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D.C. Restricts Employer Use of Credit Information

On February 15, D.C. Mayor Muriel Bowser signed the Fair Credit in Employment Amendment Act of 2016, joining a growing number of jurisdictions that significantly limit the use of credit checks for employment purposes. Following the requisite congressional review period, the law became effective April 7, subject to appropriations. Employers should review their applicant screening, hiring and other employment practices to ensure compliance.

Background

While the federal Fair Credit Reporting Act (FCRA) does not restrict the use of credit information for employment purposes, it does impose certain procedural requirements on employers that seek an employee's or job applicant's consumer credit report. By contrast, a growing number of states and cities have enacted laws that limit employers' ability to secure credit histories or factor the information into hiring or other employment decisions.

On February 15, D.C. Mayor Muriel Bowser signed the [Fair Credit in Employment Amendment Act of 2016](#) (the Act), which amends the D.C. Human Rights Act (DCHRA) to prohibit employment discrimination based on an applicant's or employee's "credit information." Following the requisite congressional review period, the Act became effective April 7, subject to appropriations. With that, D.C. joined nearly a dozen states – including California, Connecticut and Illinois – and major cities like Chicago, New York City and Philadelphia that either limit or prohibit the use of credit checks for employment purposes. (See our [February 27, 2017 For Your Information](#).)

Employer Restrictions

Under the Act, D.C. employers, employment agencies and labor organizations can no longer use an applicant's or employee's consumer credit information in making employment decisions, with certain narrow exceptions. Unless an exemption applies, the new law prohibits employers from directly or indirectly requesting, requiring, suggesting or causing employees (including unpaid interns) or applicants to provide credit information or to use, accept, refer to or inquire about it.

Defining "credit information" broadly to include "any written, oral, or other communication of information bearing on an employee's



creditworthiness, credit standing, credit capacity, or credit history,” the new law impacts applicant screening, hiring and other employment practices. While conduct intended to gather credit information through application forms, interviews, background checks and credit history would generally be unlawful, employers are permitted to run credit checks or inquire into an applicant’s or employee’s credit history if the:

- Employer is required by D.C. law to request or use an individual’s credit information
- Individual is applying for a position – or is employed – as a police officer, a special or campus police officer or in another position with a law enforcement function
- Position is in the Office of the Chief Financial Officer of D.C.
- Employee is required to possess a security clearance under D.C. law
- Position is with a financial institution, and involves access to personal financial information
- Employer requests or receives credit information pursuant to a lawful subpoena, court order or law enforcement investigation

Disclosures by D.C. 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 are also permitted.

Penalties for Non-compliance

The D.C. Office of Human Rights is charged with investigating complaints. An employer found to have engaged in unlawful discriminatory practices may face fines of \$1,000 for the first, \$2,500 for the second, and \$5,000 for each subsequent violation. As with other allegedly discriminatory employment practices under the DCHRA, individuals will also have a private right of action.

In Closing

DC has joined an increasing number of jurisdictions that limit or prohibit employer use of an employee’s or applicant’s credit information in making employment decisions. Employers that use credit checks for hiring or other employment purposes will want to review and, as needed, update their screening, hiring and other employment practices to ensure compliance.

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