

Cooley

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On July 13, 2011, Connecticut Governor Dannel Malloy signed legislation that prohibits employers from using credit reports to make selection and employment-related decisions. The law will become effective on October 1, 2011, and it will cover all employers in Connecticut that have at least one employee.

Under the new law, employers will not be able to require employees or applicants to consent to giving credit reports that contain information relating to employees' or applicants' credit scores, credit account balances, payment history, savings or checking account balances, or savings/checking account numbers unless:

- The employer is a financial institution;¹
- The report is required by law;
- The employer reasonably believes the employee engaged in specific activity that constitutes a violation of law related to the employee's employment; or
- A credit report is "substantially related" to the employee's current position or the applicant's prospective position or the employer has a bona fide reason for requesting and using information in the credit report that is substantially job-related.

Employers can show that a credit report is substantially related to an employee's or applicant's job if the position:

- Is managerial and involves setting the direction or control of the business, division, unit or agency of the business;
- Involves access to personal or financial information, other than information that is customarily provided in a retail transaction;
- Involves a fiduciary responsibility to the employer;
- Provides an expense account or corporate debit or credit card;
- Provides access to certain confidential or proprietary business information; or
- Involves access to the employer's nonfinancial assets of \$2,005 or more (*i.e.*, prescription drugs and other pharmaceuticals).

Employees who suspect their employer has violated the new law can file a complaint with the state Labor Commissioner, and the Commissioner may investigate and issue a civil fine of \$300 for each credit check that violates the law. In addition, the Attorney General of Connecticut, upon complaint by the Labor Commissioner, may institute a civil action to recover these penalties.

By passing this legislation, Connecticut joins the trend of states, including Hawaii, Washington, Oregon, Illinois, and Maryland, that have recently enacted laws limiting employers' use of credit reports, and there are similar laws pending in several other states and at the federal level.

If you have any questions about this new law, please feel free to contact one of the attorneys listed above.

Notes

¹ "Financial institution" means any entity or affiliate of a state bank and trust company, national banking association, state or federally chartered savings bank, state or federally chartered loan association, state or federally chartered credit union, insurance company, investment advisor, broker-dealer or an entity registered with the securities and exchange commission.

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