

Philadelphia Ordinance Restricting Credit Checks on Job Applicants, Employees Effective July 7

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Effective July 7, 2016, a new City of Philadelphia ordinance will restrict the use of credit checks and credit-related information. With certain exemptions, the ordinance prohibits covered employers in Philadelphia from discriminating against job applicants and employees because of negative credit history.

Philadelphia Mayor Jim Kenney on June 7, 2016, signed into law the ordinance prohibiting the use of credit-related information when making employment decisions. The credit check ordinance was enacted through amendment to Chapter 9-1100 of The Philadelphia Code, the “Fair Practices Ordinance,” adding to the already extensive protections afforded under the City’s anti-discrimination laws. Employment decisions also may not be based on an individual’s ethnicity, ancestry, sexual orientation, gender identity, status as a domestic abuse victim, marital status, or family status.

The new ordinance will apply to any employer doing business in Philadelphia, including public employers, unless the employer falls into one of a number of exemptions.

New Restrictions

The ordinance makes it unlawful for employers to consider a job applicant’s or employee’s credit-related information “in connection with hiring, discharge, tenure, promotion, discipline or consideration of any other term, condition or privilege of employment with respect to such employee or applicant.” The term “credit information” has been defined broadly to include “[a]ny written, oral, or other communication of information regarding a person’s: debt, credit worthiness, standing, capacity, score or history; payment history; charged-off debts; bank account balances or other information; or bankruptcies, judgments, liens, or items under collection.”

Exemptions

Tempering the above restrictions are a number of exemptions from the ordinance. First, law enforcement agencies and financial institutions (*e.g.*, insurance companies, banks, and credit unions) are not subject to the ordinance. Further, as an employer, the City of Philadelphia is exempted where credit-related information is sought “with respect to efforts to obtain information regarding taxes or other debts owed to the City.” Last, credit-related information may be considered “if such information must be obtained pursuant to state or federal law.”

The ordinance provides certain job-specific exemptions. Employers may consider credit-related information if the job:

- requires an employee to be bonded under applicable law;
- is supervisory or managerial in nature;
- requires “significant financial responsibility to the employer” (not including duties customary in the retail setting);
- involves access to sensitive financial information (not including information customarily obtained in the retail setting); or
- requires access to “confidential or proprietary information that derives substantial value from secrecy.”

The ordinance is careful to ensure that retail employers are not able to claim an exemption simply because an employee will routinely be handling credit cards or will otherwise be engaging in frequent sales transactions.

Where an exempt employer relies on credit-related information to take an adverse action against an applicant or employee, the employer must notify that person in writing of its decision. This

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notification must identify and provide the information on which the employer's decision relied. The employee or applicant then must be given an opportunity to explain the information at issue before any final adverse action may be taken.

Complaint and Remedies

Finally, an individual claiming to have been aggrieved by violations of the ordinance may file a complaint with the Philadelphia Commission on Human Relations. The individual may pursue an action in court once administrative remedies have been exhausted. Remedies available to a successful litigant include compensatory and punitive damages, attorneys' fees, court costs, and injunctive relief. Employers violating the ordinance may also be subject to administrative penalties.

Implications for Philadelphia Employers

The credit check ordinance adds to the already significant anti-discrimination protections afforded under the Fair Practices Ordinance. Employers in Philadelphia must be aware of the new obligations associated with compliance and the potential penalties. Employers should review existing policies and practices and ensure they are compliant with the new ordinance.

If you have any questions, please contact the Jackson Lewis attorney with whom you regularly work.

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