

INSIGHTS

## Employment Background Check Class-Action Litigation: Avoiding the Seemingly Minor Mistakes Fueling a Costly Wave of New Lawsuits

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Federal courts, most notably the Ninth Circuit Court of Appeals, have recently taken an increasingly hyper-technical view of employer obligations under the Fair Credit Reporting Act (FCRA) in conducting applicant background checks, including criminal background checks. The result has been a growing wave of costly FCRA class-action lawsuits over seemingly minor issues – such as the wording and formatting of employers’ FCRA disclosures to applicants.

Please join Bob Nichols and Amber Dodds for a 30-minute practical consideration of how employers can design and implement their background check process to avoid expensive FCRA litigation.

Key issues to be addressed include:

- Understanding the nuances of the FCRA’s standalone disclosure requirement, such as:
  - Whether federal and state fair credit reporting notice requirements may be combined in the same document.
  - What well-intentioned explanations or other information, if included in the FCRA disclosure, may render the process unlawful.
  - How to satisfy the “clear and conspicuous” requirement for the FCRA disclosure.
  - The timing and formatting considerations for FCRA disclosure and authorization documents.
- Assuring that your Consumer Reporting Agency (CRA) is meeting its independent obligations with regard to background checks.
- Properly making the required certification to your CRA concerning your actions.
- Understanding the content and timing requirements for the two-step adverse action process when rejecting an applicant based upon a background report.

- Recognizing the unique requirements of some state fair credit reporting laws.

**Date/Time:** Thursday, March 25, 2021 from 10 – 10:30 am CT