

When findings from a background check uncovers data that could potentially impact a candidate's eligibility for employment, it's crucial to exercise care and adhere to the legal protocols concerning adverse action. The Federal Fair Credit Reporting Act (FCRA) mandates a two-step procedure for employers prior to denying employment due to adverse background check results.

The Equal Employment Opportunity Commission (EEOC) has issued guidance to assist employers in reviewing information and preventing discrimination, even if unintended. The "nature-time-nature" test prompts you to consider;

- The nature and severity of the offense
- How long ago was the offense committed or the sentence completed?
- How does this offense relate to the position in question?

You will need to provide your candidate with three main components when initially handling an adverse action situation:

1) Pre-Adverse Action Letter 2) Copy of the Report and 3) A copy of the Summary of Rights under the FCRA

Be sure to become familiar with the EEOC regulations and remember these helpful tips:

Adverse Action

Do's

- ✓ Do establish an Adverse Action policy outlining procedures.
- ✓ Do have a conversation with the candidate to discuss results.
- ✓ Do maintain clear communication with the candidate regarding the next steps..
- ✓ Do evaluate the severity and relevance of offense in relation to the position.
- ✓ Do furnish candidate with pre-adverse and adverse action letter, copy of the report & Summary of Rights under FCRA
- ✓ Do allow a reasonable amount of time between notices for candidate to reply.
- ✓ Do follow all local, state and federal EEOC laws as they apply to Adverse Action.



Adverse Action

Don'ts

- ✗ Don't make a final hiring decision before following the Adverse Action process.
- ✗ Don't ignore the candidate's request for additional information that may help them through the process.
- ✗ Don't forget to document every step and communication with the candidate.
- ✗ Don't forget to send the final Adverse Action letter if the candidate fails to respond.
- ✗ Don't forget to differentiate between the pre-adverse and adverse action notifications, as both are a required step in the process per the EEOC.
- ✗ Don't skip any steps of your policy when handling an adverse action situation.

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