



## *Labor and Employment Law Alert*

### EMPLOYERS MUST USE A NEW FCRA DISCLOSURE FORM TO CONDUCT LAWFUL BACKGROUND CHECKS

By Chris Thrutchley

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The Bureau of Consumer Financial Protection issued new model disclosure forms that must be used beginning **September 21, 2018** by employers using third-party consumer reporting agencies to conduct background checks. Forms are available to download in both English and Spanish at <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-issues-updated-fcra-model-disclosures>.

To conduct lawful background checks, employers must comply with the Fair Credit Reporting Act ("FCRA"). Compliance is involved but imperative--any breach, even if not willful, subjects' employers to liability, including attorney fees and costs.

FCRA noncompliance exposes employers to potential class action suits, especially employers with a high volume of job applicants. Settlements alone can easily cost millions. For instance, one federal court recently approved a \$6.7 million FCRA class action settlement with an additional \$1.4 million in attorney fees for the plaintiffs. *Hillson v. Kelly Servs., Inc.*, No. 2:15-CV-10803, 2017 WL 3446596 (E.D. Mich., Aug. 11, 2017). The violation: merely including FCRA disclosure statements on the same piece of paper as other notices, rather than as a separate document.

In May, Congress amended the FCRA to give consumers the right to "national security freezes" limiting access to their credit reports and a longer duration for initial fraud alerts on their credit reports. To reflect this change in law, the new model forms for FCRA-required *Summary of Consumer Rights* and *Summary of Consumer Identity Theft Rights*

disclosures include notices about the availability of these new security freezes and longer fraud alerts.

Our Labor and Employment Practice Group can help employers ensure proper compliance with the FCRA. Please contact one of our Labor and Employment attorneys to arrange for an audit of your background check policies, procedures, practices, and forms. Also consider implementing mandatory employment arbitration agreements with effective class or collective action waivers to further protect your organization from the risk of costly claims.

**Chris Thrutchley** is an attorney in GableGotwals' Labor & Employment Practice Group who assists clients in the area of Labor and Employment Law. For help auditing and updating your employment practices and for defense of labor and employment related claims, contact **GableGotwals**.



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