

## **FAIR CREDIT REPORTING ACT**

### ***Step By Step Compliance During The Hiring Process***

#### **STEP 1: Make Disclosure and Obtain Consent**

Applicant must give employer consent to have a third party service conduct a background check. The disclosure and consent form can be presented to the applicant at the time he/she completes the employment application form. The disclosure and consent form should grant the employer permission to conduct an initial background check (and, subject to state law, possible subsequent background checks if the applicant is hired) utilizing a third party service. Also, a [Summary Of Your Rights Under The Fair Credit Reporting Act](#) must be attached. **Please note:** There are additional notice and disclosure requirements for employers using [investigative consumer reports](#), which are reports that typically include information obtained through personal interviews. ***The background investigation cannot be lawfully conducted without a signed consent form.*** Applicants can be advised that they will not be considered for employment without submitting the signed form.

#### **STEP 2: Pre-Adverse Action: Notify Applicant of Negative Report BEFORE Adverse Action is taken**

If the consumer reporting agency reports information which may be used, in whole or in part, as a basis for an adverse employment action (e.g., rescinding a conditional offer of employment), the applicant must receive notification before a final decision is made not to hire. As a result, the employer should provide a copy of the consumer report and a notice of rights. See [Sample Pre-Adverse Action Notice](#) form and [Summary of Your Rights Under the Fair Credit Reporting Act](#) form.

#### **STEP 3: Wait for a Reasonable Period of Time to Find Out What, if Any, Explanation is Offered by the Applicant**

If the applicant does not respond at all to the notification within a reasonable period of time, the employer may proceed with its decision to rescind the conditional offer. If the applicant responds, the employer should carefully consider the information submitted and then make a decision. If the explanation is reasonable under the circumstances, then it may still be possible to go forward with the new hire (e.g., a case of mistaken identity). If the applicant has successfully passed the background check, the hiring process continues. However, if the applicant's explanation is determined (after due consideration) to be insufficient, then the employer should proceed to the next step.

**STEP 4: Notify Applicant of Adverse Action** The employer should provide the applicant with written notice of: (a) the adverse action; (b) the name, address and telephone number of the consumer reporting agency; (c) a statement that the consumer reporting agency did not make the decision and does not know why the decision was made; and (d) a notice of the applicant's right to obtain the report and dispute the information. See [Sample Adverse Action Notice](#) form.

**STEP 5: Maintain Documentation** For all adverse decisions, document each step taken. Keep copies of all consent and disclosure forms and other documentation sent to the applicant in the event the company has to defend its decision at some later point. Consider centralizing the background checking function within your organization. Also, consider how the documentation will be maintained (e.g., personnel files might not be the best place).

Forms mentioned above are available at [www.mcssltd.com](http://www.mcssltd.com)