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UPDATE: D.C. Fair Credit in Employment Amendment Act Prohibits Inquiry Into Prospective and Current Employees' Credit Information

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Seyfarth Synopsis: *The District of Columbia has become the newest jurisdiction to prohibit employers from inquiring into their job applicants' and current employees' credit information.*

Update: *The law became effective on March 17, 2017.*

The Act

On February 15, 2017, D.C. Mayor Muriel Bowser signed [B21-0244](#) (now known as [A21-0673](#)), "The Fair Credit in Employment Amendment Act of 2016" (the "Act"), amending the D.C. Human Rights Act of 1977 to prohibit employers, including employment agencies and labor organizations, from taking discriminatory action against prospective and current employees based on their credit information (defined as "any written, oral, or other communication of information bearing on an employee's creditworthiness, credit standing, credit capacity, or credit history"). Specifically, employers are prohibited from directly or indirectly requiring, requesting, suggesting, or causing any employee to submit credit information and from using, accepting, referring to or inquiring into credit information unless the particular position is exempt from the law's prohibitions.

Exemptions

Employers are permitted to inquire into an applicant's or employee's credit history is permitted if the position falls under one of the following exemptions:

- The employer is otherwise required by D.C. law to require, request, suggest or cause the employee to submit credit information, or use, accept, refer to or inquire into an employee's credit information;
- The employee is applying for a position as or is employed as a police officer, as a special police officer or campus police officer, or in a position with law enforcement function;
- For employees within the Office of the Chief Financial Officer of D.C.;
- The employee is required to possess a security clearance under D.C. law;

- For financial institutions, where the position involves access to personal financial information. Financial institutions are defined as “a bank, savings institution, credit union, foreign bank, trust company, non-depository financial institution, or any other person which is regulated, supervised, examined, or licensed [or which has applied to be regulated, supervised, examined, or licensed] by the Department of Insurance, Securities, and Banking; . . . which is subject to the regulation, supervision, examination, or licensure by the Department of Insurance, Securities, and Banking; or which is engaged in an activity covered by the D.C. Banking Code;” or
- Where an employer requests or receives credit information pursuant to lawful subpoena, court order or law enforcement investigation.

Potential Damages

The D.C. Office of Human Rights will investigate charges of violations of the Act. An employer who is found to have violated the law may be subject to fines ranging from \$1,000 to \$5,000. Specifically, employers will face a \$1,000 fine for the first violation, a \$2,500 fine for the second violation, and a \$5,000 for each violation thereafter. Most significantly, individuals also will have a private right of action for violations of the Act, just as they would for any other unlawful discriminatory employment practice under the D.C. Human Rights Act.

Employer Outlook

D.C. employers should review their practices to ensure compliance with the new requirements, including that their employment practices do not directly or indirectly request credit information unless an exemption is met. Employers who seek credit information for positions that fall into one of the exemptions to the Act should also review the new requirements for compliance and additional process guidance. Additionally, employers should review their applications and other employment-related documents to ensure that there are no references to the procurement or use of credit information. Employers in multi-state jurisdictions should ensure compliance both with this Act and with the laws of other applicable jurisdictions that regulate employers’ use of credit information.

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Seyfarth Shaw LLP One Minute Memo® | April 6, 2017

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