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New Oregon Law Prohibits Credit Checks

By Howard Rubin and Jennifer A. Nelson

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There are a few exceptions to the new Oregon prohibition. Specifically, federally insured banks and credit unions, businesses required by law to consider employee credit history, and police and other public employers hiring for law enforcement and airport security. In addition, the law includes an exception for employers conducting credit checks for "substantially job-related reasons," so long as those reasons are disclosed to the employee in writing.

Apply Exceptions Carefully

Oregon employers should use caution in applying the "substantially job-related" exception, at least until there is guidance from the Oregon Bureau of Labor and Industries (BOLI) or the courts. Positions requiring access to company or customer financial information will most likely qualify, but beyond that it is unclear how the exception will be applied. The law itself does not define "substantially job-related," and while BOLI is expected to promulgate rules defining the term, it will be a few months before that occurs.

In the meantime, Oregon employers should use credit checks only if one of the four statutory exceptions is met, and should use the "substantially job-related" exception only after carefully considering its application to the specific position in question, consulting with legal counsel, and disclosing the reasons for conducting the credit check to the applicant or employee in writing.

Oregon Is Not the First and Will Not Be the Last

About 60% of U.S. employers conduct credit checks for prospective employees, according to the Society for Human Resource Management. While credit checks can be an effective hiring tool, Oregon is part of a growing national trend toward prohibiting this practice. Hawaii and Washington have recently passed such laws, and similar legislation is pending in Connecticut, Illinois, Indiana, Kansas, Maryland, Missouri, New Jersey, New York, Ohio, Oklahoma, South Carolina, Vermont, Wisconsin, as well as the U.S. House of Representatives. The Equal Employment Opportunity Commission (EEOC) has also made clear that an employer should be able to establish that credit history information is essential to the particular job in question, as the application of credit check policies can result in an arguably discriminatory disparate impact on certain protected classes.¹

Given this trend, employers nationwide should revisit credit checking practices, and consider only using credit checks for those positions for which it is essential – even in those states where no law currently prohibits them. In those states where laws have already passed or legislation is pending, employers should seek the advice of counsel to ensure that forms and practice are in compliance with applicable law.

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Howard Rubin is the Office Managing Attorney and Jennifer A. Nelson is an Associate in Littler Mendelson’s Portland office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, Mr. Rubin at hrubin@littler.com, or Ms. Nelson at jnelson@littler.com.

¹ See the EEOC website: http://www.eeoc.gov/laws/practices/inquiries_credit.cfm.