



Nevada Imposes Restrictions On The Use Of Credit Reports In Employment Decisions

Insights

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Employers frequently use credit reports (sometimes referred to as “consumer reports”) as a tool in determining whether to hire, promote or retain an employee. The Fair Credit Reporting Act (FCRA), a federal law, allows an employer to deny employment based on the content of a consumer report, but requires various notices and disclosures, e.g., obtaining the applicant or employee’s authorization before requesting a credit report, giving the applicant or employee notice and information before taking any potential adverse action based on the report, and giving notice and information if an adverse action is actually taken based in whole or in part on the content of the report.

In addition to complying with the FCRA, employers must comply with state laws which may provide additional protections. Nevada has now enacted a law which, effective October 1, 2013, with certain exceptions, makes it unlawful for an employer to:

1. Require, request, suggest or cause a prospective new employee to submit a consumer credit report or other credit information as a condition of employment;
2. Make inquiries about a consumer credit report or other credit information;
3. Deny employment to an applicant who refuses, fails or declines to submit a consumer credit report or other credit information or on the basis of such a report or information.

The Context

The law applies to existing employees, making it unlawful to fire, discipline, discriminate against, or fail to promote an employee who refuses, declines, or fails to submit a consumer credit report or other credit information. It will also be unlawful to retaliate against an employee or prospective employee who files a complaint, institutes a legal proceeding, or testifies in a legal proceeding regarding an alleged violation of the law.

A “consumer credit report” is a written or verbal communication of information by a consumer-reporting agency relating to creditworthiness, credit standing, or credit capacity. “Credit information” is information from a consumer credit report that is “related to credit.” Information that is not related to credit is not “credit information,” even if it is contained in a consumer credit report. Nothing in the new Nevada law prohibits criminal-background checks if any other legal requirements for such background checks are met.

Penalties

In the event of a violation of the law, the Nevada Labor Commissioner may impose a penalty of not more than \$9000 for each violation and/or bring a civil lawsuit. Further, the employee or prospective employee may bring a legal action to recover remedies and damages for violations of the statute, including being granted employment, reinstatement, promotion, and payment of lost wages and benefits. A successful applicant or employee may also be entitled to court costs and reasonable attorneys' fees. Suit may also be brought on behalf of other employees who are "similarly-situated," creating a type of potential class action.

Exceptions

There are a number of situations in which a Nevada employer can still request or consider a consumer credit report or other credit information for the purpose of making employment decisions regarding a prospective or current employee. Such action is allowed if:

- The employer is required or authorized, pursuant to state or federal law, to use a consumer credit report or other credit information for that purpose;
- The employer reasonably believes the employee or prospective employee has engaged in a specific activity which may constitute a violation of state or federal law, e.g., there is reasonable suspicion of an employee theft; or
- The information contained in the consumer credit report or other credit information is "reasonably-related" to the position for which the applicant or current employee is being evaluated. There are eight situations under the statute that shall be deemed as reasonably-related, including when the employment is with a licensed gaming establishment or a financial institution chartered under state or federal law.

Other exceptions include when the duties of the position involve: 1) the care, custody and handling of, or responsibility for, money, financial accounts, corporate credit or debit cards or other assets; 2) access to trade secrets or other proprietary or confidential information; 3) managerial or supervisory responsibility; or 4) access to, or the care, custody or handling of, or responsibility for, the personal financial or other personal information of another person.

Action Needed

To get ready to be in compliance with the law by October 1, you should review your job positions and determine which positions are such that you will no longer be able to request or use consumer credit reports or other credit information in filling or otherwise making decisions about these positions and the persons in these positions. You should then educate the employees who are involved in hiring and making other employment decisions about the new legal requirements.

You will also need to review your existing policies, forms and employment applications to make sure their language is consistent with the new law. For example, as of October 1, you would no longer want a form, policy or application to categorically state that consenting to a credit check is a requirement for all positions in the company.

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For more information contact any attorney in the Las Vegas office of Fisher Phillips at (702) 252-3131.

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

Service Focus

FCRA and Background Screening