

Credit Checks on the Chopping Block: NYC Restricts Credit Inquiries During Hiring

Following a vote by the New York City Council on April 16 and a May 6 hearing held by Mayor Bill de Blasio, the Mayor yesterday signed a local law that limits the ability of employers in New York City to request credit-related information from current and potential employees. Among other things, New York City employers will no longer be able to perform credit checks as part of their employee screening process for most positions.

The law, "Prohibiting discrimination based on consumer history," was passed as an amendment to the New York City Human Rights Law ("NYCHRL") by a vote of 47-3. While private New York City employers may still collect credit-related information for certain employees and in certain circumstances (including when required by law), the collection and use of this information will be greatly restricted when the law goes into effect on September 3, 2015.

For most private employers in New York City, credit-related information may only be collected or considered for those employed, or seeking employment in, the following positions: ¹

- (1) Positions that are non-clerical in nature in which the individual has regular access to trade secrets. Trade secrets are defined as information that "(a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and (c) can reasonably said to be the end product of significant innovation." This definition of trade secrets excludes "general proprietary company information such as handbooks and policies," as well as access to or the use of "client, customer or mailing lists."
- (2) Positions having "signatory authority over third party funds or assets valued at \$10,000 or more."
- (3) Positions that "involve a fiduciary responsibility to the employer with the authority to enter financial agreements valued at \$10,000 or more on behalf of the employer."
- (4) Positions that, as part of their regular duties, allow the employee to modify digital security systems that are designed to prevent the unauthorized use of the employer's or client's networks or databases.

Int. No. 261-A, Section 2, 24(b)(2)(E)-(G) and (d)(3). In addition to the exceptions identified above, employers may request or receive credit-related information where required by federal, state, or local law or regulations or through "a lawful subpoena, court order or law enforcement investigation." Int. No. 261-A, Section 2, 24(b)(1) and (e).

If the position in question does not fall into one of the exceptions listed above, under the new law, it will be "an unlawful discriminatory practice for an employer, labor organization, employment agency, or agent thereof to request or to use for employment purposes the consumer credit history of an applicant for employment or employee, or otherwise discriminate against an applicant or employee with regard to hiring, compensation, or the terms, conditions or privileges of employment based on the consumer credit history of the applicant or employee." Int. No. 261-A, Section 2, 24(a).

¹ Additional exceptions apply to positions in public agencies, positions with access to information related to criminal investigations or national security, and positions that are required to be bonded by city, state or federal law. The full text of the law is available at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1709692&GUID=61CC4810-F9ED-4F16-A765-FD1D190CFE6C>.

“Consumer credit history” is broadly defined to include an “individual’s credit worthiness, credit standing, credit capacity, or payment history,” including information contained in a credit report or information obtained directly from an individual regarding credit accounts. Int. No. 261-A, Section 1, 29.

As an amendment to the City Human Rights Law, the enforcement provisions contained in the NYCHRL apply to this new legislation as well. Complaints may be filed with the New York City Commission on Human Rights, and actions may also be filed directly in court. Remedies may include back pay, reinstatement, compensatory and punitive damages, and attorneys’ fees and costs.

The law also specifies that the City’s Commission on Human Rights will collect information from public and private employers related to their collection and use of credit-related information through the identified exceptions, and that a report will be presented to the City Council regarding this use for the first two years that the law is in place.

Employers who are currently requesting and/or using consumer credit reports for their employees in New York City, including as part of a background check, should carefully evaluate the positions for which these reports are used to ensure compliance with the new law. If you determine that a credit report may still be considered for a particular position, as always, you should also ensure that you are complying with the various notice requirements in place under federal and state law regarding the use of these reports.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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