Restrictions on Credit Checks Coming Soon to a State Near You

Thursday, June 7, 2012

Running credit checks on new hires and employees eligible for a transfer or promotion was almost second nature. They were part and parcel of the employer’s background checking process and were used to ensure that individuals were not subjecting their business operations, customers or employees to risk. However, in the past year, credit checks have become a dirty word. They have been portrayed as a tool in the corporate arsenal used to unfairly disqualify individuals who are unemployed or have limited resources.

As a result, seven states implemented laws limiting the use of credit checks: California, Connecticut, Hawaii, Illinois, Maryland, Oregon and Washington. Nineteen other states and the District of Columbia are considering similar legislation. New Jersey may be the eighth state to prohibit the use of credit checks in the employment process.

The New Jersey Senate passed a bill on May 31, 2012, that would prohibit employers from performing credit checks on job applicants and employees. There are limited exceptions to this prohibition for job positions that, by law, require credit checks, as well as jobs where a credit history is a bona fide occupational requirement, including those that oversee the company’s financial controls, have access to assets of the business or customers, or use expense accounts for travel or entertainment. Law enforcement and security positions are also exempt from the prohibition. The exceptions, however, are narrowly drawn and specifically exclude retail cashier positions even though employees in these positions deal with cash and credit transactions on a daily basis.

The New Jersey bill provides a private cause of action for individuals who are discriminated against based on their credit history or those who suffer retaliation based on complaints related to alleged violations of the bill or participation in a related investigation. As with New Jersey’s Law Against Discrimination, the bill banning credit checks provides for civil damages, including compensatory and consequential damages, injunctive relief, attorneys’ fees and costs, and civil penalties of up to $2,000 for the first offense and up to $5,000 for subsequent offenses. The New Jersey Assembly still needs to pass on an identical bill before it goes to the governor.

Employers, particularly those with multi-state operations, need to review their current background check procedures and make sure that they are consistent with the ever-changing laws governing job applicants and employees.

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