

Labor and Employment Law Bulletin

New Credit-Checking Legislation Signed Into Law

Last April, we alerted you to a fast-moving proposal in the Illinois General Assembly to prohibit employers from using an employee's credit history in employment decisions (*Check Your State Law Before Credit-Checking Your Employees*, 4/13/10). With Governor Patrick Quinn's signature one week ago, this proposal became law. When it goes into effect on January 1, 2011, Illinois will join a small group of states banning credit checks for most job applicants.

The Employee Credit Privacy Act (Public Act 096-1426) (the "Act") generally prohibits employers in Illinois from:

- refusing to hire, discharging or otherwise discriminating against an applicant or employee because of the individual's credit history or credit report;
- inquiring about an applicant's or employee's credit history; or
- ordering or obtaining an applicant's or employee's credit report.

"Credit history" is defined as an individual's past borrowing and repaying behavior, including paying bills on time and managing debt and other financial obligations, while "credit report" means any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing, credit capacity or credit history.

The prohibition does not apply if a satisfactory credit history is an established bona fide occupational requirement of the particular position. The Act identifies seven such circumstances where an applicant or employee's credit information may be considered:

- (1) State or federal law requires bonding for an individual holding the position.
- (2) The duties of the position include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more.
- (3) The duties of the position include signatory power over business assets of \$100 or more per transaction.
- (4) The position is a managerial position that involves setting the direction or control of the business.
- (5) Positions with access to personal or confidential information, financial information, trade secrets or state or national security information.
- (6) The position meets criteria in administrative rules, if any, issued by the U.S. Department of Labor or

the Illinois Department of Labor to establish the circumstances in which a credit history is a bona fide occupational requirement.

- (7) A credit history is otherwise required by or the position is exempt under federal or state law.

Other features of the Act:

- Certain employers are exempt from the Act, such as banks and bank holding companies, savings and loan associations, credit unions and certain other financial institutions, insurance companies and agents, debt collectors, law enforcement agencies and certain governmental employers.
- Any person injured by a violation of the Act may bring an action for damages and injunctive relief. A prevailing plaintiff in such an action is entitled to an award of costs and reasonable attorney's fees.
- Employers are still permitted to conduct—according to the Act—a "thorough background investigation," but these investigations must be devoid of any credit history or report information.

With recent studies indicating that three out of every five employers run credit checks, the impact of this new law on Illinois employers will be significant. Between now and the Act's January 1, 2011 effective date, Illinois employers subject to the Act that are using credit reports when conducting background checks should review and modify those procedures to ensure compliance with the Act, at least with respect to the employer's Illinois operations.

As we have detailed in earlier Labor and Employment Law newsletter articles (April 2010, August 2010), there has been and will continue to be significant state and federal legislative activity regarding employer use of credit checks. Illinois now joins Oregon, Washington and Hawaii in adopting restrictions on their use. Though proposals died earlier this year in nine other states, as of this summer they remain pending in Pennsylvania, Ohio and California. We advise employers to review and update their policies now.

Having identified this area of concern early this year and through continued legislative monitoring, Vedder Price is well equipped to assist clients across the country in their evaluating use of credit histories and scores. If you would like more information or have any questions, please contact **Thomas G. Hancuch** (312-609-7824), **Laura Sack** (212-407-6960), **Roy P. Salins** (212-407-6965), or **Christopher L. Nybo** (312-609-7729).

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