



# Employer Credit Report Restrictions WHITE PAPER

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# Employer Credit Report Restrictions

Credit reports for employment purposes are modified versions of full credit reports that are used by lenders. While credit reports for employment purposes show financial information such as a prospective employee's creditors, available credit, payment history, and present account statuses, there are some important differences compared to a full credit report. For example, credit reports for employment purposes do not include any account numbers or credit scores, nor do they affect the subjects' credit scores.

Many employers utilize a credit report to assess whether a prospective employee is suitable to fill a particular job position. In doing so, employers typically weigh the information within the credit report to determine whether the credit history shows a pattern of the individual being financially responsible which could point to dependability in the position for which they applied. Alternatively, the credit history could indicate that they are in a financial strain which may cause the employer to question their reliability for the position for which they applied, or even cause the employer to conclude that the individual could potentially pose a risk of theft for the employer. Though the aforementioned line of thinking may seem reasonable, employers still need to be aware of the risks associated with employer credit checks.

Credit reports for employment purposes do not include any account numbers or credit scores, nor do they affect the subjects' credit scores.



If an employer is going to exclude prospective employees from employment based on credit report information, they must ensure that they can effectively link the credit report information and its unacceptable risks to a particular job position in a way that shows that there is a compelling need to maintain the policy.

### What are the risks associated with employer credit checks?

While credit reports for employment purposes can be a helpful product to evaluate certain prospective employees for employment, there are two common risks associated with relying on employment credit reports that need to be considered.

First, the Equal Employment Opportunity Commission (“EEOC”) has released at least two publications, [“Pre-employment Inquiries and Financial Information”](#) and [“Background Checks: What Employers Need to Know,”](#) which shed light on the EEOC’s position as it relates to an employer’s use of credit reports. The EEOC guidance asserts that although federal law does not prevent employers from asking about a prospective employee’s financial information, an employer’s use of financial information contained in a credit report can result in illegal discrimination. The EEOC warns that an employer’s neutral policy, such as excluding prospective employees from employment based on certain financial records found in credit reports, may disproportionately impact some individuals protected under Title VII of the Civil Rights Act, and could violate the law if the policy is not job-related and consistent with business necessity. It follows that an employer must not have credit report requirements if they do not help the employer to accurately identify responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular race, color, national origin, religion, or sex. Accordingly, if an employer is going to exclude prospective employees from employment based on credit report information, they must ensure that they can effectively link the credit report information and its unacceptable risks to a particular job position in a way that shows that there is a compelling need to maintain the policy. It is for this reason that many employers prudently choose

to only conduct employment credit checks when the candidate will be working in a position that includes duties related to handling assets, money, or confidential information such as credit card information.

Second, there are currently at least 14 state and local jurisdictions that restrict the use of credit reports for employment purposes under the theory that credit report information is largely not indicative of a prospective employee’s ability to perform job-related duties and thus should not be considered when making an employment decision. These jurisdictions generally prohibit credit reports for employment purposes absent specific exceptions. The exceptions to the general prohibitions vary greatly from jurisdiction to jurisdiction. Be that as it may, none of the jurisdictions prohibits an employer from using a credit report when it is required by law.

### The jurisdictions that restrict the use of credit reports for employment purposes include:

Please note that this information is not meant to be all-inclusive. Instead, the summaries are simply meant to shed light on some of the ways the credit check ban laws impact the hiring process for employers. InCheck strongly recommends that readers work closely with their legal counsel to further examine all applicable credit check ban laws to ensure their hiring processes are compliant.

California  
Connecticut  
Hawaii  
Maryland  
New York (New York City)  
Pennsylvania (Philadelphia)  
Washington

Colorado  
District of Columbia  
Illinois (Chicago and Cook County)  
Nevada  
Oregon  
Vermont

## California - Cal. Labor Code § 1024.5; Cal. Civ. Code § 1785.20.5

### General Prohibition

An employer or prospective employer shall not use a consumer credit report for employment purposes.

### Exceptions

The prohibition does not apply to businesses subject to the Gramm-Leach-Bliley Act and state and federal statutes or regulations implementing those sections if the business is subject to compliance oversight by a regulatory agency with respect to those laws.

The prohibition does not apply if the position of the person for whom the report is sought is any of the following:

- A managerial position as defined in the statute;
- A position in the state Department of Justice;
- A sworn peace officer or other law enforcement position;
- A position for which the information contained in the report is required by law to be disclosed or obtained;
- A position that involves regular access, for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment, to all of the following types of information of any one person:
  - Bank or credit card account information
  - Social security number
  - Date of birth
- A position in which the person is, or would be, any of the following:
  - A named signatory on the bank or credit card account of the employer.
  - Authorized to transfer money on behalf of the employer.
  - Authorized to enter into financial contracts on behalf of the employer.
- A position that involves access to confidential or proprietary information as defined in the statute;
- A position that involves regular access to cash totaling \$10,000 or more of the employer, a customer, or a client, during the workday.

## Required Disclosures

Prior to requesting a consumer credit report for employment purposes, the user of the report shall provide written notice to the person involved. The notice shall inform the person that a report will be used and shall identify the specific basis for the use of the report. The notice shall also inform the person of the source of the report and shall contain a box that the person may check off to receive a copy of the credit report.

## Colorado - C.R.S. § 8-2-126

### General Prohibition

An employer shall not use consumer credit information for employment purposes.

### Exceptions

- The prohibition does not apply to an employer that is a bank or financial institution.
- The prohibition does not apply if a credit report is required by law.
- The prohibition does not apply if the credit report is substantially related to the employee's current or potential job and the employer has a bona fide purpose for requesting or using the information in the credit report that is substantially related to the employee's current or potential job and is disclosed in writing to the employee.
  - "Substantially related to the employee's current or potential job" means the position:
- Constitutes executive or management personnel and the position involves one or more of the following:
  - Setting the direction or control of a business, division, unit, or agency of a business;
  - A fiduciary responsibility to the employer;
  - Access to customers', employees', or the employer's personal or financial information other than information customarily provided in a retail transaction; or
  - The authority to issue payments, collect debts, or enter into contracts.
- Involves contracts with defense, intelligence, national security, or space agencies of the federal government.



## Required Disclosures

If an employer obtains the credit report based on the substantially job-related exception, the employer must disclose such to the current or potential employee in writing.

## Connecticut - Conn. Pub. Act No. 11-223

### General Prohibition

No employer may require an employee or prospective employee to consent to a request for a credit report that contains information about the employee's or prospective employee's credit score, credit account balances, payment history, savings or checking account balances or savings or checking account numbers as a condition of employment.

### Exceptions

The prohibition does not apply if:

- The employer is a financial institution as defined by the statute;
- The report is required by law;
- The employer reasonably believes that the employee has engaged in specific activity that constitutes a violation of the law related to the employee's employment;
- The report is substantially related to the employee's current or potential job, or the employer has a bona fide purpose for requesting or using information in the credit report that is substantially job-related and is disclosed in writing to the employee or applicant.
  - "Substantially related to the employee's current or potential job" means the information contained in the credit report is related to the position for which the employee or prospective employee who is the subject of the report is being evaluated because the position:
    - Is a managerial position that involves setting the direction or control of a business, division, unit, or agency of a business;
    - Involves access to customers', employees', or the employer's personal or financial information other than information 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 confidential or proprietary business information; or
- Involves access to the employer's nonfinancial assets valued at \$2005.00 or more.

## Required Disclosures

If an employer obtains a credit report based on the substantially job-related exception, the employer must disclose such to the employee or applicant in writing.

## District of Columbia - D.C. Official Code §2-1402.11

### General Prohibitions

- It shall be unlawful to discriminate against any individual with respect to their compensation, terms, conditions, or privileges of employment, wholly or partially for a discriminatory reason based upon the actual or perceived credit information of any individual.
- It shall be an unlawful discriminatory practice to directly or indirectly require, request, suggest, or cause any employee to submit credit information, or use, accept, refer to, or inquire into an employee's credit information.

### Exceptions

Prohibited acts that otherwise would constitute unlawful discriminatory practices based upon the credit information of an individual shall not apply:

- Where an employer is otherwise required by D.C. law to require, request, suggest, or cause any employee to submit credit information, or use, accept, refer to, or inquire into an employee's credit information;
- Where an employee is applying for a position as or is employed as a police officer, as a special police officer, or campus police officer or in a position with a law enforcement function;
- To the Office of the Chief Financial Officer of the District of Columbia;
- To the D.C. Retirement Board;
- Where an employee is required to possess a security clearance under D.C. law;

- To disclosures by D.C. government employees of their credit information to the Board of Ethics and Government Accountability or the Office of the Inspector General, or to the use of such disclosures by those agencies;
- To financial institutions (as defined in the statute) where the position involves access to personal financial information; or
- Where an employer requests or receives credit information pursuant to a lawful subpoena, court order, or law enforcement investigation.

## **Hawaii - Haw. Rev. Stat. § 378-2, § 378-2.7**

### **General Prohibition**

It shall be an unlawful discriminatory practice for any employer to refuse to hire or employ, bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment of any individual because of the individual's credit history or credit report.

### **Exceptions**

- The prohibition does not apply if the information in the individual's credit history or credit report directly relates to a bona fide occupational qualification.
- The prohibition does not apply to:
  - Employers who are expressly permitted or required to inquire into an individual's credit history for employment purposes pursuant to any federal or state law;
  - Managerial or supervisory employees as defined in the statute;
  - Employers that are financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution.

## **Illinois - 820 ILCS 70/10**

### **General Prohibitions**

An employer shall not do any of the following:

- Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual's credit history or credit report;
- Inquire about an applicant's or employee's credit history; or
- Order or obtain an applicant's or employee's credit report from a consumer reporting agency.

### **Exceptions**

The prohibitions do not prevent an inquiry or employment action if a satisfactory credit history is an established bona fide occupational requirement of a particular position or a particular group of an employer's employees. A satisfactory credit history is not a bona fide occupational requirement unless at least one of the following circumstances is present:

- State or federal law requires bonding or other security covering an individual holding the position;
- The duties of the position include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more;
- The duties of the position include signatory power over business assets of \$100 or more per transaction;
- The position is a managerial position that involves setting the direction or control of the business;
- The position involves access to personal or confidential information, financial information, trade secrets, or state or national security information, as those terms are defined by the statute;
- The position meets criteria in administrative rules, if any, that the U.S. Department of Labor or the Illinois Department of Labor has promulgated to establish the circumstances in which a credit history is a bona fide occupational requirement; or
- The employee's or applicant's credit history is otherwise required by or exempt under federal or state law.

## Illinois (Chicago) - Chicago Municipal Code 2-160-053

### General Prohibitions

No employer shall do any of the following:

- File or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual's credit history or credit report;
- Inquire about an applicant's or employee's credit history; or
- Order or obtain an applicant's or employee's credit report from a consumer reporting agency.

### Exceptions

The prohibitions shall not prevent an inquiry or employment action if a satisfactory credit history is an established bona fide occupational requirement of a particular position or a particular group of employees. A satisfactory credit history is not a bona fide occupational requirement unless at least one of the following circumstances is present:

- State or federal law requires bonding or other security covering an individual holding the position;
- The duties of the position include signatory power over business assets of \$100 or more per transaction;
- The position is a managerial position that involves setting the direction or control of the business;
- The position involves access to personal or confidential information, financial information, trade secrets, or state or national security information, as those terms are defined by the statute;
- The position meets criteria in administrative rules, if any, that the U.S. Department of Labor or the Illinois Department of Labor has promulgated to establish the circumstances in which a satisfactory credit history is a bona fide occupational requirement; or
- The employee's or applicant's credit history is otherwise required by or exempt under other applicable laws.

The prohibitions shall not apply to any of the following:

- Any bank holding company, financial holding company, bank, savings bank, savings and loan association, credit union, trust company, or any subsidiary or affiliate thereof, that is authorized to do business under the laws of Illinois or of the United States;
- Any company authorized to engage in any kind of insurance or surety business pursuant to the Illinois Insurance Code;
- Any municipal law enforcement or investigative unit;
- Any entity that is defined as a debt collector under federal or state statute.

## Illinois (Cook County) – Cook County Ord. 41-35

### General Prohibitions

No employer shall do any of the following:

- Fire or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, classification, grading, discipline, selection for training and apprenticeship, compensation, or other term, condition, or privilege of employment because of the individual's credit history or credit report;
- Inquire about an employee's credit history; or
- Order or obtain an employee's credit report from a consumer reporting agency.

### Exceptions

The prohibitions shall not prevent an inquiry or employment action if a satisfactory credit history is an established bona fide occupational requirement of a particular position or a particular group of employees. A satisfactory credit history is not a bona fide occupational requirement unless at least one of the following circumstances is present:

- State or federal law requires bonding or other security covering an individual holding the position;
- The duties of the position include custody of or unsupervised access to cash or marketable assets (as defined by the ordinance) valued at \$2,500.00 or more;

- The duties of the position include signatory power over business assets of \$100.00 or more per transaction;
- The position is a managerial position that involves setting the direction or control of the business;
- The position involves access to personal or confidential information, financial information, trade secrets, or state or national security information, as those terms are defined by the ordinance;
- The position meets criteria in administrative rules, if any, that the U.S. Department of Labor or the Illinois Department of Labor has promulgated to establish the circumstances in which a satisfactory credit history is a bone fide occupational requirement; or
- The employee's credit history is otherwise required by or exempt under other applicable laws.

The prohibitions contained shall not apply to any of the following:

- Any bank holding company, financial holding company, bank, savings bank, savings and loan association, credit union, trust company, or any subsidiary or affiliate thereof, which is authorized to do business under the laws of Illinois or of the United States;
- Any company authorized to engage in any kind of insurance or surety business pursuant to the Illinois Insurance Code;
- Any municipal law enforcement, investigative unit, or municipal agency that requires the use of the employee's credit history or credit report;
- Any entity that is defined as a debt collector under federal or state statute or county ordinance.

## **Maryland - MD. Labor and Employment Code § 3-711**

### **General Prohibitions**

An employer may not use an applicant's or employee's credit report or credit history in determining whether to:

- deny employment to the applicant;
- discharge the employee; or
- determine compensation or the terms, conditions, or privileges of employment.

### **Exceptions**

The prohibitions do not apply to an employer that is:

- Required to inquire into an applicant's or employee's credit report or credit history under federal law or any provision of state law for the purpose of employment;
- A financial institution that accepts deposits that are insured by a federal agency, or an affiliate or subsidiary of the financial institution;
- A credit union share guaranty corporation that is approved by the Maryland Commissioner of Financial Regulation; or
- An entity, or an affiliate of the entity, that is registered as an investment advisor with the United States Securities and Exchange Commission.

An employer may request or use an applicant's or employee's credit report or credit history if the employer has a bona fide purpose for requesting or using information in the credit report or credit history that is substantially job-related and disclosed in writing to the employee or applicant. A position for which an employer has a bona fide purpose that is substantially job-related for requesting or using information in a credit report or credit history includes a position that:

- Is managerial and involves setting the direction or control of a business, or a department, division, unit, or agency of a business;
- Involves access to personal information, as defined in the statute, of a customer, employee, or employer, except for personal information customarily provided in a retail transaction;
- Involves a fiduciary responsibility to the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts;
- Is provided an expense account or a corporate debit or credit card; or
- Has access to confidential business information.

### **Required Disclosures**

If an employer obtains a credit report based on the substantially job-related exception, the employer must disclose such to the employee or applicant in writing.



## Nevada - NV Rev Stat § 613.570, § 613.580

### General Prohibitions

It is unlawful for any employer to:

- Directly or indirectly, require, request, suggest or cause any employee or prospective employee to submit a consumer credit report or other credit information as a condition of employment;
- Use, accept, refer to or inquire concerning a consumer credit report or other credit information; or
- Discharge, discipline, discriminate against in any manner or deny employment or promotion to, or threaten to take any such action against any employee or prospective employee:
  - Who refuses, declines or fails to submit a consumer credit report or other credit information; or
  - On the basis of the results of a consumer credit report or other credit information.

### Exceptions

An employer may request or consider a consumer credit report or other credit information for the purpose of evaluating an employee or prospective employee for employment, promotion, reassignment, or retention as an employee if:

- The employer is required or authorized, pursuant to state or federal law, to use a consumer credit report or other credit information for that purpose;
- The employer reasonably believes that the employee or prospective employee has engaged in specific activity which may constitute a violation of state or federal law; or
- The information contained in the consumer credit report or other credit information is reasonably related to the position for which the employee or prospective employee is being evaluated for employment, promotion, reassignment, or retention as an employee. The information in the consumer credit report or other credit information shall be deemed reasonably related to such an evaluation if the duties of the position involve:
  - The care, custody, and handling of, or responsibility for, money, financial accounts, corporate credit or debit cards, or other assets;

- Access to trade secrets or other proprietary or confidential information;
- Managerial or supervisory responsibility;
- The direct exercise of law enforcement authority as an employee of a state or local law enforcement agency;
- The care, custody, and handling of, or responsibility for, the personal information of another person;
- Access to the personal financial information of another person;
- Employment with a financial institution that is chartered under state or federal law, including a subsidiary or affiliate of such a financial institution; or
- Employment with a licensed gaming establishment, as defined in the statute.

## New York (New York City) - New York City Human Rights Law 8-107(24)

### General Prohibition

It shall be an unlawful discriminatory practice for an employer to request or to use for employment purposes the consumer credit history of an applicant for employment or employee, or otherwise discriminate against an applicant or employee with regard to hiring, compensation, or the terms, conditions or privileges of employment based on the consumer credit history of the applicant or employee.

### Exceptions

The prohibition shall not apply to:

- An employer that is required by state or federal law or regulations or by a self-regulatory organization to use an individual's consumer credit history for employment purposes;
- Persons applying for positions as or employed:
  - As police officers or peace officers, as those terms are defined by New York City law, or in a position with a law enforcement or investigative function at the department of investigation;
  - In a position that is subject to a background investigation by the department of investigation, provided, however, that the appointing agency may not use consumer credit history information for employment purposes unless the position is an appointed position in

which a high degree of public trust, as defined by the commission in rules, has been reposed;

- In a position in which an employee is required to be bonded under city, state, or federal law;
- In a position in which an employee is required to possess security clearance under federal law or the law of any state;
- In a non-clerical position having regular access to trade secrets, intelligence information or national security information as those terms are defined by the statute;
- In a position having signatory authority over third-party funds or assets valued at \$10,000 or more;
- In a position that involves a fiduciary responsibility to the employer with the authority to enter financial agreements valued at \$10,000 or more on behalf of the employer; or
- In a position with regular duties that allow the employee to modify digital security systems established to prevent the unauthorized use of the employer's or client's networks or databases.

The prohibition does not preclude an employer from requesting or receiving consumer credit history information pursuant to a lawful subpoena, court order, or law enforcement investigation.

### Required Disclosures

The New York City Commission on Human Rights has issued guidance stating that employers availing themselves of exemptions to the anti-discrimination provision should inform applicants or employees of the claimed exemption.

## Oregon – OR Rev Stat § 659A.320

### General Prohibition

It is 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 of the applicant or employee.

### Exceptions

The prohibition does not apply to:

- Employers that are federally insured banks or credit unions;
- Employers that are required by state or federal law to use individual credit history for employment purposes;
- The application for employment or the employment of a public safety officer who will be or who is a member of a law enforcement unit; or
- The obtainment or use by an employer of information in the credit history of an applicant or employee because the information is substantially job-related and the employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing.

### Required Disclosures

If an employer obtains the information in the credit history based on the substantially job-related exception, the employer must disclose its reasons for the use of such information to the employee or prospective employee in writing.

## Pennsylvania (Philadelphia) - Phil. Code §9-1130

### General Prohibition

It shall be an unlawful discriminatory practice for an employer to procure, to seek a person's cooperation or consent to procure, or to use credit information regarding an employee or applicant in connection with hiring, discharge, tenure, promotion, discipline or consideration of any other term, condition or privilege of employment with respect to such employee or applicant.

### Exceptions

The prohibition shall not apply to:

- The City of Philadelphia with respect to efforts to obtain information regarding taxes or other debts owed to the City;
- If credit information must be obtained pursuant to state or federal law;
- If the job requires an employee to be bonded under city, state, or federal law;

- If the job is supervisory or managerial in nature and involves setting the direction or policies of a business or a division, unit, or similar part of a business;
- If the job involves significant financial responsibility to the employer, including the authority to make payments, transfer money, collect debts, or enter into contracts, but not including handling transactions in a retail setting;
- If the job requires access to financial information pertaining to customers, other employees, or the employer, other than information customarily provided in a retail transaction; or
- If the job requires access to confidential or proprietary information that derives substantial value from secrecy.

## Vermont - 21 V.S.A. § 495i

### General Prohibitions

An employer shall not:

- fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual's credit report or credit history; or
- inquire about an applicant's or employee's credit report or credit history.

### Exceptions

An employer is exempt from the prohibitions if one or more of the following conditions are met:

- The information is required by state or federal law or regulation;
- The position of employment involves access to confidential financial information;
- The employer is a financial institution or a credit union, as those terms are defined by Vermont law;
- The position of employment is that of a law enforcement, emergency medical personnel, or a firefighter as those terms are defined by Vermont law;
- The position of employment requires a financial fiduciary responsibility to the employer or a client of the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts;

- The employer can demonstrate that the information is a valid and reliable predictor of employee performance in the specific position of employment; or
- The position of employment involves access to an employer's payroll information.

Please note that an employer that is exempt from the prohibition may not use an employee's or applicant's credit report or history as the sole factor in decisions regarding employment, compensation, or a term, condition, or privilege of employment.

### Required Disclosures

If an employer seeks to obtain or act upon an employee's or applicant's credit report or credit history that contains information about the employee's or applicant's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers, the employer shall:

- Obtain the employee's or applicant's written consent each time the employer seeks to obtain the employee's or applicant's credit report.
- Disclose in writing to the employee or applicant the employer's reasons for accessing the credit report.

## Washington - Wash. Rev. Code § 19.182.020

### General Prohibition

A person may not procure a consumer report for employment purposes where any information contained in the report bears on the consumer's creditworthiness, credit standing, or credit capacity.

### Exceptions

The prohibition does not apply if the information is either:

- Substantially job-related and the employer's reasons for the use of such information are disclosed to the consumer in writing; or
- Required by law.

### Required Disclosures

If an employer obtains the information based on the substantially job-related exception, the employer must disclose its reasons for the use of such information to the consumer in writing.

### What are some best practices employers can implement?

Credit checks can be a helpful product for employers. Still, employers must be cognizant of the risks associated with credit checks. Employers may find it beneficial to identify job positions with essential job requirements for which credit report information may demonstrate unfitness and make

certain that screening procedures only require credit reports for such job positions. Additionally, employers should consult with their legal counsel to become familiar with applicable jurisdictions that contain credit check ban laws and understand all the prohibitions and exceptions under such laws.

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