

Thought About Lately Whether You Are Violating the Fair Credit Reporting Act?

AUTHOR: SANDBERG PHOENIX

By Narcisa P. Symank

Narcisa Symank for type unknown

You should. And yes, just saying the “Fair Credit Reporting Act” (“FCRA”) is a mouthful. With numerous opportunities for employers to trip up on technical violations, and promise of potential attorneys’ fees for plaintiffs’ attorneys, lawsuits, including class actions, are on the rise.

Below are a few questions to think about in determining whether or not you are in compliance:

1. Are you conducting background checks on your employees through third party vendors?

Remember that the FCRA covers not only credit history, but various other background check information, including criminal, employment, educational, and motor vehicle information.

2. Is your FCRA applicant disclosure contained within an employment application?

If so, you are violating the FCRA. The FCRA has very specific requirements as to how the applicant disclosure is to be presented.

3. Are you obtaining appropriate authorization prior to conducting an FCRA check?

If you are not providing a proper disclosure, and obtaining authorization prior to conducting an FCRA check, you could be subject to damages.

Your authorization may also be invalid if you include extraneous information, such as, for example, a waiver of rights, with the authorization.

4. Are you providing the appropriate notices when making employment decisions on the basis of FCRA-covered background check information?

Employment decisions may not be made until after the applicant or employee receives a pre-adverse action notice and has a meaningful opportunity to respond.

After you take an adverse action, you must comply with additional FCRA requirements to avoid liability. Talk to qualified counsel for more information about FCRA compliance.