

Use of Credit Checks as a Hiring Screen Draws Questions

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As seen in the May 7th issue of *The State Journal*.

Credit checks have become a common tool for employers looking for information to screen employees. Especially for employers who are inundated with employment applications in this tight job market, credit checks are an easy way to narrow the applicant pool and shorten the amount of time to select applicants. Sounds like a perfectly reasonable thing to do, right? Maybe not, some critics say.

Still reeling from the recession and effects of massive job losses, many job applicants' credit histories have taken a hit. Whether a result of a job loss, medical bills, or other unforeseen circumstances, financial woes of applicants may be linked to factors outside their control. Many lawmakers, after learning that qualified applicants are losing job opportunities due to the results of a credit check, have begun addressing the use of credit histories in hiring - specifically, to try and ban the practice in most instances. Legislation has been introduced in 16 states that would prohibit the use of a job applicants' credit history to take an employment action. West Virginia is not among those states, but neighbors, Pennsylvania, Ohio, and Maryland are among those whose lawmakers have tackled the issue. Presently, three states, including Oregon, Hawaii, and Washington, have made it an unlawful employment practice to obtain or use for employment purposes information contained in the credit history of an applicant for employment. Those laws do, however, contain exceptions for positions in which a credit check is relevant, for example, in banking or positions that handle large amounts of cash.

Federal law already places some limitations on the use of credit reports in the hiring process. The Fair Credit Reporting Act ("FCRA") allows employers to obtain credit reports to evaluate potential applicants provided that they comply with certain consent and notice requirements to obtain and take action based upon information contained in the report. Similar to the push on the state level, Tennessee Delegate Steve Cohen has pursued legislation which would amend the FCRA to prohibit credit checks to screen out applicants for employment.

State and federal laws are not the only thing that employers must worry about when it comes to checking credit histories of job seekers. A recent Equal Employment Opportunity Commission ("EEOC") informal advisory letter pointed out that, although the EEOC does not directly prohibit discrimination based upon credit information, federal discrimination laws may be implicated in some circumstances. For example, if credit information disproportionately excludes African-American and Hispanic candidates, the practice could violate Title VII of the Civil Rights Act unless the employer could establish that the practice is needed for it to operate safely and efficiently. The EEOC has already commenced a large class action suit on behalf of applicants under this theory.

West Virginia currently has no law prohibiting employers from the use of credit histories in the screening of applicants. However, astute employers may consider reviewing this practice to determine whether minority applicants have been disproportionately rejected from employment due to adverse credit histories. If so, employers may want to evaluate whether the benefit of using credit histories outweighs the risks of a facing a

similar complaint. Employers should keep this issue on their radars and seek to stay informed of the developments in the law. The EEOC's current stance on this issue makes clear that, even if a states' laws allows the practice, its effects may still have legal ramifications.