

GENERAL ANNOUNCEMENT #2

Legal Requirements for Use of Consumer Reports

Employers using consumer reports for employment purposes must adhere to a number of legal requirements before they can obtain or use a criminal check on an employee or job applicant. Under the Fair Credit Reporting Act, which defines screening companies as "consumer reporting agencies" (CRAs) and the screening report they prepare as "reports", the employers, who are the "end users" of consumer reports, are subject to the FCRA's compliance requirement, including providing notice to the individual that they will be the subject of background screening and obtaining their authorization to perform such screening.

Under FCRA, employers obtaining consumer reports are required to:

- Make a clear and conspicuous written disclosure to the applicant or employee that a consumer report may be obtained. This disclosure must be made before the consumer report is obtained or cause to be obtained. The disclosure must consist of a separate document- that is, it may not be incorporated into an application.
- Obtain the written authorization of the applicant or employee prior to requesting the report. If any adverse employment action is taken based in whole or in part upon the consumer report, the employer must provide two notices to the subject of the report before and upon actually taking the adverse action. Before taking the adverse action, the employer has to provide the applicant or employee with the following:
- A copy of the consumer report obtained from the CRA.
- A summary of the consumer's rights under the Act. (This summary is a standard document created by the Federal Trade Commission (FTC) and can be found at www.ftc.gov/bcp/online/pubs/credit/fcrasummary.pdf.) After providing this information, the employer must wait for a period of time (approximately five days) before actually taking the adverse action. As described more fully below, this waiting period allows the applicant or employee to identify any inconsistencies or inaccuracies in the consumer report.

Upon taking the adverse action, the employer must provide the applicant or employee with all of the following:

- Notice of the adverse action taken.
- The name, address and toll-free telephone number of the consumer reporting agency that furnished the consumer report.
- A statement that the CRA did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken.
- Notice of the consumer's right to obtain a free copy of the consumer report from the CRA within 60 days.
- Notice of the consumer's right to dispute the accuracy or completeness of any information in the consumer report furnished by the CRA.

Posted 8/29/2006 to 9/6/2006