



OCTOBER 2015

Human Rights Commission to New York City Employers: Be Wary of Consulting Credit Histories

Businesses operating in New York City may already be aware that the Stop Credit Discrimination in Employment Act (read the full text [here](#)), which took effect on September 3, 2015, generally prohibits employers from considering an individual's credit history for employment purposes. In a recent [Guidance](#), the city's Commission on Human Rights emphasized its intention to apply the SCDEA's protections liberally, adopting a very narrow interpretation of the law's exemptions. NYC employers should ensure that they understand and comply with the law's prohibitions and exemptions.

Some key takeaways from the Guidance include:

- The SCDEA makes it illegal for companies to request or obtain the consumer credit history of a job applicant or current employee — whether by asking the applicant or obtaining the information from a consumer reporting agency.
 - The employer need not make an adverse employment decision based on the report to be in violation of the act.
 - It is a separate violation for a company to use that information (however obtained) in making an employment decision or employment action.
- The SCDEA defines “consumer credit history” broadly to include not only credit reports, but information obtained directly from an individual regarding their credit accounts, debts, bankruptcies, judgments or liens.
- Violations may result in fines of up to \$125,000 — and up to \$250,000 for violations involving willful, wanton or malicious conduct — in addition to remedies, including back pay and compensatory and punitive damages.
- A prospective or current employee's credit history is rarely relevant to employment decisions, and the exemptions in the law should be construed narrowly. The Guidance clarifies:
 - Exemptions apply to positions or roles, not to employers or industries.
 - The exemption for regulated securities professionals applies to positions requiring registration with FINRA. The exemption does not apply, however, to positions surrounding and supporting FINRA-registered employees.

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- The exemptions for positions having signatory authority over third-party assets of \$10,000 or more or fiduciary responsibility to enter into financial agreements valued at \$10,000 or more apply only to executive-level positions with financial control over a company. It does not apply to all positions in a company finance department.
- The exemption for positions entailing “regular duties that allow the employee to modify digital security systems” also includes an executive-level limitation and does not cover all employees in a company’s IT department.
- The exemption for positions requiring bonding applies only if bonding is legally required for the specific position, for example, bonded U.S. Customs carriers, pawnbrokers, ticket sellers and resellers, auctioneers, and tow truck drivers, among others.
- The exemption for employees who regularly handle “trade secrets” does not cover “recipes, formulas, customer lists, processes and other information regularly collected in the course of business, or regularly used by entry-level and non-salaried employees and supervisors or managers of such employees.”
- An employer that runs a credit check must inform the applicant or employee of the exemption the employer believes applies.
- Employers must keep a record of the claimed exemption for credit checks they run for five years from the date of the credit check.
- Exemption logs, which employers may be required to share with the Commission, should include:
 - The claimed exemption and why it covers the position.
 - The name and contact information of all applicants or employees considered for that position.
 - The job duties of and the qualifications necessary for the position.
 - Copies of applicants’ or employees’ credit histories obtained pursuant to the claimed exemption and how the credit history was obtained.
 - Whether and how the credit history led to an employment action.

Given the limited exemptions to the SCDEA (and the potential fines at stake), companies should be very careful — and consider consulting experienced counsel — before asking for or using an employee’s or applicant’s credit history.

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