

New “Summary of Your Rights”• Notice Required for Externally Conducted Background Checks

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Employers who use an external company to conduct background checks should be sure this company provides you (or your applicants, if the external company is sending these notices directly) with the new “Summary of Your Rights” notice, which has been issued by the Consumer Financial Protection Bureau (CFPB). A link to this notice is provided [here](#).

Both an English and a Spanish version of this [new notice](#) are available on the CFPB's website.

The requirement to use the new notice takes effect on Wednesday, April 19. However, the CFPB is providing a “compliance grace period” until March 20, 2024.

As we have seen in prior versions of this updated notice, the changes this time are in form not substance. The revised notice contains new contact information for the CFPB and other federal agencies. The CFPB also revised the notice to remove obsolete business types such as “Federal Land Banks.”

Another reason we are sending this alert is we continue to see even large employer clients use some type of “on-line” background check resource – where you pay \$50 or some other set amount to an on-line company to conduct a background check for you. This part of the story is fine. However, you must use a legally compliant consent form for these background checks and comply with the other requirements of the federal Fair Credit Reporting Act (FCRA), such as providing both a “pre-adverse action notice” and a “post-adverse action notice” to applicants you decide not to hire based in part or full on the information you obtain from an externally conducted background check.

By way of reminder, the FCRA is a strict-liability statute. This means saying you did not realize you were violating it will not be a defense in doing so. You, as the employer, also cannot “delegate” responsibility for complying with the FCRA to an external background check provider. (Although you can request that such providers agree to “indemnify” you for any such violations if they will agree to do so in writing.)

If you have questions in making sure your background check consent and other notice process is FCRA compliant, please contact [Stacie Caraway](#) or any other member of our [Labor & Employment Law Practice Group](#).