



Vermont Joins Growing Number of States Restricting Use of Credit Checks for Employment Purposes

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Effective July 1, 2012, Vermont joins California, Connecticut, Hawaii, Illinois, Maryland, Oregon, and Washington as jurisdictions that restrict an employer's right to obtain and use credit information for making employment decisions. Similar legislation is pending in many other jurisdictions. Further, the federal Equal Employment Opportunity Commission has been contemplating issuance of a restrictive guidance on this subject.

Under the new law, a Vermont employer may not inquire about or use an applicant's or employee's credit report or credit history with respect to employment, compensation, or a term, condition, or privilege of employment unless:

- (A) The information is required by state or federal law or regulation;

- (B) The position being sought or held involves access to confidential financial information (defined as sensitive financial information of commercial value that a customer or client of the employer gives explicit authorization for the employer to obtain, process, and store and that the employer entrusts only to managers or employees as a necessary function of their job duties);

- (C) The employer is a financial institution (as defined in 8 V.S.A. § 11101(32)) or a credit union (as defined in 8 V.S.A. § 30101(5));

- (D) The position being sought or held is that of a law enforcement officer (as defined in 20 V.S.A. § 2358), emergency medical personnel (as defined in 24 V.S.A. § 2651(6)), or a firefighter (as defined in 20 V.S.A. § 3151(3));

- (E) The position being sought or held requires a financial fiduciary responsibility to the employer or a client of the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts;

- (F) The employer can demonstrate that the information is a valid and reliable predictor of employee performance in the specific position being sought or held; or

- (G) The position being sought or held involves access to an employer's payroll information.

However, even if an employer can avail itself of one of these exemptions, the applicant's or employee's credit report or history may not be the sole factor in decisions regarding employment, compensation, or a term, condition, or privilege of employment.

If an employer lawfully is permitted to obtain credit history, the employer must:

(A) Obtain the employee's or applicant's written consent each time the employer seeks to obtain the employee's or applicant's credit report; and

(B) Disclose in writing to the employee or applicant the employer's reasons for accessing the credit report, and, if an adverse employment action is taken based upon the credit report, disclose the reasons for the action in writing.

The employee or applicant has the right to contest the accuracy of the credit report or credit history.

Vermont employers who conduct credit checks must review closely the new statute to ensure that information is obtained only where permitted by law and that all necessary disclosures are provided to applicants and employees. Further, even if an exemption is applicable, a Vermont employer must not base any employment decisions solely on credit history or credit reports.

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Management Education, including e-Based Training

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