

## *Fair Credit Reporting Act* A PRACTICAL APPLICATION

This overview of the Fair Credit Reporting Act (FCRA) addresses requirements related to the employment background checking process and is provided only as general guidance to HIRE-SAFE customers. It is neither intended as legal advice nor as a sole educational tool for the employer's staff. You, as the employer, retain the responsibility to understand the FCRA and educate your staff involved in the screening process. Because the information contained herein is general and is neither complete nor necessarily applicable to your specific set of facts or circumstances, please consult your legal counsel for guidance.

For a full copy of the FCRA and other useful information, visit the Federal Trade Commission's Web site. [www.ftc.gov](http://www.ftc.gov)

The FCRA was enacted to help protect consumers in the consumer reporting process by regulating what is reported, the consumer reporting agency, and the employers or users of the consumer reports. The FCRA requires employers to take certain actions when it obtains a consumer report through a consumer reporting agency. The following procedures, which are divided into two categories, are suggestions that are designed to help employers comply with the FCRA. The first category, Report Ordering Procedures, involves actions employers must take with the consumer reporting agency and the applicant/consumer before a consumer report is ordered and received. The second category, Adverse Action Procedures, deals with the use of the consumer report and is only necessary if any of the information, in whole or in part, obtained from the consumer report adversely affects the applicant.

### **REPORT ORDERING PROCEDURES:**

Although not required by the FCRA, some companies take the additional step of having the applicant show forms of identification to verify or confirm the person's identity. This is especially a good idea in some states such as California, Oklahoma or Minnesota where an applicant can elect to receive a copy of the consumer report that is ordered at the outset.

Here are the procedures to be taken by you, as the employer and user of the consumer report, before you order and receive a consumer report from HIRE-SAFE:

#### **Step 1. Certify to HIRE-SAFE**

Certify to HIRE-SAFE that you will comply with: (i) the FCRA requirements of providing a written disclosure and obtaining a written authorization from the applicant; (ii) all pre-adverse and adverse action procedures; and (iii) not using the consumer report in violation of any equal opportunity laws or any other laws.

#### **Step 2. Provide Disclosure to Applicant**

Provide a clear and conspicuous disclosure in writing to the applicant in a document that consists solely of the disclosure, stating that a consumer report may be obtained for employment purposes. This Disclosure must be in a separate document and cannot contain any additional information except for the consumer's authorization. Please note that the Disclosure cannot be made a part of any form including the employment application.

#### **Step 3. Obtain Authorization from Applicant**

Obtain written authorization from the applicant. As stated above, the Authorization may be obtained in the same document as the Disclosure, which is an exception to the general rule that the Disclosure must be in a separate document that consists solely of itself. In fact, some FTC opinions have found that having the Authorization on the Disclosure heightens the consumer's awareness to the Disclosure and furthers its purpose.

Therefore, one of the ways to comply with the Disclosure and Authorization requirements is to include the Authorization on the same document as the Disclosure but keep this combined document separate and apart from the employment application form. Another method of compliance is to use two separate documents, having the Disclosure by itself and the Authorization by itself.

## **ADVERSE ACTION PROCEDURES:**

Not only does the denial of employment fall under the FCRA definition of "adverse action", but also any other decision for employment purposes that adversely affects any current or prospective employee will constitute an adverse action.\*

### **Step 4. Provide Applicant Pre-Adverse Action Documents**

If the consumer report provides information that will negatively influence the employment opportunities of the applicant, whether in whole or in part, you must do all of the following BEFORE such an adverse action is made:

- Provide the applicant with a copy of the consumer report; and
- Provide the applicant a description in writing of their rights under the FCRA as prescribed by the FTC
- Provide the applicant a copy of *A Summary of Your Rights Under the FCRA*

This pre-adverse action process allows the applicant the chance to dispute the negative information in the report. The employer should allow a reasonable amount of time for the applicant to respond to this pre-adverse notification before final determination is made or adverse action is taken. (There is an FTC opinion letter that deems 5 days as reasonable, but it will depend upon your circumstances.\*)

### **Step 5. Notify Applicant of Adverse Action**

If you decide to take any adverse action (such as not employing the applicant), based in whole or in part, on the information revealed in the consumer report, you must do the following in writing, orally or electronically\* (Again, HIRE-SAFE recommends written documentation.):

- Provide notice to the applicant of the adverse action\*;
- Provide to the applicant the names, address and telephone number of the consumer reporting agency and a statement that "the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the applicant the specific reasons why the adverse action was taken"; and,
- Provide notice to the applicant of his/her right to obtain within sixty (60) days, a free copy of the consumer report from the consumer reporting agency and to dispute with the consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the consumer reporting agency.

Some variances exist for non-written consent for the trucking industry.\*

Please be aware that some states have requirements in addition to the FCRA that you will also need to comply with. For example, in the states of Minnesota and Oklahoma, you will have to give the applicant a written disclosure with a box the applicant can check if they want to obtain a copy of the consumer report. California has a similar requirement except it is limited to consumer credit reports.\*

\*Please consult legal counsel for what methods are best for your business