

New Rules Going Into Effect for Employers Use of Credit Checks for Hiring and Promotion

December 10, 2012 - When the Frank-Dodd Financial Reform law passed in 2010, it created the Consumer Financial Protection Bureau (CFPB), and it gave the bureau joint enforcement authority over the Fair Credit Reporting Act (FCRA). There are a number of law suits moving through court right now challenging the constitutionality of the CFPB and its rulemaking & enforcement authority. These cases are likely to wind up at the Supreme Court at some point. Until then, employers should assume that the bureau does have regulatory authority and that as a result of a rule that will go into effect on January 1st they need to make changes to their hiring policies & paperwork if they use credit checks on new or existing employees.

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(function() {  
var s = document.createElement('SCRIPT'), s1 = document.getElementsByTagName('SCRIPT')[0];  
s.type = 'text/javascript';  
s.src = 'http://widgets.digg.com/buttons.js';  
s1.parentNode.insertBefore(s, s1);  
})();
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(function() {  
var po = document.createElement('script'); po.type = 'text/javascript'; po.async = true;  
po.src = 'https://apis.google.com/js/plusone.js';  
var s = document.getElementsByTagName('script')[0]; s.parentNode.insertBefore(po, s);  
})();
```

Employers that use credit checks in their hiring and promotion process must provide employees and candidates notice of this and obtain their written permission first. This is not a change. But under the new rules, the forms employees or candidates fill out must now state that employees can obtain information about their rights from the CFPB instead of the FTC.

Once permission to check a candidate's credit has been secured, the employer is free to run the credit check through a credit reporting agency. When the report is furnished to the employer, it comes with a document titled "Summary of Your Rights Under the FCRA."

It is at this point that the new rules really kick in. If the employer denies employment or a promotion based on information contained in the credit report, or takes any other adverse action against the candidate, then the employer must provide a copy of the notice mentioned above to the candidate. Additionally, the employer must provide the candidate with the name, address and phone number of the credit reporting agency that provided the information.

These new rules are basically the same as those used when denying credit. In that case, an "adverse action" letter is sent to the applicant. Employers should seriously consider adopting a similar, formal procedure for employees and zealously stick to it if they want to avoid law suits. This should be a written procedure used by all hiring managers and it should also be referenced in employee handbooks in sections referring to either hiring or promotion.

Anyone applying for a position or a promotion who is denied based on their credit report is entitled to a free copy of their report. This is true even if you have used your entire allotment of free credit reports available through AnnualCreditReport.

Anyone currently in the market for a job would probably be wise to check their credit report first. If there is adverse information on your credit report and it is accurate, then at least you'll know about it before your interview and may be able to address it up-front if the company you are talking to conducts background checks. And, of course, if there is incorrect information on your credit report, you can and should dispute it. To contact AnnualCreditReport, call 877-322-8228. This is the only free credit report that is authorized by law and comes without any strings. Although users can gain access to the service online, ACCESS strongly advises against this because the site has an extremely weak privacy policy in our opinion. That is not a concern with regard to credit reports requested by phone. NOTE: When you call, you will probably be encouraged to use the online service. We advise sticking to your guns and having your report sent to you via snail-mail. It is a little slower but it will help protect your privacy.

Regardless of the CFPB rules, employers also need to be aware that several states are banning or have already banned the use of credit checks for hiring except under limited circumstances. Those states include California, Connecticut, Hawaii, Illinois, Maryland, Oregon and Washington. Fifteen other states are debating similar legislation which will either be taken up by their state legislatures or placed on state ballots for voters to decide.

by Jim Malmberg

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