

# Management Alert



## Philadelphia Restricts Employers' Use of Credit History for Employment Purposes

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**Seyfarth Synopsis:** Effective July 7, 2016, employers in Philadelphia are prohibited from procuring or using an applicant's or employee's credit history for employment purposes.

On June 7, 2016, Philadelphia Mayor Jim Kenney signed Bill No 160072, an amendment to the Philadelphia "Fair Practices Ordinance: Protections Against Unlawful Discrimination."

### The New Ordinance in Philadelphia

The Ordinance now makes it an "unlawful discriminatory practice for an employer to procure, to seek a person's cooperation or consent to procure, or to use credit information regarding an employee or applicant in connection with hiring, discharge, tenure, promotion, discipline or consideration of any other term, condition or privilege of employment with respect to such employee or applicant." The law clarifies that "credit information" means "[a]ny written, oral, or other communication of information regarding a person's debt; credit worthiness, standing, capacity, score or history; payment history; charged-off debts; bank account balances or other information; or bankruptcies, judgments, liens, or items under collection." The prohibition on the procurement and use of credit information applies regardless of whether the check is conducted pre- or post-offer of employment. There are, however, several exceptions to this new law.

### Exceptions

The Ordinance does not apply to any law enforcement agency or financial institution (meaning, "[a]ny bank, savings and loan association, credit union, trust company, insurance or surety company, bank holding company, financial holding company, investment advisor, broker-dealer, entity registered with the U.S. Securities and Exchange Commission, or any subsidiary or affiliate thereof"). The Ordinance also does not apply to the City of Philadelphia with respect to efforts to obtain information regarding taxes or other debts owed to the City or if such information must be obtained pursuant to state or federal law.

There are several specific exceptions that carry additional obligations on the part of the employer. Employers that take an adverse action against an individual who is applying for, or working in, any of the positions below, based in whole or in part on the individual's credit information, must notify the individual in writing of the reason the employer considered the individual's credit information and the specific credit information on which the employer relied. The employer also must provide an opportunity for the individual to explain the circumstances surrounding the information at issue before taking adverse action. These requirements are triggered :

- if the job requires an employee to be bonded under City, state or federal law;
- if the job is supervisory or managerial in nature and involves setting the direction or policies of a business or a division, unit or similar part of a business;
- if the job involves significant financial responsibility to the employer, including the authority to make payments, transfer money, collect debts, or enter into contracts, but not including handling transactions in a retail setting;
- if the job requires access to financial information pertaining to customers, other employees, or the employer, other than information customarily provided in retail transaction; or
- if the job requires access to confidential or proprietary information that derives substantial value from secrecy.

The notice provisions of the Fair Credit Reporting Act (FCRA) also require similar steps when employers make adverse employment decisions based on information contained in a credit report.

## Remedies

The Ordinance will provide aggrieved persons with the right to file a complaint with the Philadelphia Commission on Human Relations within 300 days of any unlawful act. Once administrative remedies have been timely exhausted, an individual may pursue a private right of action to recover the full array of damages available the Fair Practices Ordinance, which includes compensatory damages, attorney's fees and punitive damages. Violations of the Ordinance also may subject an employer to administrative penalties.

## Implications for Employers

The Ordinance applies to any employer with at least one employee in Philadelphia. Any such employers who might use credit information for employment purposes should review their practices to ensure compliance with the new requirements. In cases that fall into one of the exceptions to the Ordinance, employers should likewise review the new requirements for compliance when seeking and obtaining credit information for such covered applicants and employees. Additionally, employers that no longer can use credit information in connection with their hiring processes should review their applications and other employment-related documents to ensure that nothing pertains to the procurement or use of credit information. Employers in multi-state jurisdictions should ensure compliance with both this Ordinance and laws of other applicable jurisdictions that regulate employers' use of credit information.

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**Seyfarth Shaw LLP Management Alert | July 14, 2016**

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