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ATTORNEYS & COUNSELORS AT LAW

EMPLOYMENT ALERT: APRIL 9, 2010

NEW WORKPLACE CREDIT CHECK BAN ENACTED BY OREGON LEGISLATURE

Senate Bill 1045, adopted by the Oregon Legislature during the February 2010 special legislative session, will prohibit, with limited exceptions, the use of credit histories by employers in making employment-related decisions. Once the law becomes effective, Oregon will be one of three states (along with Washington and Hawaii) that ban work-related credit inquiries.

The new law becomes effective July 1, 2010, and makes it "an unlawful employment practice for an employer to obtain or use for employment purposes information contained in the credit history of an applicant for employment or an employee, or to refuse to hire, discharge, demote, suspend, retaliate or otherwise discriminate against an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the credit history."

Importantly, employers may still conduct criminal background checks and investigate a job applicant's employment history.

In a significant departure from the Fair Credit Reporting Act (FCRA), which allows an employer to make employment-related decisions based on credit history (provided proper notice, disclosures, consent and other requirements are met), the new Oregon law will establish an outright ban on the use of credit history in employment-related decisions.

Four types of employers or job categories are exempt from the new law:

1. Federally insured bank and credit unions;

2. Employers required by state and/or federal law to use credit histories for employment purposes;

3. Public safety officer positions; and

4. Positions for which an employer can demonstrate that an

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We specialize in providing labor and employment advice, counseling and litigation services to public and private employers.

Labor and Employment Team

Mark P. Amberg
Sharon A. Rudnick
Jens Schmidt
Joshua P. Stump
Hwa Go
Andrea M. Nagles
Kate Watkinson

applicant or employee's credit history is "substantially job-related." To use this exception, employers must provide written disclosure to the applicant/employee of the reasons for the credit check.

The statute does not define what "substantially job-related" means, and the Oregon Bureau of Labor and Industries (BOLI) has not yet adopted administrative rules to provide guidance on how this law will be interpreted and applied.

Employers that want to continue using credit checks after July 1, 2010 should consult legal counsel to determine whether they fit into one of the statute's exceptions. If it is clear that you will be unable to meet one of the statute's exceptions, you should develop and implement an alternate procedure by July 1, 2010, to avoid civil liability and potential BOLI penalties.

As with other unlawful employment practices under ORS 659A, an aggrieved individual may file a complaint with BOLI, as well as a civil lawsuit for injunctive relief, reinstatement or back pay, and attorney's fees.

Employer to-do list:

- Refrain from obtaining or using credit information for applicants and employees on or after July 1, 2010 unless you clearly fit within one of the exceptions listed above.

- Develop alternate policies for inquiries into employment history if you do not clearly fit within one of the exceptions and ensure that your human resources professionals are up to speed on the new law prior to July 1, 2010.

- Consult with your legal advisor before concluding that use of credit information is "substantially job-related."

If you would like further information regarding this new law, or how the law may apply to you, please do not hesitate to contact one of our labor and employment attorneys.

Portland
1001 SW Fifth Avenue
16th Floor
Portland, OR 97204-1116
Phone: (503) 242-0000
(800) 315-4172
Fax: (503) 241-1458

Eugene
360 E. 10th Avenue
Suite 300
Eugene, OR 97401-3273
Phone: (541) 485-0220
(800) 315-4172
Fax: (541) 686-6564

Salem
333 High Street, N.E.
Suite 200
Salem, OR 97301-3614
Phone: (503) 371-3330
(800) 315-4172
Fax: (503) 371-5336

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