

# Adverse Action Guidelines

## DISCLAIMER

The information provided in this sample is designed to serve as a guide for our clients. These materials are not to be construed as the rendering of legal or management advice. If the reader has a specific need or problem, please consult with your Human Resource professional or legal counsel. Those using these forms accept the terms of use stated above.

Note: These forms and sample letters are drafted to comply with the federal Fair Credit Reporting Act. States may have additional requirements beyond federal law. State law should be checked before being used.

### What is Adverse Action?

Adverse action refers to the hiring company taking the action of **declining** an applicant or **withdrawing an offer of employment**. Under the Fair Credit Reporting Act (FCRA), employers are required to take certain actions whenever they obtain a consumer report on a job applicant or employee. All background screening reports produced by outside vendors are classified as consumer reports and FCRA requirements include verification and notification before and after an adverse event.

If an organization relies on any part of the information from a pre-employment screening report obtained from a consumer reporting agency they must follow "adverse action" processes as outlined by FCRA. It is important to remember that the Fair Credit Reporting Act (FCRA) clearly places the responsibility of Adverse Action notification on the employer. Below outlines the process for proper Adverse Action notification.

### Step 1: Call SecureSearch with any questions.

If you choose to run an "instant" database search (including but not limited to Multi-State Criminal Records and Sex Offender Registry Search and Multi-State Criminal Records and Sex Offender Registry Search with SSN Trace and Alias Search) that you are taking responsibility for the information returned and agree to perform due diligence prior to taking any Adverse Action against the Applicant. Additional due diligence may include verifying the record by ordering county courthouse searches or the equivalent, to determine if the conviction is accurate. If a record returns on the applicant, please contact one of our client advocates for assistance in determining the validity of the record. Databases can sometimes report false positive records or aged records that have since been updated. We will be able to advise you should additional services need to be ordered to validate the reporting record. Any supplemental orders are charged to the organization.

If the record is validated at the jurisdiction, then the following steps are performed by the hiring organization.

**Remember: No unverified record should ever be used for Adverse Action.**

## **Step 2: Notify Applicant of Potential or Pre-Adverse Action**

When it is determined that the reporting record belongs to the applicant and the organization wishes to decline or withdraws an offer of employment, the organization is required to forward a Pre-Adverse Action Notice to the applicant. The notice must include:

1. A letter advising the applicant that adverse action is being considered
2. A copy of the report on which the adverse action is being considered
3. Direction to contact SecureSearch if the applicant wishes to dispute any of the information contained in the report

The notice provides the candidate an opportunity to challenge the information provided in the report and take steps to correct inaccuracies or provide explanation. A final employment decision shall not be made by the hiring department until new information is gathered and considered or at such time that the finalist fails to respond as required.

### **What if the applicant disputes the record?**

If the applicant does not agree with the accuracy and/or completeness of the report, they may contact SecureSearch to file a dispute. SecureSearch will then reinvestigate any disputed aspects of the case, correcting or reaffirming the report as it was originally issued. SecureSearch will stay in contact with both the applicant and the organization until the matter is resolved. It is SecureSearch policy to give any dispute immediate and prompt attention; however, it can take up to 30 days to verify all information submitted by the applicant. Once the dispute has been settled and the report reissued, the organization is then in the position to make a final decision. If that decision is to decline the applicant or withdraw the offer of employment, then the next step of the process can be taken.

## **Step 3: Send formal Adverse Action Notice**

The organization will forward an Adverse Action Notice to the applicant and the notice will include:

- A letter or notice advising the applicant of the adverse action being taken. Typically this would be the declining of the applicant or withdrawing of the offer of employment. However, if the applicant actually started employment, then that would typically involve a letter of termination.
- The letter will include a statement that the CRA (vendor) supplying the report did not make the decision to take the adverse action and cannot give specific reasons for it.
- A copy of the final SecureSearch investigative consumer report.
- A copy of "A Summary of Your Rights Under the Fair Credit Reporting Act" along with any specific state requirements. \*The Summary of Rights is included with every SecureSearch investigative consumer report.

The importance of this process being followed cannot be overstated for both fairness to all parties involved and the potential exposure of litigation to the organization by not adhering to the steps as required under the FCRA. If you have any questions, please contact SecureSearch by emailing [Support@SecureSearchPro.com](mailto:Support@SecureSearchPro.com) or calling 866-891-1954.

## Sample Pre-Adverse Action Notice:

Date

Employee's/Applicant's Address

### **PRE-ADVERSE ACTION LETTER**

Dear Applicant/Employee:

This letter is to inform you that information has been found during the course of our background screening process that may impact [your application/your employment] with the Company. This information was contained within a [consumer/investigative consumer] report.

Enclosed is a copy of the report and a Summary of Your Rights under the Fair Credit Reporting Act. If you have information that would show that information contained within this report is inaccurate or incomplete, please provide that information to [designate appropriate company representative] within five business days.

Sincerely,

Employer

Enclosure

## Sample Adverse Action Notice:

Date

Employee's/Applicant's Address

### **ADVERSE ACTION LETTER**

Dear Applicant/Employee:

Please be advised that the Company has decided [not to hire/promote/reassign or to terminate your employment].

This action was influenced in whole or in part by information contained in a [consumer/investigative consumer] report made at our request by SecureSearch, 558 Castle Pines Parkway, #B4-137, Castle Rock CO 80108, a reputable and well known provider of investigative services. SecureSearch can be reached at 866-891-1954 or [Support@SecureSearchPro.com](mailto:Support@SecureSearchPro.com).

This letter serves as notice that you have the right to dispute the accuracy and completeness of the information contained within the report with the consumer reporting agency. However, the consumer reporting agency did not make the decision to take the adverse action and cannot provide you with the specific reasons for the adverse action. You can obtain a free copy of the consumer report from the agency specified above within a 60-day period following receipt of this notice.

Sincerely,

Employer