



# KNOW WHO YOU ARE HIRING OR PROMOTING

## Adverse Action FAQs

Adverse action is a process often misunderstood by employers, and any mistakes in this two-step process can land you in court. The KRESS SHIELD offers every client an automated adverse action system as a complimentary service. This allows you to rest easy knowing your hiring practices are compliant, fair, and transparent for all applicants.

Our team of HR experts answered a few of your questions about adverse action. Let's take a look.

### What is adverse action?

Section 603(k)(1) of the Fair Credit Reporting Act (FCRA) states that an adverse action is "a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee." These decisions include not hiring, not retaining, employee rejection, or not promoting an individual.

### What does adverse action mean for my company?

If your company uses a consumer report/investigative consumer report in whole or in part to deny someone employment or promotion, you are obligated under the FCRA to provide BOTH the pre-adverse and the adverse action notifications to those applicants or employees.



## What is a pre-adverse action notification?

The employee notification must contain information stating that adverse action will be taken, a copy of the consumer report or investigative report, and a summary of the applicant's/employee's rights. The disclosure must also include the consumer reporting agency's name and contact information. Once the applicant/employee receives the disclosure, he or she must be given reasonable time to dispute the information. While there is no time limit specified in the FCRA, legal opinion states 5–7 business days as reasonable. KRESS gives 14 calendar days between notices.

## Should a company expect a job candidate to provide details regarding a previous conviction when the candidate receives the pre-adverse action notice? Or are there other legal ways to obtain this information?

The pre-adverse action notice lets the job candidate know they can provide further detail on the conviction. The EEOC and KRESS encourage an open dialogue about the conviction in question so that the hiring company can make a well-informed hiring decision that is based on the person, and not rely on records alone.

## What is an adverse action notification?

The adverse-action notice contains wording similar in nature to the pre-adverse action notice and must be sent in a reasonable amount of time after the pre-adverse action notice. The disclosure informs the applicant/employee of the final decision made by your company in not hiring, not retaining, or not promoting them.

## What is the adverse action waiting period?

The adverse action waiting period is the amount of time an employer must wait between sending a pre-adverse action notice and a final adverse action notice. The KRESS SHIELD standard is 14 days after sending a pre-adverse action notice before it sends the final adverse action notice. It's always best to confirm what the adverse action waiting period is with local and state laws.

## Do I need both pre-adverse and adverse action notices?

Yes. Both are required under the FCRA.

## If a report is disputed, do I need to keep the position open until the dispute is resolved?

Legal opinions have varied; however, there is nothing in the FCRA that states an employer or recruiter must consider any correction that a reporting agency may make. The job should be kept open at least for 5–7 business days between notices to allow the applicant to dispute the adverse information. After that, the employer can make a hiring decision whether the information is disputed by the applicant or not. An employer may choose to wait until the dispute is resolved, but there are no requirements in the FCRA to hold a job open for a long period of time.

## What are the penalties for not complying with adverse action procedures?

Failure to comply with the Fair Credit Reporting Act imposes civil liability, which may result in litigation and costly penalties for your company.

## Does adverse action apply to 1099 contractors?

Yes, contractors are included under the employment requirements of the FCRA. Since the FCRA applies to the screening of contractors, entities screening contractors must follow the steps when taking an adverse action based in part or in whole on a consumer report obtained through a Consumer Reporting Agency.



## How can KRESS help me?

KRESS has created a seamless, automated HR tool for adverse action notification. Once you have determined you will not be hiring a potential employee based on the consumer report we provide you, simply contact us or log into your account online to begin the process. We will not send the candidate or employee adverse action notifications without your approval to do so. Once the notifications have been mailed or e-mailed, you will receive copies of the letters in a final report for your records. KRESS also keeps those records on file for your convenience and has been doing so for over 30 years.

KRESS helps companies avoid litigation and liabilities that may occur when screening a job candidate or current employee. Consult with the experts at KRESS to discover how the KRESS SHIELD can safeguard your company today!