

Publications

Labor and Employment Alert: D.C. Bans Inquiries into Applicant and Employee Credit Histories

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Eleven states currently limit employers' use of credit information in employment: California, Colorado, Connecticut, Delaware (which currently applies only to public employers), Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont and Washington. New York City, Chicago, and Cook County, Illinois, also have enacted ordinances to restrict credit checks. The District of Columbia has now become the latest jurisdiction to prohibit employers from asking applicants and current employees about their credit history.

The D.C. "Fair Credit in Employment Act" became effective on March 17, 2017. It amends the District's Human Rights Act to make it an unlawful discriminatory practice for an employer, employment agency, or labor organization to take adverse employment action against an applicant or employee because of his or her credit information. "Credit information" is broadly defined to include any written, oral, or other communication of information bearing on an employee's creditworthiness, credit standing, credit capacity or credit history.

This means that employers, employment agencies, and labor organizations are prohibited from directly or indirectly requiring, requesting, suggesting or causing any employee to submit credit information. Further, these entities are prohibited from using, accepting, referring to or inquiring into an employee's credit information. "Inquire" is defined to include any direct or indirect conduct intended to gather credit information using any method, including application forms, interviews and credit history checks.

The prohibition does not apply:

- When an employer is required by D.C. law to require, request, suggest, or cause any employee to submit credit information, or use, accept, refer to, or inquire into an employee's credit information;
- To financial institutions, when the position involves access to personal financial information;

- When an employer requests or receives credit information pursuant to a lawful subpoena, court order or law enforcement investigation;
- To those in a law enforcement function;
- To the Office of the Chief Financial Officer of the D.C.;
- When an employee is required to possess a security clearance under D.C. law;
- When an employee is required to possess a security clearance under D.C. law; or
- To disclosures by D.C. government employees of their credit information to the Board of Ethics and Government Accountability or the Office of the Inspector General.

The D.C. Office of Human Rights is responsible for investigating violations, and an employer who violates the law may be subject to fines ranging from \$1,000 to \$5,000; the amount varies depending upon whether it is the employer's first, second or subsequent violation. Notably, as with any other unlawful discriminatory practice, applicants and employees may also pursue a private right of action.

Employers should review their hiring policies and practices to ensure they comply with these new restrictions. In particular, employers should review their employment applications to ensure that they do not include questions pertaining to credit history. Contact your Vorys lawyer if you have questions about the new D.C. law or about other pre-employment inquiries.