

May 8, 2015

New York City Passes Law Banning Use of Credit History in Employment Decisions

On Wednesday, May 6, Mayor Bill de Blasio signed a bill into law amending the City Human Rights Law (“NYCHRL”) to protect job applicants and employees from adverse employment actions based on their individual consumer credit histories. The law will go into effect on September 3, 2015.

The new law makes it an unlawful discriminatory practice for employers to request or consider employees’ or job applicants’ consumer credit histories in making decisions regarding hiring, compensation, or other terms and conditions of employment, with exceptions for certain positions. “Consumer credit history” is broadly defined under the law to encompass not only information contained in a credit report, but also related information that is provided directly by the employee. Among other exceptions, employers will still be permitted to conduct credit history inquiries where they are required by law or a self-regulatory body (as defined by the Securities Exchange Act) to use consumer credit history information for employment purposes, or to screen current or prospective employees: who would have the authority to commit the employer to transactions in excess of \$10,000; who would have signatory authority over third-party assets in excess of \$10,000; who must be bonded under federal, state, or local law; whose regular duties would allow them to modify digital security systems that protect the employer’s (or its clients’) networks or databases from unauthorized use; and non-clerical employees who would have regular access to trade secrets (which is defined narrowly by the law), intelligence information, or national security information.

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While ten states, as well as other localities, including Chicago, enforce similar restrictions on the use of credit history information in employment decisions, the New York City law provides narrower exceptions than its counterparts. For example, while Vermont's law (like many others of its kind) wholly exempts employers who qualify as "financial institutions" or "credit unions" from its coverage, New York City's new law does not contain a similar blanket exemption for any class of private employers. Additionally, because the new prohibition is incorporated into the NYCHRL, employees and job applicants will have the ability to bring a lawsuit to enforce their rights under this section, and will be able to seek the broad remedies available under the NYCHRL, including compensatory and punitive damages, as well as attorney's fees (among other potential remedies).

Employers who utilize credit checks to inform employment decisions (or who simply ask questions concerning current or prospective employees' consumer credit histories) are encouraged to review their hiring practices for compliance with the new law, and to consult with counsel in determining which employees and prospective employees can be lawfully subjected to credit history inquiries. If you have any questions or would like detailed information about the new law, please contact Nick Bauer at (212) 758-7793 or any other attorney at the Firm.

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