

EEOC to Discuss Employer Use of Credit History as a Screening Tool

Seyfarth Shaw's Pamela Devata to testify about misperceptions regarding the use of employment credit reports by employers.

The Equal Employment Opportunity Commission (EEOC) plans to hear testimony from stakeholders about employer use of credit history as a screening tool at an open meeting on Wednesday, October 20, 2010.

The meeting comes on the heels of new legislation aimed at severely limiting the use of credit checks on employees. The House Financial Services Committee held a hearing last month to discuss the Equal Employment for All Act, H.R. 3149, a bill that would make it unlawful to base adverse-employment decisions against prospective and current employees on consumer credit reports. Several states have already passed laws restricting the use of credit checks in hiring.

Pam Devata, a partner in the Labor & Employment department of Seyfarth Shaw LLP, who focuses her practice on issues related to the Fair Credit Reporting Act (FCRA) and state laws affecting background screening, has been asked by the EEOC to provide guidance on the matter. Devata's testimony will aim to clear up some common misperceptions about credit reports and how they are used by employers.

"There seems to be a common misperception that employment credit reports include a credit score," said Devata. "They do not. Before an employer is able to make a decision based on a credit report, the employer must review the content of the full report to obtain credit information and assess whether it is positive, negative, or neutral. This requires more than a mere glance at a numeric score; rather, employers must conduct a thoughtful analysis of the information contained in the report."

"While some have argued that additional restrictions are needed with respect to the use of credit in employment, I believe that adequate protections are already in place with respect to an employer's use of credit reports for employment purposes. The Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, Title VII, 42 U.S.C. § 2000e *et seq.*, and state laws all protect consumers' rights," said Devata. She explained that, "Most notably, the FCRA has very stringent and detailed procedures that employers must follow before they use credit reports in whole or in part in making hiring or other employment decisions."

"In my experience, employers rarely, if ever, make hiring decisions based on information in a credit report without giving an applicant the opportunity to explain the information on the report," she added.

"Credit checks can be a useful tool for employers because they provide a variety of information that cannot otherwise be confirmed by an employer and because they are viewed as a valid indicator of a person's judgment and potential risk to the company," Devata explained.

“Employers are also extremely cognizant about possible claims of negligent retention and negligent hiring – a main reason they conduct employment screening in the first place.”

More on Pamela Devata:

Pamela Devata specializes in all aspects of employment defense including counseling, training, and litigation. She helps employers with all issues relating to discrimination, harassment, and retaliation, among others. During her nine years of legal practice, Devata has developed a particular emphasis on the Fair Credit Reporting Act (FCRA) and state laws affecting background screening. She counsels both employers and providers (resellers and consumer reporting agencies) of background information on compliance requirements under the FCRA and various related state and local laws, and also provides defense counsel when issues are raised regarding the appropriateness of certain practices. She is the chair of Seyfarth Shaw’s FCRA Litigation and Counseling Team, and is a past member of the Board of Directors of the National Association of Professional Background Screeners.