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October 2015

STOP CREDIT DISCRIMINATION IN EMPLOYMENT ACT LIMITS THE USE OF CREDIT CHECKS IN EMPLOYMENT

Except in very limited circumstances, New York City employers with four or more employees¹ are now prohibited from requesting, or relying upon, the consumer credit history of an applicant or employee for employment purposes, including hiring and compensation decisions. This amendment to the NYS Human Rights Law went into effect on September 3.

Positions exempted from the law are as follows:

- Positions for which state or federal law and regulations require the use of an employee's credit history;
- Law enforcement personnel;
- Positions that require background investigations by the New York City Department of Investigation;
- Positions in which an employee is required to be bonded under City, state, or federal law;
- Positions requiring security clearances;
- Non-clerical positions that have regular access to trade secrets, intelligence information, or national security information;
- Positions having signatory authority over third-party funds or assets valued at \$10,000 or more;
- Positions involving a fiduciary responsibility to the employer with authority to enter financial agreements valued at \$10,000 or more on behalf of the employer; and
- Positions with regular duties that allow the employee to modify digital security systems to prevent the unauthorized use of the employer's or a client's networks or databases.

New York City Human Rights Commission has taken the position that only high level, executive positions are exempt from the prohibition on credit checks before or during employment. Employers claiming that a position is exempt from the law must give notice to applicants and maintain a written log explaining the reason the position is exempt for five years. In its published Guidance, the Commission states that merely requesting or reviewing credit information violates the law even if no adverse employment decision results. Penalties for violation of the law can be as high as \$125,000 (higher for wilful violations). The Commission's Guidance can be found here: <http://www.nyc.gov/html/cchr/html/coverage/credit-history-legalguidance.shtml>

WHAT SMART NONPROFITS MUST DO NOW: Get legal advice concerning whether it is legal to conduct a credit check if you are unsure whether a particular position may be exempt from the new law. For all other positions, discontinue the practice of conducting credit checks, and remove all references to credit checks in any pre-hire materials including advertisements and applications.

¹ Independent contractors who do not have their own employees are included in this count.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at www.lawyersalliance.org for further information.

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