

Illinois Passes Law Regulating Use of Credit Information in Employment Decisions

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Illinois law now prohibits most employers from using credit history or a credit report in any employment decision. Specifically, under the Illinois Employee Credit Privacy Act, employers are prohibited from: 1) ordering credit reports on employees or applicants; 2) inquiring about an employee's or applicant's credit history; or 3) failing or refusing to hire, recruit, discharge, or otherwise discriminate against an individual because of his or her credit history or credit report. 820 ILCS 70/1 *et seq.*

There are some exceptions to the law. Employers in the following sectors are exempted from the law: banking institutions; insurance companies; state law enforcement and investigative units; state and local government agencies that require use of credit histories or credit reports; and any entity defined as a debt collector under state or federal law.

Illinois employers can still run credit reports or check credit history if they can show that satisfactory credit history is an established bona fide occupational requirement for a particular position or group of employees. A bona fide occupational requirement can be met if at least one of the following is present:

1. State or federal law requires bonding or other security covering the individual holding the position;
2. The employee's duties include custody or unsupervised access to cash or marketable assets valued at \$2,500.00 or more;
3. The employee's duties include signatory power over business assets of \$100.00 or more per transaction;
4. The position is managerial and involves setting the direction or control of the business;
5. The position involves access to personal or confidential information, financial information, trade secrets or State or national security information;

6. The position meets criteria set by the U.S. or Illinois Departments of Labor for positions in which credit history is a bona fide occupational qualification; or
7. Credit history is otherwise required by or exempt under federal or State law.

Covered applicants and employees cannot waive their rights under the Act, and any agreement by an applicant or employee to waive any right under the Act is invalid and unenforceable. The statute provides for a private right of action with civil damages, costs, attorney's fees and injunctive remedies available to a prevailing plaintiff. Retaliation is likewise prohibited under the Act.

Employers with operations in Hawaii, Oregon or Washington, which are all states with similar laws, also should be aware that the use of credit histories or credit scores in employment decisions could violate state law.

Employers should review their background check practices to ensure that their use is properly limited in accordance with state law. Illinois law does not limit employers from conducting thorough background investigations that do not include credit history information as permitted by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681.

For more information on the new legislation or for assistance with reviewing current policies and procedures, please contact your Proskauer lawyer or any of our Employment and Labor attorneys.

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