

NEW YORK CITY PASSES THE STOP CREDIT DISCRIMINATION IN EMPLOYMENT ACT

Labor & Employment Alert
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Effective September 2, 2015, the Stop Credit Discrimination in Employment Act (the Act) will prohibit New York City employers with four or more employees from requesting or using an applicant's or employee's consumer credit history for employment purposes, and from discriminating against an applicant or employee on the basis of his or her consumer credit history.

Previously, under the Federal Fair Credit Reporting Act (FCRA), employers were required to follow certain procedural safeguards before obtaining and relying upon certain background information of an employee or applicant, including credit history. Now, New York City is joining a number of other cities in banning, with limited exception, consideration of consumer credit history in employment.

Under the Act, "consumer credit history" means an individual's credit worthiness, credit standing, credit capacity, or payment history, as indicated by: a) a consumer credit report; b) credit score; or c) information an employer obtains directly from the individual, such as information about their credit accounts, or bankruptcies, judgments, or liens. A consumer credit report will include any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing, credit capacity, or credit history.

Exclusions

The Act does not apply to an employer that is required by state or federal law or by a self-regulatory organization of the Securities Exchange Act to use an individual's consumer credit history for employment purposes. Nor does the Act apply to persons applying for or employed in certain positions, including but not limited to:

- Positions in which an employee is required by law to be bonded.
- Positions in which an employee is required by law to possess security clearance.
- Non-clerical positions having regular access to trade secrets, intelligence information or national security information.¹
- Positions i) having signatory authority over third party funds or assets valued at \$10,000 or more, or ii) that involves a fiduciary responsibility to the employer with the authority to enter financial agreements valued at \$10,000 or more on

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behalf of the employer; and

- Positions with regular duties that allow the employee to modify digital security systems established to prevent the unauthorized use of the employer's or client's networks or databases.

Importantly, the Act does not exempt all individuals who are required to handle money in the course of their job duties.

The Act does not preclude employers from requesting or receiving consumer credit history information pursuant to a lawful subpoena, court order, or law enforcement investigation.

Enforcement

Individuals claiming to be aggrieved under the Act may file a claim with the New York City Commission on Human Rights or a court of competent jurisdiction. Remedies available include injunctive relief, compensatory and punitive damages, attorneys' fees and costs, and civil penalties ranging from \$125,000 to \$250,000.

Recommendations

- Covered employers should immediately determine which of their positions are excluded from the Act's prohibition on the use of consumer credit history information.
- For those positions that do not qualify for one of the exclusions, employers should take steps to ensure that their hiring and employment practices are in compliance with the Act before September 2, 2015.

For those positions that qualify for an exclusion, employers should document the basis of the exclusion.

[1] The term "trade secrets" means information that: a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and c) can reasonably be said to be the end product of significant innovation. The term "trade secrets" does not include general proprietary company information such as handbooks and policies. The term "regular access to trade secrets" does not include access to or the use of client, customer, or mailing lists.