



BACKGROUND SCREENING COMPLIANCE

ADVERSE ACTION

Requirements employers must follow if they plan to take "adverse action" against an applicant.

ADVERSE ACTION REQUIREMENTS

After an employer obtains a background report on an employee or applicant for employment, the employer must follow certain requirements if it may take "adverse action" (e.g., denial of employment, termination, etc.) against the applicant or employee based even in part on the contents of the report.

First, before the employer implements or communicates the adverse action against the applicant or employee, the employer must provide a **"pre-adverse action"** notice to the individual, which must include a copy of the background report and the statutory Summary of Rights under the FCRA. This requirement affords the applicant or employee an opportunity to discuss the report with the employer and/or the background screening company that prepared the report before the employer takes adverse action. We recommend that employers wait at least seven or eight business days after sending the pre-adverse action notice before proceeding to the next step. It is important that the employer understand when the pre-adverse action notices are likely received by the applicant or employee to ensure that the applicant or employee have had time to review and respond to the notice. It is also important that employers ensure that other communications with the applicant or employee during this period consistently reflect that a decision is pending, not final.

If, after the requisite period of time has passed, the employer ultimately decides to take the adverse action against the applicant or employee, it **must then provide an "adverse action" notice** to the individual. The adverse action notice must contain the following information:

- The name, address and telephone number of the background screening company that provided the report;

- A statement that the background screening company did not make the adverse decision and is not able to explain why the decision was made;
- A statement setting forth the applicant's or employee's right to obtain a free disclosure of his or her report from the background screening company if the applicant or employee makes a request for such a disclosure within 60 days; and
- A statement setting forth the applicant's or employee's right to dispute directly with the background screening company the accuracy or completeness of any information contained in the report.

In addition to the FCRA, there are a variety of state and local employment laws that require certain notices with the pre-adverse and adverse action notices and also restrict when an employer can order the background report from the background screening company. Some of these laws are particularly onerous, imposing several requirements on employers before they may disqualify an applicant based on criminal history information. State and local laws also restrict "what" criminal information can be considered for employment purposes, such as criminal history, compensation history, and credit history, or require additional disclosures when obtaining such information on applicants or employees. These laws are not addressed in this document.

To learn more about Simple. Secure. Screening. with Chane Solutions visit us at chanesolutions.com.

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