

# LOWENSTEIN SANDLER LLP CLIENT ALERT

## EMPLOYMENT

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### EMPLOYERS MUST USE REVISED FCRA NOTICES

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**Employers that use the services of a consumer reporting agency (e.g., a third-party vendor) to conduct background checks on their prospective or current employees must now use an updated "Summary of Rights" form to notify applicants and employees of their rights under the federal Fair Credit Reporting Act ("FCRA").**

The FCRA regulates the means by which an employer may obtain and use a "consumer report," which it defines to include "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for," among other things, employment, promotion, reassignment or retention as an employee. Before a consumer report can be used in making employment decisions, the FCRA requires the employer to notify the subject of the background check

(i.e., the job candidate or employee) in writing that it will be obtaining such a report and that the report will be used for employment purposes, and to obtain the prospective or current employee's written authorization for the employer to procure the report. If the consumer report being obtained is an investigative consumer report involving personal interviews with people who know the applicant or employee, then, before obtaining the report, the employer also must provide the subject of the background check with the Summary of Rights form. The Summary of Rights form, together with a copy of the consumer report, also must be provided to an applicant or employee prior to an employer taking any adverse action (e.g., rejecting the applicant, denying a promotion, or terminating the employee) based upon the report.

The updated Summary of Rights under the FCRA reflects recent amendments to the FCRA that shift substantial FCRA rule-making and enforcement responsibilities from the Federal Trade Commission to the Consumer Financial Protection Bureau ("CFPB"). The new model Summary of Rights, which is codified in Appendix K to 12 C.F.R.

Part 1022, can be accessed [here](#). (Note that the updated Summary of Rights consists of three separate pages constituting one document.)

The new Summary of Rights does not involve any significant substantive changes in the rights afforded under the FCRA. Rather, it simply alters the format of the prior Summary of Rights form and updates it to incorporate the CFPB's new role in administering the FCRA. Employers using this new Summary of Rights should be aware that it is subject to change and that some items, such as dollar amounts and phone numbers, may need to be updated periodically.

## EMPLOYMENT

**If you have any questions regarding the updated Summary of Rights under the FCRA or an employer's obligations under the FCRA generally, please contact either of the attorneys listed.**

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*We would also be pleased to provide you with assistance with respect to other employment practice and workplace compliance issues.*

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