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# Alert

## New York City to Restrict Employers' Use of Credit History in Employment Decisions

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On April 16, 2015, by a 47-3 margin, the New York City Council passed a bill restricting employers from requesting or using the credit history of applicants and employees when making employment decisions. New York City Mayor Bill de Blasio is expected to sign the bill, which will go into effect 120 days after he signs it.

The bill amends the New York City Human Rights Law to prohibit employers from requesting or using "for employment purposes the consumer credit history of an applicant for employment or an employee" and from otherwise discriminating "with regard to hiring, compensation, or the terms, conditions or privileges of employment based on the consumer credit history of the applicant or employee." "Consumer credit history" is defined as "an individual's credit worthiness, credit standing, credit capacity, or payment history, as indicated by: (a) a consumer credit report; (b) credit score; or (c) information an employer obtains directly from the individual regarding (1) details about credit accounts, including the individual's number of credit accounts, late or missed payments, charged-off debts, items in collections, credit limit, prior credit report inquiries, or (2) bankruptcies, judgments or liens."

The bill includes several limited exceptions. The ban on the use of "consumer credit history" does not apply if an employer is required by law or by a self-regulatory organization as defined in Section 3(a)(26) of the Securities Exchange Act of 1934 (such as FINRA) to use an individual's consumer credit history for employment purposes. Credit checks are also permitted for individuals applying for, or employed in, the following positions:

- A "non-clerical position having regular access to trade secrets, intelligence information or national security clearance." The bill defines "trade secrets" as information that "(a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and (c) can reasonably be said to be the end product of significant innovation." The bill, however, specifically excludes "general proprietary company information such as handbooks and policies" from the definition of "trade secrets" and specifies that having "access to or use of client, customer or mailing lists" does not constitute having "regular access to trade secrets."

- A position in which the employee will have "signatory authority over third party funds or assets valued at $10,000 or more" or "that involves a fiduciary responsibility to the employer with the authority to enter financial agreements valued at $10,000 or more on behalf of the employer."
- A position in which the employee's regular duties "allow the employee to modify digital security systems established to prevent the unauthorized use of the employer's or client's networks or database."
- A position in which the employee is required by law to be bonded.

Even in circumstances in which the new law will not apply, employers need to keep in mind the restrictions imposed by Section 525(b) of U.S. Bankruptcy Code, which prohibits employment discrimination against an individual "solely because" of the individual's status as a debtor in a bankruptcy proceeding. Also, while the new law will not prohibit employers from conducting other types of background checks, such as reference checks or criminal background checks, employers need to comply with federal and state laws regarding conducting such checks and using information obtained from them when making employment decisions.[1]

Employers should carefully review their hiring and background check practices as a result of the anticipated new law. In certain circumstances, it may be necessary for employers to make decisions about whether a credit check is permitted on a case-by-case basis rather than requiring them for all employees or job applicants.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.



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[1] For a more detailed overview of these requirements, see the SRZ *Alert* titled, "EEOC Issues New Guidance Regarding Applicants and Employees with Criminal Records."