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Mayor De Blasio Signs Bill Banning Credit History in New York City Employment Decisions

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On Wednesday, May 6, 2015, Mayor Bill De Blasio signed into law *Intro-261-A*, a bill passed by the New York City Council on April 16, 2015 which amends the New York City Human Rights Law making it unlawful for employers to use an individual's consumer credit history in making employment decisions. The law takes effect on September 3, 2015.

With this bill, New York City becomes the twelfth jurisdiction in the country to prohibit employers from using credit checks to screen job applicants, joining California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont, Washington, and the city of Chicago. See our prior posts on *California*, *Colorado*, *Nevada*, and *Vermont's* laws.

However, New York City's law is broader -- and provides fewer exceptions -- than other jurisdiction, which, by way of example, provide exceptions for managerial positions, financial institutions, or positions where the credit report is substantially related to the job. Not only does the bill make it unlawful for employers to *use* an applicant's credit history when making employment decisions, but it also makes it unlawful for employers to *request* credit history for employment purposes, unless an exception is met. The bill's protections also extend beyond the hiring process and apply to current employees; the bill prohibits employers from considering consumer credit history broadly with regard to "compensation, or the terms, conditions or privileges of employment."

This bill will have a significant impact on New York City's financial institutions, which routinely use pre-employment credit checks for employees who have access to client data and funds.

Ultimately, the law provides the following exceptions, so that consideration of credit history is lawful only for:

- employers required by state or federal law or regulations, or by a self-regulatory organization as defined in Section 3(a)(26) of the Securities Exchange Act to use an individual's consumer credit history for employment purposes;
- police officers, peace officers, or those in a position with law enforcement or investigative function at the department of investigation (or in certain positions subject to background investigation by the department of investigation);
- positions requiring the employee to be bonded by City, state or federal law;
- positions requiring the employee to possess a security clearance under federal or state law;

- non-clerical positions having regular access to trade secrets, intelligence information or national security information;
- positions having signatory authority over third party funds or assets valued at $10,000 or more, or positions that involve a fiduciary responsibility to the employer with authority to enter financial agreements on behalf of the employer for $10,000 or more;
- positions that allow the employee to modify digital security systems protecting the employer or client's networks or databases.

Remedies

By amending the New York City Human Rights Law, the prohibition on credit checks applies to New York City employers of four or more individuals, and is enforceable through the City Commission on Human Rights or by civil action, with the potential for attorneys' fees and punitive damages. Notably, the New York City Human Rights Law uses a broader interpretation of "adverse action" than found under state or federal nondiscrimination laws.

Recommendations

- Employers in New York City that use credit reports or information are well advised to evaluate and reassess their practices and procedures with respect to employment-related credit checks prior to September 3, 2015. For example, employers should:
- Review whether the positions for which they obtain credit history consumer reports qualify under the New York City exceptions;
- Review the language contained in their disclosure forms used in New York City, since the law additionally prohibits employers from *requesting* credit history; and
- Revise pre-hire procedures and forms to distinguish between positions for which pre-employment credit checks will or will not be conducted.

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