

5 steps for making an employment decision based on a background check



Ryan Neumeyer | Monday, November 20, 2017

When making personnel decisions - including hiring, retention, promotion, and reassignment - employers often want to consider applicants' and employees' backgrounds. For instance, some employers might want to learn about the person's work history, education, criminal record, financial history, medical history, or use of social media.

The federal Fair Credit Reporting Act (FCRA) requires employers to take certain steps if they use third parties (known as credit reporting agencies) to perform these background checks. The FCRA also requires that an employer follow certain procedures if it plans to take an adverse employment action (e.g., terminating an employee, rescinding an offer of employment) based on the third party's report. Here is a summary of the five key steps an employer must take:

1. Employers must obtain the applicant's written authorization before the background check is conducted.
2. The authorization must be on a document separate from all other documents, such as an employment application.
3. Employers must provide the employee with a Pre-Adverse Action letter. If an employer might use information from a credit or other background check to take an adverse action it must give the employee a copy of the report and a document called "[A Summary of Your Rights Under the Fair Credit Reporting Act](#)" before taking an adverse employment action.

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4. The FCRA does not specify how long an employer must wait after providing an employee with the pre-adverse letter, but the Federal Trade Commission has suggested that five business days is reasonable.
5. Following an adverse action, the employer must give the individual an “adverse action notice” that contains:
 - a. The name, address, and phone number of the company that supplied the credit report or background information.
 - b. A statement that the company that supplied the information did not make the decision to take the adverse action and cannot give any specific reasons for it.
 - c. A notice of the right to dispute the accuracy or completeness of any information in the report and the right to get an additional free report from the company that supplied the credit or other background information if the same is requested within 60 days.

The letter also needs to include another copy of “A Summary of Your Rights Under the Fair Credit Reporting Act.”

The purpose of this process is to allow an employee to correct any discrepancies included on an incorrect report. However, the law does not require an employer to keep the job open for any period of time. Failure to follow these steps can and will lead to liability on the part of the employer. Damages can be between \$100 and \$1,000 per FCRA violation.

It is important for employers to familiarize themselves with FCRA procedures to ensure that are complying with the law and to avoid costly liability for technical mistakes.



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