

Background Checks, Regulations and Avoiding Litigation

by Claudia Perez, Senior Vice President of Operations, Marquee Staffing

Given the increase in litigation against businesses using background checks, now is a good time for employers to review and strengthen their compliance practices when it comes to applicant screening. Every company must be aware of class action litigation against employers for violating rules in obtaining and using a background report.

Those rules specifically include the federal Fair Credit Reporting Act (FCRA) and in California, the Investigative Consumer Reporting Agencies Act (ICRAA).

Non-compliance with FCRA can result in multi-million dollar settlements. Willfully violating the FCRA's Mandated Adverse Action Process has become one of the primary targets for class action litigation.

Employers who use the results of a background investigation for their hiring, promoting, suspending or termination decisions need to understand **Adverse Action** and its procedures.

Under the FCRA, employers are obligated to follow a **two-step adverse action process** (pre-adverse action and adverse action). This process provides the candidate the opportunity to review and dispute information on the report. Once the applicant has undergone a background check, and if the report that the employer receives from the background screening company has information that may be used to make a negative hiring decision, the pre-adverse action process begins.

BEFORE taking any adverse employment action, the employer must provide the applicant with:

- ▶ Pre-Adverse Action letter
- ▶ A copy of the consumer report
- ▶ A description in writing of the rights of the consumer under the FCRA, and if in California, a copy of CA Civil Code 1786.22.
- ▶ Provide a reasonable opportunity to dispute the information before rendering the adverse employment decision.

After "reasonable time" has passed for the candidate to contact the background screening company to dispute or explain the contents of the report, the employer must notify the applicant that **Adverse Action** has been taken and must include:

- ▶ The Adverse Action letter containing the name, address and phone number of



the background screening company that furnished the report.

- ▶ A statement that the background screening company did not decide to take the adverse action and is unable to provide the consumer with specific reasons for the action, and notice of the applicant's/employee's rights to obtain another free copy of applicant's report from the background screening company

within 60 days.

- ▶ A copy of the report you relied upon to make your decision.
- ▶ A description in writing of the rights of the consumer under the FCRA, and if in California, a copy of CA Civil Code 1786.

Marquee Staffing partners with Americhек, an Orange County-based background screening company.

Information for this article was adapted from Americhек's Business Development Manager, Julie Bailey. Always contact your employment attorney for direction and legal advice.



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As the Sr. Vice President of Operations, Claudia oversees day-to-day strategic operations, including spearheading marketing projects, employee training and development programs for Marquee Staffing's contingent workforce. With her strong background in business development, she continuously strives to build lasting partnerships with clients and candidates. As a result, her team focuses on quality, customer service, compliance and strategic placements.

