

August 3, 2011

FCRA Amendments Expand Adverse Action Notice Requirements for Employers Using Credit Scores

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) amendments to the Fair Credit Reporting Act (“FCRA”), which became effective on July 21, 2011, affects any person (including an employer) that uses credit scores to take an adverse action against a consumer. These amendments potentially expand an employer’s notice requirement obligations.

Under the amendments, when an employer uses a consumer report that includes a credit score to determine eligibility for employment, it is required to make additional disclosures as part of the adverse action notice already required by the FCRA.

Previous FCRA Adverse Action Notice Requirements

FCRA Section 615(a) previously required adverse action notices to include the following information:

- Contact information for the consumer reporting agency that provided the consumer report;
- A statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer with specific reasons for the action;
- Information about the consumer’s right under the FCRA to obtain a free copy of their consumer report from the consumer reporting agency, if requested within 60 days of receiving the notice; and
- The consumer’s right to dispute the accuracy or completeness of information with the consumer reporting agency.

New Adverse Action Notice Requirements Under FCRA Amendments

The amendments now require the disclosure of additional information about the credit score, such as:

- The range of possible credit score under the model used;
- The date on which the credit score was created;
- The name of the person or entity that provided the credit score or the credit file used to create the credit score; and
- The key factors, listed in order of importance, which adversely affected the score of the consumer in the model used.

These new requirements are triggered only if a credit score is used in taking the adverse action. Although most employers may not include third-party credit scores in their background checks, there are situations where employers do use such information as part of pre-employment screenings. If you use credit scores obtained from a consumer reporting agency to determine eligibility for employment, you should amend your current adverse action notices to comply with the Dodd-Frank Act amendments of the FCRA.

If you have any questions regarding this Client Alert or need assistance preparing or revising adverse action notices, please contact your Butzel Long attorney or the author of this Client Alert.

Shanta S.W. McMullan
313.225.7079
mcmullan@butzel.com

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