



New Oregon Law Prohibits Most Employment Credit Checks

Insights

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Most Oregon employers who review job applicants' credit history reports before deciding whether to hire them will no longer be able to do so as of July 1, 2010. Billed as a means to help out-of-work Oregonians find jobs more easily, the Oregon legislature passed a new law on February 22 which will greatly restrict your ability to perform credit checks on applicants and employees. Once signed into law by the Governor (which is expected), Oregon will become the third state in the country – joining Washington and Hawaii – to prohibit this common practice.

The New Rules

Currently, so long as a business provides appropriate notices and disclosures, it may check the credit and other background information of its applicants and even current employees. But after the "Job Applicant Fairness Act" takes effect in July, it will be illegal for most employers to obtain or use information in a credit report to make a decision about hiring an applicant, or as part of any decision involving a current employee. The new law will not affect an employer's ability to conduct criminal or other types of background checks.

As with most laws, there are exceptions. Excluded from the new prohibition on credit checks are federally insured banks and credit unions, businesses required by law to consider employee credit history, and police and other public employers hiring for law enforcement and airport security. In addition to these clear exclusions, there is an important but somewhat vague exception: any employer may obtain or use a credit report if the information is "**substantially job-related**." In order to take advantage of this exception, the employer's reasons for the use of such information must be disclosed to the employee or prospective applicant in writing.

While some businesses conduct credit checks as a matter of course to assess an applicant's level of responsibility, this alone will likely not constitute a "substantially job-related" reason. The goal of the law was to limit employers' ability to conduct credit checks, and allow them only when tied to some aspect of the specific job in question. Those employees in cash-handling positions, or who have access and responsibility involving the company's or its customers' financial data, should be squarely included in the exception.

Ultimately, what is considered "substantially job-related" will need to be defined by regulations or the courts before employers can feel confident in applying the new rules. Oregon's Bureau of Labor and Industries will be asked to promulgate regulations defining the term, but if and when that process begins, it will likely take several months to complete.

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The New Consequences

Violations of the credit-check restrictions can result in an administrative complaint from the Oregon Bureau of Labor and Industries or a private lawsuit. Individuals who sue and win can recover, among other things, lost wages and attorneys' fees. As a result, seemingly small violations can result in steep penalties.

What To Do Now

If your business currently performs credit checks for Oregon employees as part of its hiring process, you should plan to discontinue that practice unless your business meets one of the four exceptions to the general prohibition. Before attempting to use the "substantially job-related" exception, you should carefully examine the reasons for conducting the check and consult with legal counsel. If you apply the exception for any reason, make sure you disclose the reasons for the credit check to applicants or employees in writing. Given the present uncertainty in how this standard will be interpreted, we urge caution before proceeding.

This Legal Alert provides information about a specific new state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.