

ADVERSE ACTION CHECKLIST:

When You Decide Not To Hire

The background check you ordered is in – and you see a red flag. Before you make a final decision, you must follow a specific “adverse action” process mandated by law. We’ve listed all the steps you need to take to comply with the federal Fair Credit Reporting Act – and reduce the chance of a lawsuit.



Adverse action is one of the most common triggers for class-action lawsuits for FCRA violations. But there's good news: The process is simple and easy to follow, and we've laid it out for you here in a simple checklist.

1

When You Think You Might Not Hire

- ✓ Send the job candidate a letter (the pre-adverse notice) that explains the background check results are under review and a decision is pending.
- ✓ Include a copy of the candidate's background check results.
- ✓ Include a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act," which you can [download here](#).
- ✓ Keep a copy of the letter and attachments, and document the date sent.
- ✓ Consider sending by certified mail if you're sending the notices yourself (rather than having your background check provider send them).
- ✓ Wait at least five business days before taking any additional action so the candidate has time to dispute any inaccuracies.

2

If You Still Want To Reject The Candidate

- ✓ Send a letter informing the applicant in writing of the adverse action (denial of employment) and that the decision was based, at least in part, on the background check results.
- ✓ Include the name, address, and phone number for the CRA that performed the background check and a statement explaining the CRA wasn't the decision maker and can't explain why adverse action was taken.
- ✓ Inform the job candidate of the right to request a free copy of the background check within 60 days and of the right to dispute inaccurate information.
- ✓ Keep a copy of the letter and attachments, and document the date sent.
- ✓ Consider sending by certified mail if you're sending the notices yourself (rather than having your background check provider send them).