

## Rules for Adverse Action

### **Step 1: Written notice and authorization**

Before you can order a consumer report for employment purposes, you must notify the individual in writing - in a document consisting solely of this notice - that you are using the report. You must also get the person's written authorization before you ask a CRA for the report. (Special procedures apply to the trucking industry).

### **Step 2: Pre-Adverse action procedures**

If you rely on a consumer report for an "adverse action" - denying a job application, reassigning or terminating an employee, or denying a promotion - be aware that: Before you take the adverse action, you must give the individual a pre-adverse action disclosure that includes a copy of the individual's consumer report and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act" - a document prescribed by the Federal Trade Commission. The CRA that furnishes the individual's report will give you the summary of consumer rights.

### **Step 3: Post-Adverse Action**

After you've taken an adverse action, you must give the individual notice - orally, in writing, or electronically - that you have taken the adverse action. The notice must include: the name, address, and phone number of the CRA that supplied the report a statement that the CRA that supplied the report did not make the decision to take the adverse action and cannot give specific reasons for it a notice of the individual's right to dispute the accuracy or completeness of any information the agency furnished and his or her right to an additional free consumer report from the agency upon request within 60 days.

### **What's your responsibility?**

In any case where information in a consumer report is a factor in your decision - even if the report information is not a major consideration - you must follow the procedures mandated by the FCRA. In this case, you must provide the applicant a pre-adverse action disclosure before you reject his or her application. When you formally reject the applicant, you must provide an adverse action notice.

*The applicants for a sensitive financial position have authorized you to obtain credit reports. You reject one applicant because his or her credit report shows a debt load that may be too high for the proposed salary, even though the report shows a good repayment history. You turn down another because the credit report shows only one credit account and you want someone who has shown more financial responsibility.*

### **Are you obliged to provide any notices to these applicants?**

Both applicants are entitled to a pre-adverse action disclosure and an adverse action notice. If any information in the credit report influences an adverse decision, the applicant is entitled to the notices - even when the information isn't negative. The applicant has the right to receive a copy of their background check.

**Noncompliance**

There are legal consequences for employers who fail to get an applicant's permission before requesting a consumer report or fail to provide pre-adverse action disclosures and adverse action notices to unsuccessful job applicants. The FCRA allows individuals to sue employers for damages in federal court. A person who successfully sues is entitled to recover court costs and reasonable legal fees. The law also allows individuals to seek punitive damages for deliberate violations. In addition, the Federal Trade Commission, other federal agencies, and the states may sue employers for noncompliance and obtain civil penalties.

**EEOC**

Employment tests such as cognitive tests, criminal background checks and physical ability tests can often help employers sift through large pools of job applicants and employees seeking promotion. A new fact sheet issued by the U.S. Equal Employment Opportunity Commission ("EEOC") reminds employers to be careful in deciding what tests to use and how to score those tests. While the fact sheet does not stake out new ground, the EEOC's focus on an increase in testing-related discrimination charges should impel employers to ensure that their own procedures comply with federal anti-discrimination laws.

For more information:

[http://www.eeoc.gov/policy/docs/factemployment\\_procedures.html](http://www.eeoc.gov/policy/docs/factemployment_procedures.html)

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint, or to get free information on any of 150 consumer topics, call toll-free, 1-877-FTC-HELP (1-877-382- 4357), or use the online complaint form. The FTC enters Internet, telemarketing, and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies worldwide.

If you feel you are a victim of identity theft, the Federal Trade Commission (FTC) has information available to assist you. The following URL is the FTC's identity theft website: <http://www.ftc.gov/bcp/edu/microsites/idtheft/>. In addition, the FTC has published a document that provides an overview of the identity theft issue. It is titled "Remedying the Effects of Identity Theft."

**Federal Trade Commission for the Consumer**

1-877-FTC-HELP

[www.ftc.gov](http://www.ftc.gov)