



Adverse Action Process

If an employer denies a job applicant, terminates an employee, rescinds a job offer, or denies a promotion based on the results of a background check and/or a driving record, it is considered an adverse action. Under federal law there are required steps that must be followed in order to be in compliance with the Fair Credit Reporting Act (FCRA).

There are two notice requirements under the FCRA

I. The Pre-Adverse Action Letter

This is called a Pre-Adverse Action letter, since it must be sent before the adverse action is taken. In other words, if an employer feels that the information contained in a background check and/or a driving record report may impact the hiring decision, then at that time the employer must send the Pre-Adverse Action letter. The purpose of this process is to give the applicant an opportunity to dispute the accuracy of what was reported. Section 604 of the FCRA requires that before taking any adverse action employers provide to the applicant with:



- **The Pre-Adverse-Action Letter**
- **A copy of the background check and /or driving record report**
- **A summary of consumer's rights under the FCRA**

II. The Adverse Action Letter

The second notice must be sent after the employer decides to take adverse action (not hire the applicant). In the Adverse Action letter the employer must notify the consumer that adverse action has been taken based on a consumer report, and include in that disclosure the following:

1. The name, address, and phone number of the consumer reporting agency that furnished the report.
2. A statement that the consumer reporting agency did not decide to take the adverse action and is unable to provide the consumer with specific reasons for the action.
3. A notice of a consumer's rights to obtain a free copy of his or her report from the consumer reporting agency within 60 days.

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4. The individual has the right to dispute the accuracy or completeness of any information in the report.”
FCRA §615.

How long should I wait after sending the Pre-Adverse Action letter before I send the Adverse Action letter?

Unfortunately, the FCRA does not provide an exact time frame. However, the FTC stated in an opinion letter that employers should keep in mind that the purpose of the provision is to allow consumers to discuss the report with employers before adverse action is taken (FTC Opinion Letter, Lewis, June 11, 1998). The adverse action letters provide the consumer protection giving them an opportunity to clear up any potential errors on a report. Congress has ruled that 5 business days is a reasonable time period to wait after the pre-adverse action letter before taking adverse action. H.R.Rep.No. 103-486, at 30 (1994).

How should I send the letters?

While there is no required method, sending the letter by mail with return receipt or getting the applicant to sign for it, provides evidence that they received it. If you have the ability to send the letter by email with return receipt it can also show that it was received and opened.

How important are These Letters?

The FCRA has penalties including punitive damages and actual damages for failure to comply with the adverse action provisions. As compliance is fairly simple, employers should incorporate into the adverse action process into their employment screening policies.

Just ask these companies if complying with the FCRA is important

- [Swift Transportation has been sued in a federal court for allegedly violating the Fair Credit Reporting Act](#)
- [Domino’s Pizza Drivers Reach \\$2.5 Million Tentative Settlement for Violations of Fair Credit Reporting](#)

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