

NYC to Ban Credit Checks by Employers

On May 6, New York City Mayor Bill de Blasio signed into law a bill prohibiting most employers from running credit checks or considering an applicant's or employee's consumer credit history in making employment decisions. When the new law takes effect on September 3, NYC will join a growing number of jurisdictions that restrict employers' use of credit history for employment purposes. Employers will need to reassess and, as needed, modify their background check practices and use of credit checks to ensure compliance.

Background

The federal Fair Credit Reporting Act (FCRA) requires employers to follow certain notice and authorization procedures to secure an employee's or applicant's credit report, but does not otherwise restrict an employer's ability to secure consumer credit histories. As long as those procedures are followed, the FCRA does not limit an employer's ability to factor the contents of the credit reports into hiring or other employment decisions.

In contrast, some states and cities have laws in place that restrict or prohibit an employer from considering credit history in making employment decisions. Ten states — California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont and Washington — and cities such as Chicago and Madison, Wisconsin already restrict employers from using employee or applicant credit information for employment purposes, and a number of other states are considering similar restrictions. Those laws either bar an employer from requesting or requiring a job applicant's or employee's consumer credit report and inquiring about credit history or, at a minimum, limit when that may be done.

New Restrictions for NYC Employers

On May 6, New York Mayor Bill de Blasio signed the Stop Credit Discrimination in Employment Act ([Int. 261-A — Local Law 37](#)) into law. When the new law takes effect in 120 days, the city will join a growing number of jurisdictions that now restrict — or are considering restricting — employers' use of credit history for employment purposes.

The new law amends the NYC Human Rights Law (NYCHRL) to make it an unlawful discriminatory practice for an employer, labor



organization, employment agency, or agent thereof to request or use an individual's consumer credit history in making employment decisions. With certain limited exceptions, the law bars employers covered by the NYCHRL

Background Screening Companies

Because the law covers employers and their agents, the new limits on employment-related credit checks would extend not only to employers but also to the background screening companies employers often use to vet job candidates.

from taking employment actions or otherwise discriminating against a job applicant or employee with respect to hiring, firing, promotion, demotion, discipline, compensation or other terms and conditions of employment on the basis of their consumer credit history. Thus, the new restrictions will apply to employers with four or more employees (including independent contractors who are not themselves employers).

What constitutes "consumer credit history" is broadly defined under the new law as "an individual's credit worthiness, credit standing, credit capacity, or payment history." Among other things, it would include information found in consumer credit reports, a credit score, or information provided by the individual to the employer about his or her credit accounts, bankruptcies, judgments or liens.

Exemptions for Certain Employers

Although the new law generally restricts an employer's ability to run credit checks or consider an applicant's or employee's consumer credit history in making employment decisions, it does contain certain narrow exceptions. Employers that are required to consider credit history for employment purposes under federal or state law or regulations or self-regulatory organizations as defined by the Securities Exchange Act of 1934 are not subject to the new restrictions. Thus, the law will not apply to employers governed by the rules of the Financial Industry Regulatory Authority (FINRA).

Exemptions for Certain Positions

The exemptions also extend to certain limited categories of jobs. The restrictions on an employer's, or its agent's, use of consumer credit history will not extend to individuals who hold or seek positions with:

- Signatory authority over third-party funds or assets valued at \$10,000 or more, or the authority to enter into financial agreements valued at \$10,000 or more on behalf of the employer
- Regular duties that allow the employee to modify digital security systems established to prevent unauthorized use of the employer's or client's networks or databases
- Regular access to trade secrets, intelligence information or national security information
- A requirement to be bonded under federal, state or local law

Exemptions from the ban also exist for certain law enforcement personnel, positions requiring security clearance under federal or state law, and for employees who have to disclose information on creditors or debts to the NYC Conflicts of Interest Board. The law also provides a carve-out for an employer's request and receipt of consumer credit history pursuant to a subpoena, court order or law enforcement investigation.

Comment. In the event that an exemption applies, employers must still be mindful of the Bankruptcy Code's prohibition against employment discrimination based solely on the individual's debtor status in a bankruptcy proceeding.

Enforcement and Remedies

The new law will provide a private right of action under the NYCHRL for aggrieved applicants and employees. Thus, individuals may either enforce the restrictions on employment-related credit checks by filing a complaint with the NYC Commission on Human Rights or by filing suit in state court. Employers that violate the new proscriptions may be liable for the full range of damages available under the NYCHRL, including back pay, front pay, punitive damages and attorneys' fees.

In Closing

The new law will alter the way many employers screen job applicants during the hiring process by barring pre-employment credit checks. When the local law takes effect in September, using credit reports for employment will generally be prohibited in NYC and most employers will no longer be able to request or take into account an applicant's or employee's consumer credit history in making employment decisions. In anticipation, employers with employees who work in NYC will want to reevaluate their background screening practices and procedures and make any needed changes with respect to employment-related credit checks.

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