



## The right employment screening partner

# Adverse Action Guide for Employers

*This information presented here is not legal advice and is presented for general education purposes ONLY. BackTrack recommends that you consult with legal counsel for advice and opinions.*

### **Adverse Action Guide for Employers: A Simplified Guide to the Fair Credit Reporting Act**

#### **What is the Fair Credit Reporting Act?**

The Fair Credit Reporting Act (FCRA) is federal legislation that was enacted on April 25, 1971 and is designed “to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy.” The law was substantially amended on September 30, 1997 and additional amendments were made in 1998. The Federal Trade Commission (FTC) is the department that oversees consumer protection, which includes the FCRA.

#### **Why is the FCRA important to my company?**

The FCRA governs employment screening reports obtained from third party agencies, such as BackTrack. There are rules and requirements that must be followed by the potential employer to insure that the information is used fairly.

#### **What are my company’s requirements?**

When you order an employment screening report, you need to certify to BackTrack:

- the purpose for requesting the report and use the information ONLY for that purpose.
- that you will comply with the disclosure requirements of the FCRA, including the adverse action provisions.
- that the information will not be used to violate any federal or state Equal Employment laws or regulations.
- that the consumer report or investigative consumer report will not be ordered for retention or promotion purposes without the consumer’s authorization.

The BackTrack Client User Agreement for Service needs to be signed and returned to our office prior to initiating your account and contains the above information.

#### **I have a small company and only hire one or two people per year. Do I still need to follow the Fair Credit Reporting Act?**

Yes. Any company who orders and uses a consumer report or an investigative consumer report in full or in part to make a hiring decision is required to follow the guidelines of the FCRA.

#### **What is a Consumer Report?**

A Consumer Report is defined under the FCRA as “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility credit or insurance to be used primarily for personal, family or household purposes; employment purposes; or any other purpose authorized under Section 604 of the FCRA.”

In general, Consumer Reports contain factual information, including criminal records, credit reports, educational verifications and motor vehicle records.

# BackTrack

The **right** employment screening partner

## Adverse Action Guide for Employers

### **What is an Investigative Consumer Report?**

An Investigative Consumer Report is defined under the FCRA as “consumer report or portion thereof in which information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with other with whom he is acquainted or who may have knowledge concerning any such items of information.”

In general, Investigative Consumer Reports contain opinions about your applicants/employees, including employment performance related issues and reference verification and may include interviews with neighbors, friends or associates of the consumer concerning the applicant’s character, general reputation, personal characteristics, or mode of living.

BackTrack provides both types of reports to our clients for employment purposes.

### **How do I notify applicants I am requesting a background check?**

Any time a consumer report is ordered for employment purposes, you must notify your applicants. The simplest way to do this is to have your applicants sign the BackTrack Notice and Acknowledgement Authorization and Release which is a stand alone document and notifies your applicants that a consumer report may be ordered on them. The document also contains information regarding the applicants’ rights as prescribed by the Federal Trade Commission.

### **What do I do if I receive a consumer report and decide not to hire the applicant?**

If you choose not to hire an applicant based on the information found in the consumer report, you must notify your applicant of that fact and

- provide a copy of the report along with a Summary of Rights
- notify the applicant of the adverse action either orally, in writing or electronically.

After taking an adverse employment action, you must provide the applicant with the following:

- description in writing of the applicant’s right to obtain a free report within 60 days to dispute any inaccuracies with the consumer reporting agency.
- reporting agency’s name, address and telephone number
- a statement noting that the consumer reporting agency did not make the decision and cannot provide the reason for the adverse decision.

BackTrack has also simplified these processes for you and has included samples of the Pre-Adverse and Final Adverse Action letters and the FCRA Summary of Rights in the packet.

### **What is Adverse Action?**

Section 603(k)(1) of the Fair Credit Reporting Act (FCRA) states that an adverse action is “a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.” These decisions include not hiring, not retaining or not promoting an individual.

### **What does this mean for my company?**

If your company uses a consumer report/investigative consumer report in whole or in part to deny someone employment or promotion, you are obligated under the FCRA to provide both Pre-Adverse and Final Adverse Action Disclosures to those applicants/employees.

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The **right** employment screening partner

## Adverse Action Guide for Employers

### **What is a Pre-Adverse Action Disclosure?**

The disclosure must contain information stating that an adverse employment action will be taken, a copy of the consumer report/investigative report, and a summary of the applicant's/employee's rights. The disclosure must also include the consumer reporting agency's name and contact information. Once the applicant/employee receives the disclosure, he or she must be given sufficient time to dispute the information. While there is no time limit specified in the FCRA, the FTC has suggested five days as a reasonable amount of time.

### **What is a Final Adverse Action Disclosure?**

The Final Adverse Action Disclosure contains wording similar in nature to the Pre-Adverse Action Disclosure and must be done in a reasonable amount of time after the Pre-Adverse Action Disclosure. The disclosure informs the applicant/employee of the final decision made by your company in not hiring, not retaining or not promoting an individual.

### **Do I need to do both the Pre-Adverse Action and the Final Adverse Action Disclosures?**

Yes. Both are required under the FCRA.

### **Where can I get samples of these disclosures?**

Sample Pre-Adverse and Final Adverse Action letters are included in this packet, or you may contact our office at 800-991-9694 to receive copies of these letters in Word format.

### **If a report is disputed, do I need to keep the position open until the dispute is resolved?**

Both the FCRA and the FTC emphasize the importance of adverse action and the dispute process BEFORE a final employment decision is made. Not holding a position open would be in conflict with the objective of the adverse action procedures.

### **What are the penalties for not complying with these procedures.?**

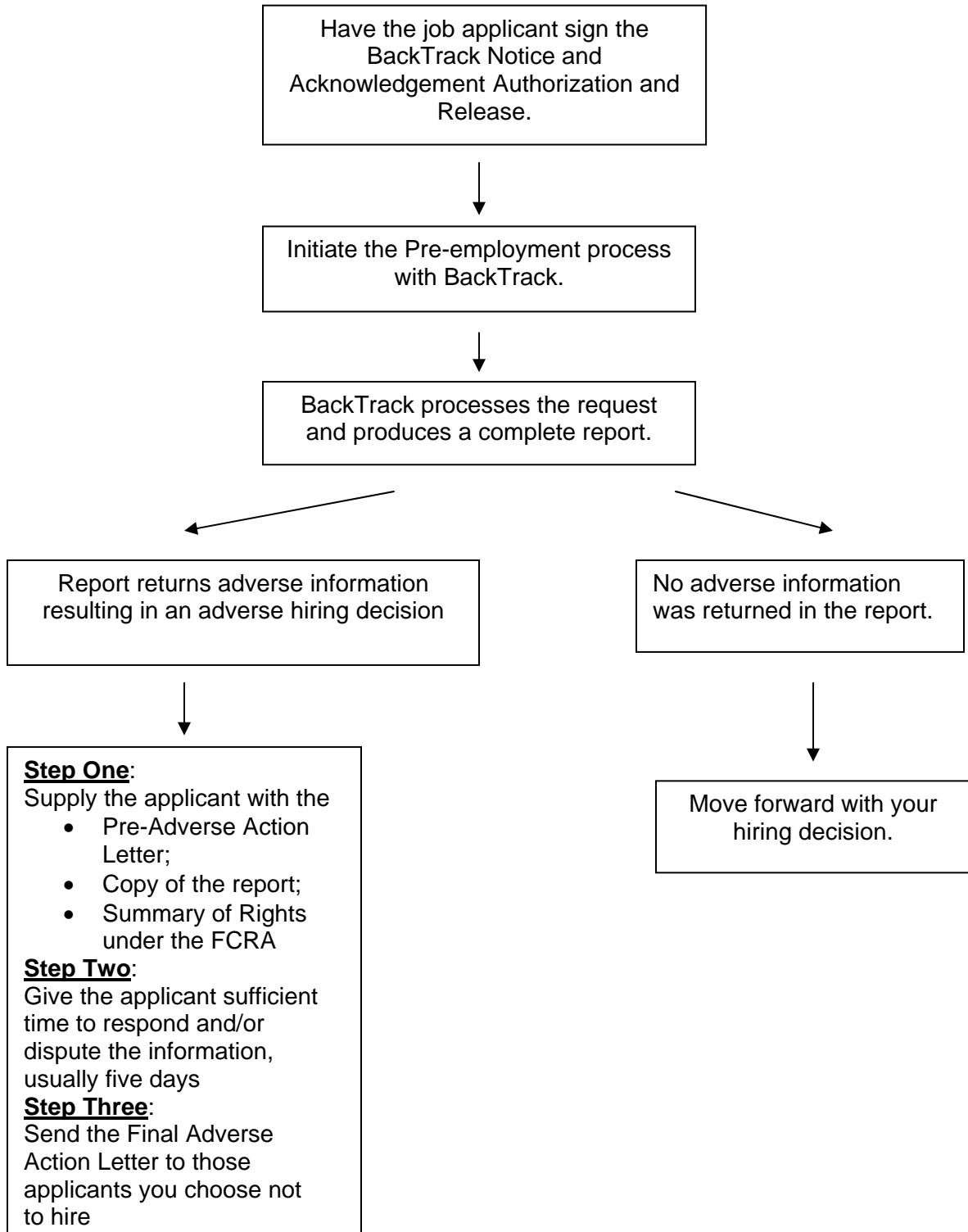
Failure to comply with the Fair Credit Reporting Act imposes civil liability which may result in litigation and costly penalties for your company.

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## Adverse Action Guide for Employers

### Simple Steps in the Employee Screening Process



## SAMPLE PRE-ADVERSE ACTION NOTICE

(Client Letterhead)

Date

Applicant's Name  
Address

Dear Applicant:

A decision is currently pending concerning your application for employment. We are forwarding a copy of the consumer report that you authorized in regard to your application for employment, together with a "Summary of Rights Under the Fair Credit Reporting Act." The contents of the enclosed report are currently under review in consideration of your employment.

The consumer report was used only for employment purposes and prepared for us by a consumer-reporting agency. If you wish to dispute any information in the report, please contact the consumer-reporting agency as listed below immediately. The consumer-reporting agency did not make the adverse employment decision and is unable to explain the reason(s) for the decision.

BackTrack, Incorporated  
8850 Tyler Boulevard  
Mentor, OH 44060  
Telephone: (800) 991-9694

This notice is provided to you in accordance with the Fair Credit Reporting Act, and additional information is outlined in the enclosed Summary of Rights.

Sincerely,

Name, Title

Enclosure

## **SAMPLE FINAL ADVERSE ACTION NOTICE**

(Letterhead)

Date

Applicant's Name

Address

Dear Applicant:

Thank you for your recent application for employment. We carefully considered your application, and we regret that we are unable to offer you employment at this time.

The reasons for our decision were based in part on information obtained from the consumer reporting agency identified below. The agency listed did not make the decision to take adverse action and is unable to provide the consumer with specific reasons why adverse action was taken.

BackTrack, Incorporated  
8850 Tyler Boulevard  
Mentor, OH 44060  
(800) 991-9694

You were provided with a copy of the report and a "Summary of Your Rights Under the Fair Credit Reporting Act" in an earlier notification.

Under the Fair Credit Reporting Act, if you act within 60 days of receiving this notice, you also have the right to dispute the accuracy and completeness of any information in the report by contacting the consumer-reporting agency listed above.

Sincerely,

*Para información en español, visite [www.ftc.gov/credit](http://www.ftc.gov/credit) o escriba a la FTC Consumer Response Center, Room 130-A 600 Pennsylvania Ave. N.W., Washington, D. C. 20580.*

## A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to [www.ftc.gov/credit](http://www.ftc.gov/credit) or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.**

**You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment - or to take another adverse action against you - must tell you, and must give you the name, address, and phone number of the agency that provided the information.

**You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:

a person has taken adverse action against you because of information in your credit report;

you are the victim of identify theft and place a fraud alert in your file;

your file contains inaccurate information as a result of fraud;

you are on public assistance;

you are unemployed but expect to apply for employment within 60 days.

In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See [www.ftc.gov/credit](http://www.ftc.gov/credit) for additional information.

**You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.

**You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See [www.ftc.gov/credit](http://www.ftc.gov/credit) for an explanation of dispute procedures.

**Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

**Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.

**Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.

**You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to [www.ftc.gov/credit](http://www.ftc.gov/credit).

**You may limit “prescreened” offers of credit and insurance you get based on information in your credit report.** Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 888-5-OPT-OUT (888-567-8688) or [www.optoutprescreen.com](http://www.optoutprescreen.com).

**You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.

**Identity theft victims and active duty military personnel have additional rights.** For more information, visit [www.ftc.gov/credit](http://www.ftc.gov/credit).

**States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General Federal enforcers are:**

<b>TYPE OF BUSINESS:</b>	<b>CONTACT:</b>
Consumer reporting agencies, creditors and others not listed below	Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 877-382-4357
National banks, federal branches/agencies of foreign banks (word “National” or initials “N.A.” appear in or after bank’s name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551 202-452-3693
Savings associations and federally chartered savings banks (word “Federal” or initials “F.S.B.” appear in federal institution’s name)	Office of Thrift Supervision Consumer Complaints Washington, DC 20552 800-842-6929
Federal credit unions (words “Federal Credit Union” appear in institution’s name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 703-519-4600
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Consumer Response Center, 2345 Grand Avenue, Suite 100 Kansas City, Missouri 64108-2638 877-275-3342
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation, Office of Financial Management Washington, DC 20590 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator – GIPSA Washington, DC 20250 202-720-7051



## NOTICE REGARDING BACKGROUND INVESTIGATION PURSUANT TO CALIFORNIA LAW

Employer (the "Company") intends to obtain information about you from an investigative consumer reporting agency and/or a consumer credit reporting agency for employment purposes. Thus, you can expect to be the subject of "investigative consumer reports" and "consumer credit reports" obtained for employment purposes. Such reports may include information about your character, general reputation, personal characteristics and mode of living. With respect to any investigative consumer report from an investigative consumer reporting agency ("ICRA"), the Company may investigate the information contained in your employment application and other background information about you, including but not limited to obtaining a criminal record report, verifying references, work history, your social security number, your educational achievements, licensure, and certifications, your driving record, and other information about you, and interviewing people who are knowledgeable about you. The results of this report may be used as a factor in making employment decisions. The source of any investigative consumer report (as that term is defined under California law) will be Back Track, Inc., 8850 Tyler Boulevard, Mentor, OH 44060, 800-991-9694. The source of any credit report will be Back Track, Inc., 8850 Tyler Boulevard, Mentor, OH 44060, 800-991-9694.

The Company agrees to provide you with a copy of an investigative consumer report when required to do so under California law.

Under California Civil Code section 1786.22, you are entitled to find out from an ICRA what is in the ICRA's file on you with proper identification, as follows:

- In person, by visual inspection of your file during normal business hours and on reasonable notice. You also may request a copy of the information in person. The ICRA may not charge you more than the actual copying costs for providing you with a copy of your file.
- A summary of all information contained in the ICRA's file on you that is required to be provided by the California Civil Code will be provided to you via telephone, if you have made a written request, with proper identification, for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to you.
- By requesting a copy be sent to a specified addressee by certified mail. ICRA's complying with requests for certified mailings shall not be liable for disclosures to third parties caused by mishandling of mail after such mailings leave the ICRA's.

"Proper Identification" includes documents such as a valid driver's license, social security account number, military identification card, and credit cards. Only if you cannot identify yourself with such information may the ICRA require additional information concerning your employment and personal or family history in order to verify your identity.

The ICRA will provide trained personnel to explain any information furnished to you and will provide a written explanation of any coded information contained in files maintained on you. This written explanation will be provided whenever a file is provided to you for visual inspection.

You may be accompanied by one other person of your choosing, who must furnish reasonable identification. An ICRA may require you to furnish a written statement granting permission to the ICRA to discuss your file in such person's presence.