary of Your Rights Under the Fair Credit Reporting Act," which employers must use to comply with their requirements.

Revised Template: What Changed?

The updates to the CFPB's March 17 [Summary of Rights Notice](#) that employers (and consumer reporting agencies) should begin using to satisfy FCRA requirements are largely non-substantive in nature. For example, they include formatting corrections and updated contact information for the CFPB and other federal agencies. The CFPB also revised the document to remove obsolete business types such as "Federal Land Banks."

Those who began using the updated notice immediately should be aware that when it was published on March 17, the notice omitted a phone number for applicants and workers to use when seeking to limit "prescreened" offers of credit and insurance based on their report. The original notice listed 1-800-XXX-XXXX as the phone number to use. However, the CFPB has since corrected the notice, inserting the appropriate contact information: 1-888-567-8688. You should check to make sure you are using the corrected notice.

When Should You Start Using It?

While the CFPB's final rule becomes effective April 19, the mandatory compliance date is a year away (March 20, 2024). Regardless, we recommend that you begin

using the updated notice as soon as possible to get ahead of the compliance deadline and ensure that applicants and workers are provided the correct contact information for the agencies listed in the notice.

Notably, you do not need to provide the updated notice to anyone who you have already given the prior notice. You should simply ensure that you are using the most current version of the notice moving forward.

Need More Guidance?

If your organization needs assistance verifying that you are in compliance with federal, state, and increasingly prevalent local background check laws, our [FCRA and Background Screening Practice Group](#) provides tailor-made solutions for companies of all types. We can provide you with a model package that will ensure you are fully compliant with the current state of the law, including a step-by-step guide to walk you through all of the requirements. We also offer customized solutions and advice for any hiring and background check issues you may have. For more information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [FCRA and Background Screening Practice Group](#).

We will continue to monitor this area of the law and provide updates as warranted. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox.