



# Credit Checks In California Now Tougher Than Ever

Insights

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Effective January 1, 2012, California employers will have to avoid yet another potential legal hazard that haunts businesses with the threat of costly penalties: the unauthorized use of consumer credit reports regarding job applicants and current employees.

Currently, pursuant to the California Consumer Credit Reporting Agencies Act, employers can request a consumer credit report (i.e., a report obtained from a consumer credit-reporting agency bearing on an individual's credit worthiness, credit standing, or credit capacity) for purposes of evaluating an applicant or employee for employment, reassignment, or retention. But starting next year a valid reason for obtaining a consumer credit report should be viewed as being the exception rather than the rule.

## The Specifics

Gov. Jerry Brown signed the new law on October 10, restricting the use of consumer credit reports for employment purposes. Specifically, the signed legislation will prohibit an employer or prospective employer, with the exception of certain financial institutions, from obtaining consumer credit reports unless the person for whom the report is sought has (or will have) a position that is:

- managerial;
- in the state Department of Justice;
- a sworn peace officer or other law enforcement position;
- one for which the information contained in the report is required by law to be disclosed or obtained;
- one that involves regular access, for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment, to someone's bank or credit card account information, social security number, and date of birth;
- one in which the person is, or would be, any of the following: 1) a named signatory on the bank or credit card account of the employer; 2) authorized to transfer money on behalf of the employer; or 3) authorized to enter into financial contracts on behalf of the employer;
- one that involves access to certain confidential or proprietary information; or
- a position that involves regular access to cash totaling \$10,000 or more of the employer, a customer or client during the workday

customer, or client, during the workday.

The new law still imposes the same notice requirements currently in effect. Specifically, an employer must give notice to the person whom the report is sought stating that a report will be used and the source of the report, and the notice must contain a box that the person may check off to receive a copy of the credit report. In addition to these requirements, employers will now have to identify which of the above position categories for which the report is being obtained.

Moreover, when adverse action is taken, that is based in whole or in part on a consumer credit report, you must give the applicant or employee written notice of the adverse action along with the name and address of the consumer credit reporting agency which provided the consumer credit report.

In the event an employer fails to comply with the new law, applicants or employees may bring individual suits for damages, including court costs, loss of wages, attorneys' fees, and when applicable, pain and suffering. In addition, courts can award additional damages up to \$5,000 for each violation and any other relief it deems necessary.

### **Our Advice**

So what should you do in order to avoid violating the new law?

Make sure to have a clear understanding of any position for which an employee is being hired, reassigned, or transferred when determining whether to obtain a consumer credit report. The determination as to whether an employee is in a "managerial" position or has access to "confidential or proprietary information" is not always as clear cut as one thinks, and may require an examination and interpretation of other applicable legal principles.

When obtaining consumer credit reports for employment related purposes, think to yourself, "generally, the company cannot obtain consumer credit reports." Then ask, "what position does the person for whom I am seeking the consumer credit report hold (or will hold)?" If the position does not fall in one of the above categories, you will not have a valid reason for obtaining a consumer credit report.

For more information contact any attorney in one of our California offices:

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