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EMPLOYMENT LAWSCENE ALERT: EMPLOYERS MUST REVIEW THEIR BACKGROUND CHECK PROCESSES TO ENSURE COMPLIANCE WITH NEW RULES

The Fair Credit Reporting Act ("FCRA") requires that employers who request "consumer reports," which include background checks, criminal histories, driving records, and credit reports, from a third-party service about employees and applicants follow certain rules. These rules contain specific requirements for notice, disclosure, and consent both in conjunction with obtaining a report and taking adverse employment action because of information in the report.

One requirement is that an employer must make certain disclosures **before** the employer takes an adverse action based on information discovered in the consumer report. This includes providing the employee or applicant with a written summary of consumer rights under the FCRA. Recently, the Bureau of Consumer Financial Protection updated its model disclosure to reflect recent legislative changes to the FCRA, such as the consumer's right to place a security freeze or fraud alert on their credit report. The new model form can be found here.

Employers must ensure that their authorizations and disclosures meet all FCRA requirements and that they are providing the correct notifications, including the updated summary of rights.