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ADVERSE ACTION

EMPLOYER TOOLKIT

A practical guide to the federal pre-adverse and adverse-action process when employment decisions are based on consumer reports

WHAT'S INSIDE

Process overview • Pre-adverse checklist • Sample pre-adverse notice • Candidate review/dispute workflow • Final adverse-action checklist • Sample final notice • Documentation checklist • Common mistakes

IMPORTANT

This toolkit provides general educational information and sample language only. It is not legal advice and the sample notices are not guaranteed to satisfy every federal, state or local requirement. Employers should have qualified legal counsel review their forms, timing and procedures before use.

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01 Understanding Adverse Action

The FCRA creates a before-and-after process when a consumer report influences an unfavorable employment decision.

For employment purposes, adverse action can include decisions such as declining to hire, terminating employment, denying a promotion, or reassigning an individual when the decision is based in whole or in part on information in a consumer report.

The federal process has two distinct stages:

PRE-ADVERSE ACTION

Before the decision is final: provide the consumer report relied upon and the current Summary of Rights so the individual has an opportunity to review the information.

FINAL ADVERSE ACTION

After the decision is made: provide the required adverse-action notice, CRA contact information, and the individual's dispute/free-report rights.

IMPORTANT DISTINCTION

The consumer reporting agency (CRA) supplies the report. The employer makes the employment decision. The final adverse-action notice must explain that the CRA did not make the decision and cannot provide the specific reasons for it.

02 Pre-Adverse Action Checklist

- ☐ Confirm that the contemplated unfavorable decision is based in whole or in part on information in a consumer report.
- ☐ Confirm the report belongs to the correct applicant or employee and identify the information being considered.
- ☐ Apply the employer's documented decision criteria consistently and consider applicable equal-employment-opportunity requirements.
- ☐ Check whether state or local fair-chance, individualized-assessment, notice or timing rules apply.
- ☐ Send a pre-adverse action notice before making the employment decision final.
- ☐ Include a complete copy of the consumer report relied upon.
- ☐ Include the current 'A Summary of Your Rights Under the Fair Credit Reporting Act.'
- ☐ Provide a meaningful opportunity for the individual to review the report and raise questions or dispute potentially inaccurate information.
- ☐ Route any dispute or new information through the employer's defined review process before finalizing the decision.

TIMING NOTE

The FTC describes the purpose of advance notice as giving the individual an opportunity to review the report and address negative information. State/local law, contracts, policy, or case-specific requirements may impose additional timing obligations. Do not assume one waiting period works everywhere.

03 Sample Pre-Adverse Action Notice

Use as a starting point only; have counsel adapt it to your organization and jurisdictions.

[DATE]

[APPLICANT / EMPLOYEE NAME]

[ADDRESS]

[CITY, STATE ZIP]

Re: Employment Background Report

Dear [NAME]:

We are considering an employment decision that may be based, in whole or in part, on information contained in a consumer report obtained for employment purposes.

No final decision has been made at this time.

Enclosed are:

- A copy of the consumer report we are considering; and
- A copy of "A Summary of Your Rights Under the Fair Credit Reporting Act."

Please review the report carefully. If you believe any information in the report is inaccurate or incomplete, you may contact the consumer reporting agency that prepared the report:

[CRA NAME]

[CRA ADDRESS]

[CRA TELEPHONE]

[CRA WEBSITE / DISPUTE INFORMATION, IF APPROPRIATE]

If you wish to provide information to us regarding the report or notify us that you have initiated a dispute, please contact [EMPLOYER CONTACT / EMAIL / PHONE] promptly.

We will consider any information provided through our review process before a final employment decision is made.

Sincerely,

[EMPLOYER / AUTHORIZED REPRESENTATIVE]

CUSTOMIZE BEFORE USE

State and local laws may require specific notices, individualized assessment language, reasons, worksheets, waiting periods or other content. This federal sample should not be deployed as a universal form.

04 Candidate Review & Dispute Workflow

1. PRE-ADVERSE SENT

Record the date, delivery method, report version and Summary of Rights version.

2. CANDIDATE RESPONDS

Route questions, context or dispute notices to the designated HR/compliance owner.

3. DISPUTE WITH CRA

If report accuracy/completeness is disputed, follow the organization's hold/review procedure and coordinate appropriately with the CRA.

4. UPDATED INFORMATION

Review any corrected report or relevant information before making the final decision.

5. EMPLOYER DECISION

Apply documented, job-related criteria consistently and complete any required state/local assessment.

6. FINAL NOTICE

If adverse action is ultimately taken based in whole or in part on the report, send the final adverse-action notice.

05 Final Adverse-Action Checklist

- ☐ Confirm the employer has completed its review and made the final employment decision.
- ☐ Confirm required pre-adverse materials were provided before the final decision.
- ☐ Confirm any candidate response, dispute or updated report was handled under the employer's process.
- ☐ Confirm applicable state/local requirements have been satisfied.
- ☐ Provide the final adverse-action notice orally, in writing or electronically; written/electronic documentation is generally easier to retain.
- ☐ State that adverse action was taken based in whole or in part on information in the consumer report.
- ☐ Provide the CRA's name, address and telephone number.
- ☐ State that the CRA did not make the employment decision and cannot provide the specific reasons for it.
- ☐ Explain the individual's right to dispute the accuracy or completeness of information furnished by the CRA.
- ☐ Explain the right to obtain an additional free report from the CRA if requested within 60 days.
- ☐ Retain appropriate documentation of the process and notices.

06 Sample Final Adverse-Action Notice

[DATE]

[APPLICANT / EMPLOYEE NAME]

[ADDRESS]

[CITY, STATE ZIP]

Re: Employment Decision

Dear [NAME]:

After completing our review, we have made a final employment decision. This decision was based, in whole or in part, on information contained in a consumer report provided by:

[CRA NAME]

[CRA ADDRESS]

[CRA TELEPHONE]

The consumer reporting agency listed above did not make this employment decision and cannot provide the specific reasons for our decision.

You have the right to dispute with the consumer reporting agency the accuracy or completeness of any information it furnished. You also have the right to obtain an additional free copy of your consumer report from the agency if you request it within 60 days.

For information about disputing your report or requesting another copy, please contact the consumer reporting agency using the information above.

Sincerely,

[EMPLOYER / AUTHORIZED REPRESENTATIVE]

SAMPLE LANGUAGE ONLY

Review this notice with counsel and add any state/local content, reasons, assessments, attachments or timing language required for the jurisdiction.

07 Common Employer Mistakes

COMMON MISTAKE	BETTER PRACTICE
Making the decision final too early	The pre-adverse stage is intended to occur before the final adverse employment action.
Sending only a pre-adverse letter	Federal guidance requires the consumer report relied upon and the Summary of Rights to accompany the advance notice.
Treating the CRA as the decision-maker	The employer owns the employment decision. The CRA reports information.
Ignoring a dispute or updated report	Create a clear workflow so recruiters do not finalize a decision while relevant review steps are unresolved.
Using one national workflow without jurisdiction review	State and local fair-chance laws can add notices, assessments, reasons and timing requirements.
Failing to document delivery	Maintain a reliable record of notices, attachments, dates, delivery method, responses and final disposition.
Using outdated forms	Periodically review the Summary of Rights, notices, CRA information and state/local addenda.

08 Adverse-Action Documentation Checklist

- ☐ Consumer report version relied upon
- ☐ Date report was reviewed and by whom
- ☐ Applicable decision criteria / adjudication notes
- ☐ State/local jurisdiction review, if applicable
- ☐ Pre-adverse notice and delivery record
- ☐ Copy of report provided to individual
- ☐ Summary of Rights version provided
- ☐ Candidate response or dispute documentation
- ☐ Updated/corrected report, if any
- ☐ Individualized assessment or other jurisdiction-specific documentation, if required
- ☐ Final decision approval
- ☐ Final adverse-action notice and delivery record
- ☐ Retention / secure-disposal status

09 One-Page HR Quick Reference

IF A BACKGROUND REPORT MAY LEAD TO AN UNFAVORABLE DECISION

Do not immediately reject, terminate, reassign or deny promotion. Route the case through the organization's adverse-action workflow.

BEFORE THE FINAL DECISION

- ☐ Send pre-adverse notice.
- ☐ Provide the report relied upon.
- ☐ Provide the current FCRA Summary of Rights.
- ☐ Allow the individual an opportunity to review/respond and follow the dispute workflow.
- ☐ Complete applicable state/local requirements.

AFTER THE FINAL DECISION

- ☐ Send final adverse-action notice.
- ☐ Identify the CRA by name, address and telephone.
- ☐ State the CRA did not make the decision.
- ☐ Explain dispute rights.
- ☐ Explain the right to another free CRA report within 60 days.
- ☐ Document the process.

10 Primary Federal References

Federal Trade Commission

- Background Checks: What Employers Need to Know
- Using Consumer Reports: What Employers Need to Know
- Background checks on prospective employees: Keep required disclosures simple

Consumer Financial Protection Bureau

- Background screening reports / employment background-check rights
- A Summary of Your Rights Under the Fair Credit Reporting Act

U.S. Equal Employment Opportunity Commission

- Background-check and criminal-record guidance for employers

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Educational disclaimer: This toolkit is provided for general informational and educational purposes only. It is not legal advice, does not create an attorney-client relationship, and is not a certification of compliance. Laws and regulatory guidance may change. Additional federal, state, local, industry-specific and contractual requirements may apply. Employers should consult qualified legal counsel regarding their specific forms, procedures, timing and employment decisions.