

CLIENT ALERT

Washington, D.C. Set to Prohibit Use of Credit History in Employment Decisions

FEBRUARY 23, 2017

On February 16, 2017, the District of Columbia Mayor, Muriel Bowser, signed the Fair Credit in Employment Amendment Act of 2016 (Bill 21-0244) (FCEAA or Act). The Act would amend the District's Human Rights Act by prohibiting employers from making employment decisions based on the credit histories of current or prospective employees. The FCEAA is now before the U.S. Congress for a 30-day mandatory review period. If Congress declines to pass a joint resolution rejecting the Act, it will become effective following the expiration of this review period.

The FCEAA is similar to the District's 2014 "ban-the-box" law that prohibits employers from asking applicants about their criminal history before making a conditional offer of employment. Unlike the District's "ban-the-box" law, however, which allows employers to check for criminal convictions after a conditional offer is made and to rescind the conditional offer under certain circumstances, the FCEAA bans most employers from inquiring into, or using an applicant or employee's credit history at any point during the hiring process.

The Act broadly prohibits employers from taking any discriminatory action against an applicant or employee with respect to employment or employment-related matters based on the individual's credit information. The Act further prohibits employers from (i) directly or indirectly requiring, requesting, suggesting, or causing any employee to submit credit information, or (ii) using, accepting, referring to, or inquiring into an employee's credit information. The Act defines "credit information" broadly to mean "any written, oral, or other communication of information bearing on an employee's credit worthiness, credit standing, credit capacity, or credit history."

The Act sets forth certain exceptions to its prohibitions, including where:

- D.C. law requires that the employer request or use an individual's credit information;
- D.C. law requires that the employee possess a security clearance;
- The employer is a financial institution and the employee holds a position that involves access to personal financial information; and
- The employer requests or receives credit information pursuant to a lawful subpoena, court order, or law enforcement investigation.

Aggrieved individuals have a private right of action for alleged violations of the Act. In addition, the District of Columbia Commission on Human Rights has the authority to investigate alleged violations of Act and to levy fines for violations.

In passing the Act, the District joins 11 states—California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont, and Washington—as well as New York City and Chicago, which have already enacted legislation restricting credit report use by employers in the hiring process.

D.C. employers should consult with counsel to review their hiring and background check policies to ensure that they are compliant should the Act take effect.

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