



## Illinois' Cook County Ordinance Restricts Credit History Use

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*An amendment to Cook County's Human Rights Ordinance, with certain exceptions, broadly prohibits employers from using credit histories or reports in making employment decisions. Cook County is the most populous county in Illinois and the one in which Chicago is situated.*

Joining a nationwide trend, the Board of Commissioners of Cook County, Illinois, on May 20, 2015, amended the Human Rights Ordinance to add credit history to the list of items an employer may not consider in making employment decisions. The amendment broadly restricts employers from using an employee's or job applicant's credit history to discriminate with respect to any "term, condition, or privilege of employment," including hiring, recruiting, disciplining, setting compensation, and terminating employment. Unless an exception applies, employers are prohibited from inquiring about credit histories or obtaining reports on applicants or employees.

The new prohibitions and exceptions are similar to those of the Illinois Employee Credit Privacy Act (see our article, *Illinois Joins States Narrowing Credit Checks by Employers*) and the Chicago Human Rights Ordinance. Employers in Illinois, including those in Chicago, who are in compliance with the preexisting Illinois and Chicago laws likely will need to make few, if any, changes to their protocols based on the amendment (Cook County Code Section 42-35(g)), which is in effect.

Perhaps the most generous of the three state and local laws in terms of permissible remedies, the county ordinance effectively builds on the remedial provisions of the state law (which provides for lawsuits) and the Chicago ordinance (which provides for regulatory fines that can accumulate quickly). However, unlike any other rights under the Illinois law, claims under the Cook County ordinance can be released as part of a general release.

### Employers Covered

The ordinance applies to employers that have their principal place of business in Cook County *or do business in Cook County*. However, as under the state law and Chicago ordinance, certain types of governmental entities or organizations and certain private entities are exempt. The latter include:

Certain financial entities, including banks;

Insurance or surety businesses authorized under Illinois law; and

Debt collectors recognized under federal or state law or county ordinance.

### Other Exceptions

The state law and Chicago and county ordinances allow credit history to be taken into account when it is a *bona fide occupational requirement*, meaning:

State or federal law requires bonding or other security for the position;

Job duties include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more;

Job duties include signatory power over assets of \$100 or more per transaction;

The position is managerial and involves setting the direction or control of the business;

The position involves access to limited categories of personal or confidential information, financial information, trade secrets, or state or national security information;

The position meets federal or state rules regarding when credit history is a bona fide occupational requirement; or

The employee's or applicant's credit history is required by or exempt under other law.

## Remedies

Individuals may pursue claims at the Cook County Commission on Human Rights. The ordinance's remedial provisions are extensive. Among its powers, the county's Commission on Human Rights, which administers the law, can issue fines of \$100-\$500 per violation (of which there may be more than one), payable to the county, award actual damages, order hiring or reinstatement, with or without backpay, and award attorney's fees.

The adjudicative process also is simpler than under state law. The county's Commission on Human Rights requires only an administrative complaint, while Illinois law requires initiation of a formal court action. Moreover, individuals filing at the county's Commission on Human Rights may request to proceed with a formal court action instead.

Jackson Lewis attorneys are available to answer inquiries regarding this and other workplace developments.

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## practices

Background Checks

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