

## K-Mart to Pay \$3M to Settle Background Check Claims

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K-Mart, the mega retailer once known for its blue light specials, is paying out \$3 million to settle a class action suit for alleged background screening violations. The suit was settled in mediation, and if approved, it will certify a class of 64,506 people. I did the math, and that's about \$18.09 per person, after the named plaintiff gets his share of \$5,000 and his lawyers take out their share—\$900,000.

K-Mart is the latest corporation to settle claims based on FCRA violations in the background screening process, joining First Student, Domino's Pizza and Capital One. The FCRA requires that employers notify applicants when negative, or "adverse" information comes back in a report. The process, known as "adverse action" notification, is intended to give applicants a chance to correct errors in reports and to identify incorrect information before a final hiring decision is made. Pitt claims that the company rejected him based on a background check that revealed a misdemeanor charge from 2002 without giving him any opportunity to see the report or challenge the results. That's a big no-no.

While the FCRA has many nuanced sections that confuse even the most practiced and skilled legal mind, the statute is clear on at least one point. Applicants are entitled to an adverse action notice, including a copy of the report, prior to making a final decision not to hire. There really is no excuse for getting it wrong.

### How to Avoid Being the Next K-Mart

Employers take note. Here are my **FCRA do's and don'ts for background checks**. Follow these simple rules to keep your organization out of hot water:

#### Do:

- Make sure the background check is run only AFTER receiving a signed authorization and disclosure from the applicant.
- Send an adverse action notice PRIOR to making a final decision not to hire or promote based on a background check.
- Include a copy of the background report AND the CFPB Summary of Rights with the pre-adverse action notice.
- Send a second communication—an adverse action notice—after the decision not to hire has been made.

#### Don't:

- "Bury" the background check authorization in the job application.
- Include extraneous information on the authorization and consent form.
- Forget to provide a copy of the report when it used to take adverse employment action, such as refusing to hire an applicant, or refusing to promote an employee or terminating an employee.
- Send outdated forms. Make sure you have the most current version of the required forms and notices by contacting [compliance@employeescreen.com](mailto:compliance@employeescreen.com).

If you have any questions, your [background screening firm](#) should be able to help.