

FACT SHEET

Credit History Information in Employment

Effective July 1, 2010, most employers cannot legally obtain or use, for employment purposes, an applicant or employee's credit history information.

Q: What does “credit history” mean?

A: The new law, Senate Bill 1045, defines “credit history” as any communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing or credit capacity.

Q: What does the new law prohibit?

A: It is unlawful to obtain or use for employment purposes an applicant's or employee's credit history information. The law also specifically prohibits the refusal to hire or to promote, the termination, discipline or demotion of, or the retaliation or discrimination against an applicant or employee based on that individual's credit history.

Q: Are all employers covered by the law?

A: No. The law makes exceptions for: 1) federally insured banks and credit unions, 2) for law enforcement agencies (the exception applies to continuing employees, without mentioning applicants) and 3) for employers that are required by law to use individual credit histories for employment purposes. Finally, there is an exception for employers that obtain or use credit history information because it is “substantially job-related” and only then if the reasons for use of the information are disclosed in writing to the employee or applicant.

Q: What does “substantially job-related” mean?

A: Credit history information is substantially job-related by definition if: (1) an essential function of the job requires access to financial information not customarily required in a retail transaction other than a loan or extension of credit (i.e., beyond check information, credit card numbers or debit card numbers); or (2) the employer is required to obtain credit history information as a condition of bonding or insuring the employee.

Employers should use the substantially job-related exception with care. For many positions, such as mechanics, cashiers, receptionists, housekeepers and wait-staff, a credit history is not going to be substantially job-related. On the other hand, if an essential job function of an employee requires that employee to obtain such things as financial institution account numbers and amounts and sources of income, the employer could make an argument that obtaining that

clerk's credit history information is "substantially job-related" and therefore permissible.