

BRAIN TEASER

Fair Credit Reporting Act

Your company has an established hiring practice of conducting pre-employment background checks for all management positions. You have received a report indicating a red flag on a new hire. You want to rescind the offer and let the individual know employment will be denied.

How should you handle this issue?

- A. Call the individual and let them know they did not pass the background check.
- B. Provide a Pre-Adverse Action notice prior to running a Credit check, then an Adverse Action letter if employment is being denied based on information contained in the credit report.
- C. Send a letter stating they did not “pass” the background check and the offer is rescinded.

See below for answer



The correct answer is B.

Explanation:

Employers that use the results of background investigation in hiring, promotion, suspension, or termination decisions need to be aware of Adverse Action procedures under the Fair Credit Reporting Act (“FCRA”). The FCRA provides that employment decisions based in whole or in part on a background check report are “adverse action” decisions, which have specific notice requirements that must be satisfied. “Adverse Action” is defined as a denial of employment or any other decision for employment purposes based in whole or in part on a consumer report that adversely affects any current or prospective employee. *FCRA §603(k)(1)(B)(ii) {15 USC §1681a} and FCRA §615 {15 USC §1681m}*.

Employers that intend to take adverse action against an applicant or employee because of information uncovered in the consumer report must follow these two notice provisions of the FCRA:

1. **Provide a Pre-Adverse Action Letter.** Before taking any adverse action based on a consumer report, the employer must provide to the consumer (i.e. applicant/employee) with a copy of the report and a summary of consumer’s rights under the FCRA. This is referred to as the Pre-Adverse Action letter, since it must be sent before the adverse action is taken. In other words, if an employer has a report and believes that the information contained in the report may impact the hiring decision, then at that time the employer must send the Pre-Adverse Action letter.
2. **Provide a Post-Adverse Action Letter.** After the employer takes adverse action based on the contents of a consumer report, the employer must notify the consumer of the fact that adverse action has been taken because of information contained in the consumer report. This disclosure must include the following information:
 - a. The name, address, and phone number of the consumer reporting agency that furnished the report;
 - b. 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;
 - c. A notice of a consumer's rights to obtain another free copy of his or her report from the consumer reporting agency within 60 days and
 - d. A statement advising the individual that he/she has the right to dispute the accuracy or completeness of any information in the report.

In addition to the foregoing requirements, state law may place additional restrictions on credit checks that are conducted on applicants and/or employees. Click [here](#) for applicable state laws.