



Your Adverse Action Checklist

When a background check is part of your hiring process, you may find information that could disqualify a candidate. You need to tread carefully and follow the laws that govern taking adverse action. The Federal Fair Credit Reporting Act (FCRA) requires that employers follow a two-step process before denying employment as a result of adverse information on a background check.

1. Send a pre-adverse action notice, informing the candidate that an adverse employment decision may be made based on something in their report. Include a copy of the background check report for the candidate to review and address possible inaccuracies. Inform the candidate of their right to dispute possible inaccuracies.
2. If the candidate does not dispute their findings within a reasonable amount of time or the allotted days, or if their dispute doesn't result in amendment or change, send the final notice of adverse action indicating that an adverse decision was made.



Adverse Action DO's:

Create an adverse action policy with procedures for both pre-adverse and final adverse action notifications

Refrain from extraneous verbal communication with the candidate that might be premature or indicate a final decision prior to sending a final notice. Such communication could invalidate your written notices

Include all attachments required by the statute, including a copy of the background check report, the required Federal Summary of Rights, and appropriate state notices with your pre-adverse action notice

Provide attachments on a separate page(s) from the other information in the pre-adverse notice

Include the Consumer Reporting Agency contact information to allow the candidate to dispute incomplete or inaccurate information on their report

Wait a reasonable amount of time between notices, generally at least five (05) days, but some state and local jurisdictions require a longer time period

Consider laws which may obligate additional requirements, i.e., written notices identifying the specific charge at issue, completion of individualized assessments, or other special forms or processes

Include a statement that the background screening company does not make the hiring decision



Adverse Action DONT's:

Don't make a final decision on a candidate before the pre-adverse notice has gone out

Don't send the final notice until a reasonable amount of time has passed to give the applicant a chance to dispute

Don't rely on verbal, undocumented adverse action

Don't confuse pre-adverse and adverse action notifications (required under the Federal FCRA) with individualized assessment notices or other "Fair Chance" processes that are required by the Equal Employment Opportunity Commission (EEOC) or other state, city, or county laws. Each may have its own requirements

Need to Stay Ahead of Regulatory Riddles?

Our in-house team of compliance experts share regular updates on state and federal laws, amendments, and updates.

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Be sure to consult with your legal counsel and have them review your adverse action policy and notices/forms. Periodic review is recommended to stay on top of state and local laws as well as the FCRA.

ABOUT STERLING

Sterling (NASDAQ: STER) — a leading provider of background and identity services — offers background and identity verification to help over 50,000 clients create people-first cultures built on a foundation of trust and safety. Sterling's tech-enabled services help organizations across all industries establish great environments for their workers, partners, and customers. With operations around the world, Sterling conducts more than 95 million background checks annually. Visit us at sterlingcheck.com.

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