

One Minute Memo®



New York City To Prohibit Use of Credit History in Employment Decisions

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On April 16, 2015, the New York City Council passed [Intro-261-A](#), a bill that would amend the New York City Human Rights Law to make it an unlawful discriminatory practice for an employer to use an individual's consumer credit history in making employment decisions. In particular, the bill makes it unlawful for employers not just to use an applicant's credit history, but also to request it for employment purposes. The bill's protections extend beyond the hiring process to current employees by prohibiting employers from considering consumer credit history broadly with regard to "compensation, or the terms, conditions or privileges of employment."

With this bill, New York City will become 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.

The bill carves out the following exceptions, so that the law will not apply to:

- 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.

These exceptions are more narrow than legislation in other jurisdictions, which, by way of example, provide exceptions for managerial positions, financial institutions, or positions where the credit report is substantially related to the job.

Mayor Bill de Blasio is expected to sign the bill, and the law will be effective 120 days following enactment.

Remedies

By amending the New York City Human Rights Law, the bill's prohibition on credit checks will apply to New York City employers of four or more individuals, and will be enforceable through the City Commission on Human Rights or by civil action, with the potential for attorneys' fees and punitive damages. In addition, 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 in anticipation of the law taking effect.

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