



ADVERSE ACTION NOTICE REQUIREMENTS UNDER THE FCRA

Adverse Action Defined: Adverse Action as it relates to background screening is the process an organization or institution takes when it intends to decline or withdraw consideration for an application based on the results of a background check.

Adverse Action Process

The FCRA (15 U.S.C. § 1681) places the responsibility on the organization/institution to give the applicant the opportunity to make sure the information on the Consumer report or Investigative Consumer report is correct. The FCRA has instituted a two-step process when considering declining applicants based on information contained in the pre-employment background check report. The first step is to send notice of intended Pre-Adverse Action against the subject, the second step notifies the subject that the Adverse Action has been taken.

Step One – Notice of Pre-Adverse Action

The FCRA Requirements under Sec 604(b)(3)(A) states, “in using a consumer report for employment purposes, before taking any adverse action based in whole or in part of the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates

- (i) a copy of the report; and
- (ii) a description in writing of the rights of the consumer under this title, as prescribed by the Federal Trade Commission under section 609(c)(3)”.

This notice is to be provided to the applicant when the organization/institution determines that adverse action may be taken based on the results of the background check and before the applicant is declined. The purpose of the Pre-Adverse Action letter is to provide time for the applicant to review the report and provide any details or documentation that would show the report to be inaccurate.

The Dispute Process: If the subject does not agree with the accuracy of the report, they should be directed to contact CoreScreening via email at support@corescreening.com, to dispute the results and provide any backup documentation as applicable. CoreScreening will discuss the details of the report with the applicant and re-verify and reinvestigate the items in question. After re-investigation, an updated report will be issued that either reaffirms the original report or contains corrections to the report.

Once the report is re-issued, the employer may then choose to make a final decision on the subject. If that decision is to decline the subject, the second step of the process can be taken to send final notice of Adverse Action.

Step 2 – Adverse Action Sec. 615(a) of the FCRA details duties of users taking adverse action based on information contained in a consumer report. “If any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in the consumer report, the person shall,

(1) provide written, or electronic notice of the adverse action to the consumer;

(2) provide to the consumer in writing, or electronically

(A) the name, address, and telephone number of the consumer reporting agency (including a toll free telephone number established by the agency if the company complies and maintains files on consumers on a nationwide basis) that furnished the report to the person; and

(B) a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and

(3) provide to the consumer a written, or electronic notice of the consumer’s rights

(A) to obtain under Sec. 612 [15 U.S.C. 1681j], a free copy of a consumer report from the consumer reporting agency referred to in paragraph (2), which notice shall include an indication of the 60 day period under that section for obtaining such a copy; and

(B) to dispute, under Sec. 611 [15 U.S.C. 1681i], with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency”.

It is very important to follow the two-step rule to remain compliant with the Fair Credit Reporting Act (FCRA). This gives the subject a chance to dispute any information contained in the report. Although the FCRA does not say how much time should be allowed between the Pre-Adverse Action notice and the Adverse Action notice, the Federal Trade Commission has suggested that five (5) business days be allowed for the applicant to respond to the Pre-Adverse Action notice.

If you have any additional questions about your responsibilities under the FCRA, we encourage you to contact us at 800-275-1243 or email: support@corescreening.com

Disclaimer

This document is to be used as a reference tool only and not intended to be legal advice. We encourage you to contact your own legal counsel for advice on this topic as it relates to your unique circumstances.