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Recent Lawsuit Highlights the Importance of Fair Credit Reporting Act Compliance

The Fair Credit Reporting Act (FCRA) expressly requires employers to provide applicants with a stand-alone disclosure and authorization form prior to obtaining a background check. This form must be separate from the employment application, and cannot include any type of language attempting to release the employer from liability associated with obtaining the background check. Unfortunately, many employers still fail to comply with this law by relying solely on a disclosure located on an employment application to inform applicants that they will be subject to a background check, or by attempting to include additional language on the disclosure. A recent proposed class action lawsuit against Whole Foods Market California provides a reminder to employers to review their disclosure and authorization forms for FCRA compliance.

The lawsuit accuses the employer of using an invalid form to obtain consent to conduct background checks during the employment application process. Specifically, it is alleged that the employer relied on a background check consent that was included alongside several other consent paragraphs on an online employment application, and that the online consent form included a release of claims related to obtaining the background check. If the employer is found to have used an invalid form, the consequences are significant, including invalidation of the consent, statutory damages in the amount of up to \$1,000 for each applicant, costs and attorneys' fees, and potential punitive damages.

This lawsuit is a reminder that FCRA compliance makes good business sense, and that employers should periodically review their application and hiring forms and processes to ensure strict compliance.

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