

PROCEDURE FOR OBTAINING AND USING A CONSUMER REPORT FOR EMPLOYMENT PURPOSES

Employment background checks through a Consumer Reporting Agency (CRA), such as The Reference Company, also are known as consumer reports. As an employer, you may use consumer reports when you hire new employees and when you evaluate employees for promotion, reassignment, and retention. When you use consumer reports to make employment decisions, including hiring, retention, promotion or reassignment, you must comply with the Fair Credit Reporting Act (FCRA). Before you can get a consumer report for employment purposes, you must notify the individual in writing – in an explicit document separate from the application – that a report may be used. If requesting an investigative consumer report which includes references, the disclosure must contain the document “A Summary of Your Rights Under the Fair Credit Reporting Act.” You also must get the person’s written authorization before you ask a CRA for the report.

If and when you decide not to hire, promote, reassign, or retain an individual based in whole or in part on the consumer report you received from a consumer reporting agency, the Fair Credit Reporting Act (FCRA) requires that you adhere to the following procedure consisting of two steps: The Pre-Adverse Action notification and the Final Adverse Action notification.

Adverse Action* Two step Procedure: **“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) and FCRA §615*

Step One: BEFORE you take the Adverse Action, you must give the individual a Pre-Adverse Action Notice, a copy of the investigative consumer report we provided to you and a copy of the Federal trade Commission’s document “A Summary of Your Rights Under the Fair Credit Reporting Act.”

The Pre-Adverse Action Notice should contain the following information:

- The name and contact information (address and phone number) of the Reference Company (the consumer reporting agency issuing the report)
- A statement that the individual must contact the consumer reporting agency directly to dispute or challenge information in the report.

Once a copy of the report and summary of consumer rights are given to an applicant, the FCRA also does not specify how long the employer should wait before taking adverse action. The intent of the law is to give applicants and employees time to read the report and dispute the information if they wish. For those of you looking for a specific time frame, Congress has provided that 5 business days is a reasonable time period to wait after the pre-adverse action letter before taking adverse action. H.R. Rep No. 103-486, at 30 (1994).

If the individual contacts us regarding their report, we will notify you of the dispute and we will investigate and recheck all the items the individual is challenging. During this time you are required to hold the position open for the individual for a reasonable amount of time. When we complete our investigation, we will issue a final consumer report to both you and the individual, noting any changes or corrections. The Final Adverse Action notice is given if you still cannot hire, promote, reassign, or retain the individual.

Step Two: Provide the individual the Notice of Adverse Action.

The Adverse Action Notice should contain the following information:

- The name and contact information (address and phone number) of the Reference Company (the consumer reporting agency issuing the report).
- A statement that the agency did not make the decision to take adverse action and cannot give specific reasons for the action
- A notice of the individual's rights to dispute the accuracy or completeness of any information the agency furnished and his or her right to an additional free copy of the report within sixty (60) days directly from the agency.

The importance of the Two Steps

The two step process is required by law under the FCRA. The first step, pre-adverse action notice, gives the individual an opportunity to correct a report which may contain inaccurate information before being declined or withdrawn an offer. If anything was originally wrong with the report, the report can get corrected before the individual is placed in a position of being damaged. It is extremely important that this two-step process is followed in order to be fair to everyone involved and to reduce the negative consequences of not adhering to the steps required under the FCRA.

Disclaimer: The information above is provided with the understanding that The Reference Company is not rendering legal advice. As laws change regularly and vary from state to state, you should consult a competent attorney when determining a course of action for preparing forms, policy or other documents for use in your company.