



## 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 the information below accept the terms of use stated above.

For compliance and guidance regarding the Fair Credit Reporting Act (FCRA) please go [here](#). You can also read the entire FCRA [here](#).

Individual states may have additional requirements beyond federal law. State law and professional or legal counsel should be checked before any Pre-Adverse or Adverse Action is taken.

### 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 (background check) on a job applicant or employee and then decline or withdraw an offer of employment. All background screening reports produced by a Consumer Reporting Agency (CRA), like SecureSearch™, are classified as "Consumer Reports." FCRA requirements include verification of information and notification to applicant/employee in the event an organization declines or withdraws an offer of employment due to adverse information.

It is important to remember that the FCRA clearly places the responsibility of Pre-Adverse and Adverse Action notification on the employer. Below outlines the process for proper Pre-Adverse and Adverse Action notification.

### Step 1: Contact SecureSearch™ with any questions.

If you choose to run an "instant" database search (including, but not limited to, Multi-State Criminal Search and Multi-State Criminal Search with Alias) than 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 a County Courthouse Criminal search, 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 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.**

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## 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 withdraw 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 completed background check
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 applicant/employee 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, he/she may contact SecureSearch™ to file a dispute. SecureSearch™ will 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 the next step of the Adverse Action 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:

1. 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 started employment it would typically involve a letter of termination
2. A letter stating that the CRA supplying the report did not make the decision to take Adverse Action and cannot give specific reasons for why it is taking place
3. A copy of the final consumer report
4. A copy of "A Summary of Your Rights Under the Fair Credit Reporting Act"
5. Any additional specific state requirements

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™ via email at [Support@SecureSearchPro.com](mailto:Support@SecureSearchPro.com) or by phone at 866-891-1954.

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## Sample Pre-Adverse Action Notice

Date

Employee's/Applicant's Address

Subject: PRE-ADVERSE ACTION NOTICE

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 Name

Employer Address

Employer Contact Information

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## Sample Adverse Action Notice

Date

Employee's/Applicant's Address

Subject: ADVERSE ACTION NOTICE

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.

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 Name

Employer Address

Employer Contact Information

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