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# ADVERSE ACTION LETTERS & GUIDE

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Sample Adverse Action Letter

## 1. Overview

Attracting the right employees to your company is essential to starting and growing your business. An employment application will get you part of the way, providing you with some of an applicant's background information - as reported by the potential employee himself. Getting more information about the candidate's history can ensure that you are hiring the right person for the job.

As an employer, you can use credit reports both when you are hiring new employees and when you are evaluating current employees for promotion or reassignment. However, you must comply with certain federal regulations to protect the privacy of this information. First, you must make sure that all of your applicants and employees are aware that you are using consumer reports for employment purposes and that those individuals agree to that. Second, those individuals must be notified immediately if you find information in a consumer report that could result in a negative employment decision (e.g., rejection of the application or denial of a promotion). As an employer, you must follow these procedures every time you obtain a consumer report on an applicant or employee.

Compliance with these federal regulations can protect your company from costly litigation down the road. You can also prevent tremendous damage to your company's reputation and its ability to attract qualified employees. Using the enclosed letters and guidelines will allow your company to search lawfully for background information on an applicant, protect potential employees from unwanted intrusions into personal matters, and shield your business from claims that it has violated federal regulations.

If you follow the suggestions provided, your company will be on a path toward the right hiring process for your organization. Your organization can get verified information and bring aboard the right staff to support its business. In addition, you will have shown consideration for the privacy rights of potential employees, establishing the foundation for a mutually respectful and long-lasting employment relationship.

## 2. Dos & Don'ts Checklist

- An "adverse action" is any negative act that happens as a result of an unfavorable consumer report. Rejection of a job application, reassignment or termination of an employee, and denial of a promotion are all considered adverse actions.
- Never discriminate against a prospective employee. Treat all applicants equally and be consistent in the questions you ask about qualifications for the open position. Use the same consideration in questions you ask of a potential employee's schools, employers, or listed references.
- Be professional and courteous to prospective employees. Allow applicants ample time to review and complete any employment-related documents. Anticipate and be ready to answer questions about the releases you provide.
- Do not ask for a release of information that's not strictly necessary. Not only will you increase your risk of violating labor and federal credit reporting laws, you will also waste the time and energy of everyone involved.

- Protect the privacy of the information you receive. Label any papers with that information “PRIVATE” and file them in a safe place. As a general rule of thumb, this information should be released on a “need-to-know” basis only, or if a court orders that information to be provided.
- Consider designating a high-level manager to be responsible for maintaining the privacy of your employee’s records. Conduct periodic evaluations of the security and efficiency of this record-keeping system.
- If you use a consumer reporting agency to do background checks on applicants or employees, you must comply with the Fair Credit Reporting Act. This law requires you to inform those individuals that a consumer report is being used for employment purposes and to obtain the permission of those individuals for that act. In addition, if you receive information from a consumer report that may negatively impact an employment decision (i.e., rejection of the application or denial of a promotion could result), those individuals must be contacted immediately with that information. The enclosed forms do NOT serve as notice of the intent to use consumer reports for employment purposes and may NOT be used as evidence of the employee’s consent to a credit investigation. You will need to use a specific release of credit information form and notice for those purposes.
- When you decide to dispose of the credit reports that you’ve obtained (after any relevant document retention periods have passed), do not simply throw those documents into the trash. Take reasonable steps to ensure that an applicant’s confidential information is protected (e.g., by shredding paper copies or erasing electronic information).
- Dishonesty on an employment application can provide grounds for later termination. If, for example, an applicant claims to have graduated from a particular school and the information released by your inquiry proves that to be false, he or she can be fired because of that lie. An applicant may also be denied unemployment benefits if he or she lied on their employment application. If potential employees know the consequences of dishonesty, and know that you will be verifying the information they are providing, they may be more truthful in their answers. Moreover, your company will have documentation if there is suspicion of concealment or lies on the part of the employee.
- If you decide to reformat the Federal Trade Commission document “A Summary of Your Rights Under the Fair Credit Reporting Act” (included as Sample 3), the font cannot be smaller than 12-point (or 8-point for the list of addresses).

You can use these suggestions and the enclosed models to create adverse action letters. These letters inform prospective employees in a clear and timely manner of measures you might take based on information received. You will have created a document that can be used repeatedly and that will serve to keep your business in compliance with federal and state credit regulations.

### 3. Adverse Action Letter Instructions

The following instructions will help you understand the terms of your adverse action letters and the process for providing them. Review both letters in their entirety before starting the step-by-step process.

- **Step 1: Pre-Adverse Action Letter.**

- o Before you take any adverse action, you must notify the applicant or employee in writing that you are planning on taking adverse action on the basis of the consumer report that you received. You must include with this letter (1) a copy of the consumer report and (2) a copy of the Federal Trade Commission document "A Summary of Your Rights Under the Fair Credit Reporting Act" (included as Sample 3).
- o The last paragraph of the pre-adverse action letter is optional. It gives the applicant or employee a chance to review the information that you obtained, and offer any corrections or additions to that information. You're not obliged to include this language, but consumer reports are not infallible, and individuals may be able to explain credit blips satisfactorily.
- o If you do include the optional language, insert a reasonable deadline within which the employee or applicant must respond.

- **Step 2: Adverse Action Letter.**

- o After you have taken an adverse action, you must notify the applicant or employee that you have done so.
- o You must include with this letter (1) a copy of the consumer report and (2) a copy of the Federal Trade Commission document "A Summary of Your Rights Under the Fair Credit Reporting Act" (included as Sample 3).
- o Insert the name of the Credit Reporting Company that you used to conduct the background investigation of the applicant, and contact information (including address and phone number) for that business.

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## Form Sample

### SAMPLE 1: PRE-ADVERSE ACTION DISCLOSURE

[Date]

[Applicant/Employee]

[Address]

[City, State, Zip]

Dear [Applicant/Employee]

In connection with your application for [employment/promotion/other] with [Company Name] (the "Company"), you authorized the Company to perform a background check, either with internal resources or by using an outside agency.

We are currently in the process of reviewing the investigative consumer [and consumer credit] report[s] we received and may decide to eliminate you from further consideration for [employment/promotion/other] based, in whole or in part, on the information contained in the report[s]. Enclosed is a copy of the investigative consumer [and consumer credit] report[s], together with "*A Summary of Your Rights Under the Fair Credit Reporting Act*" as required by federal law.

**[Optional]:** The Company's policy is to give [an applicant/a current employee] [insert amount of time] to review the information contained in the report[s] before a decision is made. If you can prove that the information is inaccurate or incomplete with respect to the company's decision, the company will

## Form Sample

### SAMPLE 2: NOTICE OF ADVERSE ACTION

[Date]

[Applicant/Employee]

[Address]

[City, State, Zip]

Dear [Applicant/Employee]

In connection with your application for [employment/promotion/other] with [Company Name] (the "Company"), you authorized the Company to perform a background check, either with internal resources or by using an outside agency. The Company notified you by letter dated \_\_\_\_\_ [Insert Date] of its preliminary decision to eliminate you from further consideration for [employment/promotion/other] based wholly or partially on the information contained in the report[s] [and gave you \_\_\_\_\_ days to review the report and provide corrected or complete information]. [You did not provide us with a written response within that time frame][The additional or corrected information that you provided did not change our employment assessment].

This letter serves as notification that we have decided not to [employ/promote/ot] based wholly or partially on information contained in the report[s].

We have enclosed a copy of the report, together with a copy of "*Rights Under the Fair Credit Reporting Act*".

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**SAMPLE 3:**

**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 identity theft;
  - your file contains inaccurate information.