

New Connecticut Law Restricts Use of Credit Reports in Employment Decisions

By Beverly W. Garofalo, Tanya A. Bovée and Margaret J. Strange

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A new law in Connecticut generally prohibits employers from using credit reports in making employment decisions regarding existing employees or applicants. The law, effective on October 1, 2011, applies to all employers in Connecticut that have at least one employee.

Exceptions

Under the law, employers may not require an employee or prospective employee to consent to a credit report, subject to the following exceptions:

1. The employer is a financial institution, as defined under the law;
2. The report is required by law;
3. The employer reasonably believes the employee has engaged in specific activity that constitutes a violation of the law related to the employee's employment; or
4. Such report is substantially related to the employee's current or potential job or the employer has a bona fide purpose for requesting or using information in the credit report that is substantially job-related and is disclosed in writing to the employee or applicant.

Under the fourth exception, the report is "substantially related to the employee's current or potential job" and allowable if the position:

1. Is a managerial position that involves setting the direction or control of a business, division, unit or an agency of a business;
2. Involves access to customers', employees' or the employer's personal or financial information, other than information customarily provided in a retail transaction;
3. Involves a fiduciary responsibility to the employer, as defined under the law;
4. Provides an expense account or corporate debit or credit card;
5. Provides access to certain confidential or proprietary business information, as defined under the law; or
6. Involves access to the employer's nonfinancial assets valued at \$2,005 or more, including, but not limited to, museum and library collections and to prescription drugs and other pharmaceuticals.

Remedies

Employees and prospective employees may file a complaint with the state Labor Commissioner for alleged violations of the law. The Commission may issue a civil fine of \$300 for each credit check that violates the law. There is no statutory remedy that is available directly to the employee or applicant.

What Employers Should Do

Connecticut employers that use credit reports should ensure such use falls under at least one of the law's exceptions. Employers also should consider updating current job descriptions to reflect specifically, for example, whether the employee is in a managerial position or has access to financial information, confidential or proprietary business information, or non-financial assets as outlined in the law.

Employers should continue to ensure compliance with other applicable federal and state laws, including the federal Fair Credit Reporting Act.

Contact your Jackson Lewis attorney with any questions regarding the provisions of this new law or its implications.

Meet the Authors



[Beverly W. Garofalo](#)

Principal
Hartford
860-522-0404
Email



[Tanya A. Bovée](#)

Office Managing Principal
Hartford
860-522-0404
Email



[Margaret J. Strange](#)

Principal
Hartford
860-331-1554
Email

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