

LAW ALERT

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About the Author

[Randy C. Gepp's](#) practice consists of representation in employment discrimination, labor relations, contracts, and administrative law matters before all federal and states courts, the Equal Employment Opportunity Commission, and the National Labor Relations Board.

Please contact Mr. Gepp for additional information on the Fair Credit Reporting Act Changes and how it may apply to your company or to your client.

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Fair Credit Reporting Act Changes

Beginning January 1, 2013, employers are required to provide a new version of the form entitled Summary of Your Rights Under the FCRA (Summary of Rights) to individuals before taking any adverse action based on the contents of a consumer report. Fortunately, the adverse action process that employers are to follow under the Fair Credit Reporting Act (FCRA) has not changed, only the Summary of Rights form. To view a copy of the new Summary of Rights, [Click Here](#)

As a reminder, the FCRA applies when an employer causes a "consumer report" (e.g., a criminal background check, credit check, etc.) to be prepared by a third party and the employer uses that consumer report for employment purposes, such as evaluating a job applicant. Before procuring such a report, the FCRA requires an employer to give a written disclosure to the individual and obtain his/her written consent. Many employers forget that this consent must be a stand-alone document and not simply a paragraph added at the bottom of an application or other document. The disclosure and consent requirements under the FCRA have not changed as a result of this recent rulemaking.

The FCRA further requires that five business days before taking adverse action, based in whole or in part on a consumer report, an employer must provide an individual with: (1) a copy of the consumer report; and (2) the Summary of Rights form. These two requirements remain unchanged. However, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub.L. 111-203, H.R. 4173) transferred the rulemaking and enforcement powers over the FCRA, which were previously vested in the Federal Trade Commission (FTC), to the newly created Consumer Financial Protection Bureau (CFPB). In light of this change, the CFPB recently issued a new Summary of Rights directing individuals to contact the CFPB, instead of the FTC, or to go to the CFPB's website for more information about their rights under the FCRA. Additionally, the list of contacts included at the end of the Summary of Rights has been updated and expanded.

You should replace the old Summary of Rights form with the new form. While this is the first change to the FCRA announced by the CFPB, we anticipate more changes in the future.