

DC Poised to Limit Employer Use of Credit Information

On February 15, DC Mayor Muriel Bowser signed the Fair Credit Employment Amendment Act of 2016, which generally prohibits employer use of employees’ or job applicants’ credit information. Unless Congress disapproves, DC will join a growing number of jurisdictions that restrict the use of credit checks for employment purposes. Employers will want to monitor developments closely, and identify any changes to hiring and other employment practices that would be needed if the new restrictions take effect.

Background

The federal Fair Credit Reporting Act (FCRA) imposes certain procedural requirements on employers that seek an employee’s or applicant’s consumer credit report. As long as they are satisfied, the FCRA does not restrict an employer’s ability to secure credit histories or factor the information into hiring or other employment decisions.

By contrast, a growing number of states and cities have enacted laws that limit employers’ use of credit information for employment purposes. Nearly a dozen states – including California, Connecticut and Illinois – and major cities like Chicago, New York City and Philadelphia now prohibit an employer from requesting, requiring or inquiring about a job applicant’s or employee’s consumer credit history or, at least, limit when that may be done. (See, for example, our [May 12, 2015 For Your Information.](#))

New Restrictions for DC Employers

On December 20, 2016, the District of Columbia Council unanimously passed the [Fair Credit in Employment Amendment Act of 2016](#) (the Act), amending the DC Human Rights Act (DCHRA) to prohibit employment discrimination based on an applicant’s or employee’s “credit information.” On February 15, DC Mayor Muriel Bowser [signed](#) the measure as Act Number A21-0673, which is subject to a mandatory 30-day congressional review period.

With certain narrow exceptions, the Act would make it an unlawful discriminatory practice for DC employers, employment agencies, or labor organizations to use an applicant’s or employee’s consumer credit information in making employment decisions. If the Act becomes law, it would generally prohibit most DC employers from



directly or indirectly asking or requiring employees (including unpaid interns) or applicants to provide credit information or to use, accept, refer to or inquire about it.

For these purposes, “credit information” is broadly defined as “any written, oral, or other communication of information bearing on an employee’s creditworthiness, credit standing, credit capacity, or credit history.” Unlawful inquiries would include conduct intended to gather credit information through application forms, interviews, background checks and credit history. Given the scope of the new proscriptions, the Act could potentially alter employers’ current screening, hiring and other employment practices.

Exemptions

Although the Act 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 would be permitted to inquire into an applicant’s or employee’s credit history if:

- The employer is required by DC law to request or use an individual’s credit information
- The individual is applying for a position – or is employed – as a police officer with the Metropolitan Police Department, special police officer or campus police officer, or other position with a law enforcement function
- The position is in the Office of the Chief Financial Officer of DC
- The employee is required to possess a security clearance under DC law
- The position is with a financial institution, and involves access to personal financial information
- The employer requests or receives credit information pursuant to a lawful subpoena, court order, or law enforcement investigation

In addition, disclosures by DC government employees of their credit information to the Board of Ethics and Government Accountability or the Office of the Inspector General, and the agencies’ use of such disclosures would still be permitted.

Comment. Unlike DC’s “ban the box” [law](#) that prohibits employers from asking or requiring applicants to provide their criminal history or conducting criminal background checks prior to a conditional offer of employment, the Act would prohibit employers from asking or requiring applicants to disclose their credit history or conducting credit checks at any point during the hiring process unless an exemption applies. (See our [October 8, 2014 FYI In-Depth](#).)

Enforcement and Remedies

The Act would allow an aggrieved individual to file an administrative complaint with the DC Office of Human Rights for an alleged violation. If an employer is found to have engaged in unlawful discriminatory practices, the Commission on Human Rights would be able to issue a cease and desist order, and employers may face fines of \$1,000 for the first violation, \$2,500 for the second, and \$5,000 for each subsequent violation. As with other allegedly discriminatory employment practices under the DCHRA, an individual will also have a private right of action.

In Closing

Subject to congressional approval, DC will join an increasing number of jurisdictions that limit or prohibit employer use of an employee or job applicant's credit information in making employment decisions. Employers that use credit checks for hiring or other employment purposes will want to monitor developments.

Authors

Nancy Vary, JD
Abe Dubin, JD

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