

INSTRUCTIONS
for
FAIR CREDIT REPORTING ACT (FCRA) FORMS

Forms WBA (FCRA) 1-606(a)(1)(8/20/20), WBA (FCRA) 1-615(a)(8/20/20), WBA (FCRA) 615(c)(8/20/20), WBA (FCRA) 2-606(B) (8/20/20), WBA (FCRA) 604(B)(2) (8/20/20)

NOTICE: CONSULT YOUR ATTORNEY TO BE CERTAIN THESE FORMS ARE APPROPRIATE FOR YOUR ORGANIZATION AND TO BE CERTAIN THE LAW HAS NOT CHANGED SINCE THE DRAFTING DATE ON THE FACE OF THESE FORMS.

Employment background checks (also known as consumer reports) seek a wide variety of information about candidates such as driving records, criminal records, credit reports, and many other reports procured from third-party companies. Consumer reports are defined as “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 . . . employment purposes.”

If an employer conducts its own background checks, it likely does not trigger the requirements under the Fair Credit Reporting Act (“**FCRA**”).

However, if an employer hires a third-party entity to perform background check and that entity regularly conducts background checks, the employer must then comply with a federal law known as the Fair Credit Reporting Act. The FCRA imposes specific notice and authorization obligations on employers that order background checks from third-party vendors (known as consumer reporting agencies) on both job applicants and current employees.

Employers who hire third parties to conduct background checks or obtain credit reports regarding job applicants or employees must be aware of the FCRA’s requirements and ensure compliance with the FCRA. **It is the employer’s responsibility, not the responsibility of the third-party vendor, to ensure that the FCRA requirements are followed.**

CONSUMER REPORT DISCLOSURES

When utilizing a consumer report to evaluate an employment applicant or make an employment decision regarding a current employee, various steps must be taken. The following list is not exhaustive and it is advised that counsel be consulted.

1. *Initial disclosure to and authorization from the applicant.* The FCRA requires that the employer provide a clear and conspicuous disclosure to the applicant that it will request a consumer report for employment purposes and that the applicant authorize the employer to obtain the consumer report. An employer may obtain the report only if the applicant authorizes the employer in writing to obtain the consumer report for employment purposes. An employer may use the WBA (FCRA) 604(b)(2) to obtain authorization and

to make the required disclosures if it intends to use consumer reports for employment purposes.

2. *Pre-adverse action notice.* Before taking adverse action based in whole or in part on information contained in a consumer report, an employer must provide the applicant or employee a pre-adverse action notice, a copy of the consumer report and a copy of a standard document titled “A Summary of Your Rights Under the Fair Credit Reporting Act” produced by the Federal Trade Commission. The employer must give the applicant a reasonable period of time (generally considered a minimum of 5 business days) to contact the employer to address or dispute any information included in the consumer report and should state that time period in the pre-adverse action notice. An employer may use the WBA (FCRA) 1-615(c) to notify the applicant prior to making an adverse decision.
3. *Adverse action notice.* After providing an applicant the opportunity to address the consumer report, if an employer takes adverse action based on information in the consumer report (such as denying employment), the applicant or employee must receive notice of that fact. This “adverse action notice” must tell the applicant or employee about their rights to see information being reported about them and to correct inaccurate information. The notice must include: (1) the name, address, and phone number of the consumer reporting company that supplied the report, (2) a statement that the company that supplied the report did not make the decision to take the unfavorable action and cannot give specific reasons for it; and (3) a notice of the applicant and employee’s right to dispute the accuracy or completeness of any information the consumer reporting company furnished, and to get an additional free report from the company if the applicant or employee asks for it within 60 days. The WBA (FCRA) 1-615(a) may be used for this purpose.
4. These forms may be used in regard to current employees as well. Legal counsel should be consulted for steps to use with such forms in regard to current employees.

INVESTIGATIVE CONSUMER REPORTS

The FCRA requires certain additional disclosures regarding the use of “investigative consumer reports.” An investigative consumer report is a consumer report that includes information as to the applicant and employee’s character, general reputation, personal characteristics, or lifestyle that is developed through personal interviews with the applicant’s neighbors, friends, associates, or others.

If an investigative consumer report is requested on an applicant or employee, the FCRA requires that the employer disclose that fact and that the report may include information as to any of the following that are applicable: the applicant or employee’s character, general reputation, personal characteristics, and mode of living. The disclosure must be made in a writing, mailed, or otherwise delivered, to the applicant or employee not later than three days after the date on which the report was first requested. The disclosure must also include a statement informing the applicant or employee that he or she may request in writing within a reasonable time that the employer disclose the nature and scope of the investigation requested. WBA (FCRA) 1-606(a)(1) may be used for this disclosure requirement.

If the applicant requests such a disclosure, then the employer must completely and accurately disclose the nature and scope of the investigation requested. That disclosure must be made in a writing, mailed or otherwise delivered within five days after the later of the date on which the employer receives the applicant's request for disclosure or when the employer first requests the report. WBA (FCRA) 2-606(B) may be used for this disclosure requirement.

Because the application of the FCRA is complicated, it is advisable to consult with legal counsel prior to implementing background check procedures that trigger FCRA requirements.