

COMMERCIAL INVESTIGATIONS LLC

# CI TIMES



## COMPLIANCE INSIGHT: ADVERSE ACTION

When you decide to terminate, not to hire, or not to promote someone due to information contained in their background investigation report you are required to provide notice to the applicant. Actually, you are required to provide two notices (pre-adverse and adverse), the background investigation report, the FCRA Notice of Rights and, if you are a NY employer, Article 23-A.

This Compliance Insight will provide our recommended step-by-step process for complying with the notice requirements. It is advisable that you include your process for compliance as part of your background investigations policy. It is recommended that you follow the same procedures regardless of position or status (e.g. temp vs. full-time hire).

These requirements are specific to background investigations reports that are prepared by a third party Consumer Reporting Agency, such as Commercial Investigations LLC. However, if you compile your own report there is nothing prohibiting you from also following the adverse action requirements.

The notice requirements are a two step process:

### STEP 1: Preadverse Action

Before you take the adverse action (e.g. terminate, not hire, not promote) you must give the preadverse action notice. CI provides compliant forms for its clients to utilize.

This part of the process involves four documents:

1. The Preadverse Action Notice Form (fill out the top portion about the company);

2. A copy of the applicant's complete background investigation report;
3. A copy of the FCRA Summary of Rights;
4. A copy of New York Correction Law Article 23-A (if applicable).

Make copies of these documents for your files. We recommend creating and storing these copies in a folder noted, Adverse Action. You should retain the information for seven years.

Mail the four documents via signature confirmation. This will acknowledge that the applicant received the Preadverse documents. Include the confirmation details in your Adverse Action folder with the Preadverse document copies.

### STEP 2: Adverse Action

Your next step comes approximately five to seven business days later. At that time you need to follow up with the Adverse Action Notice Form (fill out the top portion about the company).

Again, make a copy and put it with the Preadverse documents. Mail the form via signature confirmation. This will acknowledge that the subject received the Adverse Action Notice form. Include the confirmation details in your Adverse Action folder with the Preadverse documentation.

For assistance with the Adverse Action compliance requirements contact a CI representative. Do not hesitate to contact us every time you must comply, most clients do. We are also available to review your policy to make sure these requirements and your procedures are properly documented.

### INSIDE THIS ISSUE:

<b>COMPLIANCE INSIGHT: ADVERSE ACTION</b>	<b>1</b>
<b>CLIENT CLUE: DOCUMENT ADVERSE HIRING DECISIONS</b>	<b>1</b>
<b>DUE DILIGENCE: HEALTH AND HUMAN SERVICES SECRETARY</b>	<b>2</b>
<b>MEET DUE DILIGENCE: LAST "SCENE" FROM DUE</b>	<b>2</b>
<b>CI PROFILE: HAPPY 5TH BIRTHDAY!</b>	<b>3</b>
<b>INQUIRY SPOTLIGHT: DRUG TEST</b>	<b>3</b>

### CLIENT CLUE

#### DOCUMENT ADVERSE HIRING DECISIONS

When a background investigation report reveals adverse information that leads to denial of a job offer, denial of a promotion, or termination it is extremely important that our clients document the criteria used for the decision to not move forward with the applicant. This documentation is in addition to the preadverse and adverse action notifications.

Documenting how the report details relate to the position the applicant was being considered for provides necessary documentation to justify the decision should it be questioned later. It also provides guidance for the organization when faced with similar situations. This will allow the organization to make consistent and nondiscriminatory hiring decisions.

For assistance in setting up appropriate procedures for proper documentation please contact a CI representative.

## DUE DILIGENCE: HEALTH AND HUMAN SERVICES SECRETARY

The recent withdrawal of Tom Daschle from the Health and Human Services Secretary position has sent President Obama reeling for a new candidate. Daschle withdrew his nomination for the post after criticisms began to mount over his failure to pay more than \$130,000 in taxes. During the election President Obama promised the American people change and Daschle's credentials didn't represent that promise. Therefore, Sen. Daschle made the decision to step aside, saying "if 30 years of exposure to the challenges inherent in our system has taught me anything, it has taught me that this work will require a leader who can operate with the full faith of Congress and the American people, and without distraction."

President Obama expressed confidence in the vetting process, the same process that let Daschle and countless others fall through the cracks. Up to this point the vetting process has been ineffective. It comes as no surprise that the candidates for the Health and Human Services position will come under greater scrutiny due to the early blunders of the administration.

One such candidate that will come under scrutiny is CI's own Due Diligence. His background in the healthcare industry lends itself to the position. Or does it? With a closer look at Due's background the President may discover that his accomplishments are not what they seem. More specifically, if President Obama's administration used CI's Cyber Investigation Inquiry, they would learn a lot of useful information that could be used in determining whether Due is cut out for the Health and Human Services Secretary position. The administration would learn that Due Diligence also operates under the name "Bad Diligence" and that he has an interest in using drugs. Due belongs to several groups including; we smoke weed, drugs are cool, and Bud smokers unite! The administration would also find that Due defamed many of his former co-workers on MySpace along with a blog in which he talks about negative behavior that he's engaged in at the workplace. Lastly, the cyber investigation would exhibit many contradictions and fallacies regarding his resume and past work history. In conclusion, if President Obama and his administration were to use the Cyber Investigation for Due Diligence, it's likely they would find that he is not the candidate that they would be likely to nominate for the position.

In addition to the Cyber Investigation inquiry, Due will have to answer the 63 questions on President Obama's seven page questionnaire. The answers to these questions will be scrutinized via the intense presidential vetting process which includes a FBI background in-

vestigation. Private employers do not have the resources to implement such a long and thorough vetting process. They also have stricter anti-discrimination requirements amongst other federal and state human resources related legal requirements.

The Cyber Investigation examines a subject's online life and it can reveal how a subject may follow a company's IT protocol. The inquiry may also reveal illegal activities or groups in relation to the subject that may harm the business' reputation. The Cyber Investigation may also reveal offensive postings and blogs made by the subject that could jeopardize a company's reputation. You can view Due's Cyber Investigation report at:

[www.commercialinvestigationllc.com/DueDiligenceCyberInvestigationSampleReport.pdf](http://www.commercialinvestigationllc.com/DueDiligenceCyberInvestigationSampleReport.pdf)

Private employers can utilize CI's background investigations services, which can include the Cyber Investigation inquiry, to properly vet their candidates.

Daschle's past pales in comparison to Due's baggage. However, neither is qualified for the Health and Human Services Secretary position. Fortunately, Obama appears to have found a viable candidate in Kansas Governor Kathleen Sebelius. "Though she is expected to be confirmed, anti-abortion advocates have already begun to denounce the appointment and pro-life members in the Senate are most likely to be her main opposition," states Wikipedia at [http://en.wikipedia.org/wiki/Kathleen\\_Sebelius](http://en.wikipedia.org/wiki/Kathleen_Sebelius).

Looks like Due will need to move on once again. But where to . . .

*To Be Continued . . .*



### MEET DUE DILIGENCE

Last "Scene" from Due

In Due's last appearance in CI Times, we learned about the presidential vetting process and how to protect your office like the oval office.

Prior to that edition we reviewed Due's Cyber Investigation Report. We were able to get to know Due through his own self-published blogs and pictures. Through his own generated web content, Due had implicated himself with illegal and unethical behavior.

In this edition of CI Times, Due is attempting to obtain the Health and Human Services Secretary position in President Obama's cabinet.

To see Due's past reports, view his page online at: [www.commercialinvestigationllc.com/duespage](http://www.commercialinvestigationllc.com/duespage).

Read previous issues of CI Times to see the full details of Due's life at: [www.commercialinvestigationllc.com/Newsletter](http://www.commercialinvestigationllc.com/Newsletter).

## CI PROFILE: HAPPY 5TH BIRTHDAY!

Commercial Investigations LLC (CI) celebrated its 5th Birthday on March 8<sup>th</sup>, 2009. CI, headquartered in downtown Troy NY, enters its 6<sup>th</sup> year in business as a licensed Private Investigative Agency specializing in backgrounds — from pre-employment screening and tenant screening to background investigations for mergers, acquisitions, venture capital, regulatory and litigation reasons. CI's founding partner and President, Michelle Pyan ran her first background investigation in 1991.

Early in 2005, CI became approved as a member of the National Association of Professional Background Screeners (NAPBS). Also in 2005, CI entered a partnership with United Iroquois Shared Services (UISS) to offer background investigations to its members. The UISS membership consists of more than 400 hospitals, nursing homes, HMOs, surgery centers, physician groups and other health care providers in Upstate New York.

Commercial Investigations LLC also formed a similar partnership with the Rensselaer County Regional Chamber of Commerce in 2006, offering background investigations at reduced prices as a chamber member benefit.

In 2007 CI launched a new online identification and age verification service for the web. CIchecked.com allows users to get "CIchecked" and obtain an electronic Certified Identification certificate. Social Networkers and web users can post the CIchecked trust mark on their web

pages, profiles, auctions and e-mail signatures. Those interacting with them online can simply click on the trust mark to view their Certified Identification certificate to verify their name, year of birth and city/state of residence.

"A lot has happened in our first five years and we would like to thank our clients and dedicated staff for our success," says Pyan.

Commercial Investigations LLC assists employers with protecting their employees, customers and overall businesses through Background Investigations and Consulting Services. For more information contact us at 800-284-0906 or email [info@commercialinvestigationllc.com](mailto:info@commercialinvestigationllc.com).



## COMMERCIAL INVESTIGATIONS LLC

A LICENSED PRIVATE INVESTIGATIVE AGENCY

Dedicated to providing innovative Private Investigative solutions to its clients and working with them to develop tailored services that meet their needs.

Services provided include:

### BACKGROUND INVESTIGATIONS

CI provides accurate, timely, cost-effective and fully compliant reports delivered with exceptional client service.

### CONSULTING SERVICES

CI assists you in implementing a compliant background investigation process as well as providing assistance in implementing in-house procedures.

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## ∞ INQUIRY SPOTLIGHT ∞

### DRUG TEST

Over time, a drug testing policy can reduce turnover and increase both productivity and employee morale. Following are examples of situations that may warrant drug testing and could be outlined in your drug free workplace program:

- **Pre-Employment:** A proactive approach to your applicant screening process and an effective means for deterring undesirables from applying.
- **Pre-Promotion:** An effective means to maintain a drug free workplace and decrease the chance of promoting someone who is using or abusing drugs.
- **Annual Physical:** Test employees during annual physicals to refer current users for assistance or disciplinary action as stated in your drug free workplace policy.
- **Random:** An effective way to promote employee safety and security, and to protect property and equipment.
- **Post-Accident:** Test to determine whether accidents are drug or alcohol related, deterring workers' compensation claims and increasing safety.

CI's DRUG TEST inquiry is an effective and necessary component of a thorough background investigation. CI has access to over 12,000 drug testing labs throughout the US. CI's standard drug test consists of a nine panel screen which identifies amphetamines, cocaine metabolites, marijuana metabolites, opiates, phencyclidine, barbiturates, benzodiazepines, methadone and propoxyphene.

If your organization would like to establish a drug testing policy, contact CI to help you implement a program that is consistent, compliant, effective and affordable.

Also, please contact a CI representative for more information on CI's DRUG TEST inquiry, or to add this inquiry to your current requests.

This publication is designed to provide accurate and authoritative information with respect to the subject matters covered. It is distributed with the understanding that CI is not engaged in rendering accounting or legal services.