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Fair Credit Reporting Act Requirements Triggered by Use of Internet and Social Media Screening Services

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Danielle M. Barbour

David L. Woodard

There has been considerable debate regarding whether employers are bound to comply with the Fair Credit Reporting Act (FCRA) when using reports compiled by third parties of public information available on social networking sites. A May 2011 letter issued by the Federal Trade Commission (FTC) regarding Social Intelligence Corporation (Social Intelligence), a social media background screening service, has confirmed that employers must comply with the requirements of FCRA when using public information furnished by Internet and social media background screening services like Social Intelligence.

In a previous [alert](#), we discussed the implications of using third-party reports about applicants based on social media content and warned that the use of such reports will likely trigger the requirements of FCRA. As discussed in our earlier [alert](#), applicants' posts to social media reveal "personal characteristics" and "modes of living" which constitute "consumer reports" under FCRA if compiled on employers' behalf by third parties. In the May 2011 letter, the FTC has taken the same position. Accordingly, Social Intelligence was determined by the FTC to be a "consumer reporting agency," thus triggering the requirements of FCRA for all employers using reports provided by the company in their employment decisions.

Employers should be advised that using consumer reports furnished by third parties, even those comprised of publicly available information obtained from social networking sites, will require the employer to comply with FCRA by (1) notifying the applicant or employee that they will be

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WWW.POYNERSPRUILL.COM

301 Fayetteville St., Suite 1900, Raleigh, NC 27601 / P.O. Box 1801, Raleigh, NC 27602-1801 P: 919.783.6400 F: 919.783.1075

requesting a consumer report for employment purposes, (2) obtaining the applicant's written authorization to obtain a consumer report, (3) providing a summary of consumer rights to the applicant, and (4) complying with adverse action procedures in the event that an adverse action (e.g., denial of employment) is taken as a result of the report.



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