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Illinois Law Bans Credit as Employment Criterion NO CREDIT? NO PROBLEM!

By Sara O'Keefe
Kansas City Office

A new Illinois law prohibits many employers from discriminating against employees or job applicants on the basis of credit history. The Employee Credit Privacy Act, which was signed by Governor Pat Quinn on August 10, 2010, and takes effect January 1, 2011, contains exceptions for the banking and insurance industries, among others, and for positions that involve certain levels of financial or other responsibility.

The Act protects the credit history and credit reports of both job applicants and current employees. Under the Act, credit history includes an individual's borrowing and repaying behavior, such as whether they pay their bills on time or how they manage their debt. A credit report is a communication, written or otherwise, from a consumer reporting agency that relates to an individual's creditworthiness, credit standing, credit capacity or credit history.

It is a violation of the Act for an employer to refuse to hire an applicant or to discharge or otherwise discriminate against an individual because of the individual's credit history or credit report. The Act also prohibits employers from asking about an individual's credit history or obtaining an individual's credit report from a consumer reporting agency. It is not a violation of the Act to conduct a background investigation pursuant to the federal Fair Credit Reporting Act, as long as any report obtained does not include information about the individual's credit history.

The Act has a number of exceptions. The prohibitions on credit checks and discrimination do not apply if satisfactory credit history is a *bona fide* occupational requirement. Credit history is a *bona fide* occupational requirement if

- the duties for the position include custody of or unsupervised access to cash or assets valued at \$2,500 or more, or signatory power over business 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 personal or confidential information, financial information, or trade secrets; or
- the position is one for which state or federal law requires bonding or other security.

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In addition to the exceptions based on job duties, certain entities are not “employers” within the meaning of the Act. The banking and insurance industries are excluded, as well as debt collectors as defined under state or federal law. The law also exempts certain state and local governments, and law enforcement agencies.

The Act prohibits retaliation against an individual who files a complaint, participates in an investigation, or otherwise opposes a violation, of the Act. The specific language of the Act provides that “a *person* shall not retaliate” (emphasis added), which suggests that managers, supervisors and coworkers may be individually liable.

If you have questions about the Employee Credit Privacy Act, please contact Sara O’Keefe or the Constangy attorney of your choice.

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