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New York City Enacts Law Restricting Use of Consumer Credit History for Employment Purposes

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On May 6, 2015, New York City Mayor Bill de Blasio signed into law legislation making it an unlawful discriminatory practice, in most circumstances, for employers to request or use an applicant's or current employee's consumer credit history for employment purposes. The law, which will amend the New York City Human Rights Law, takes effect on September 3, 2015. When the law takes effect, New York City will count itself among the increasing number of states and municipalities that regulate the use of an applicant's or employee's credit history for employment purposes.

While the law prohibits employers, labor organizations, or employment agencies (as well as the agents of the foregoing) from requesting or using an applicant's or current employee's consumer credit history for employment purposes in most circumstances, there are several important exemptions. First, the prohibition imposed on employers by the law does not apply if the employer is required to use an individual's consumer credit history for employment purposes by state or federal law or regulation, or by a self-regulatory organization as defined by section 3(a)(26) of the Security Exchange Acts of 1934. Second, the law does not ban employers from requesting or using the consumer credit history of individuals applying for or employed in the following positions:

- police officers or peace officers, or in a position with a law enforcement or investigative function at the New York City Department of Investigation (the "DOI");
- a position subject to a background investigation by the DOI, but only if the position is an appointed position that involves a high degree of public trust;
- a position in which an employee must be bonded pursuant to New York City, New York State, or federal law;
- a position where security clearance is mandated for the employee under federal law or the law of any state;
- a non-clerical position in which the employee has regular access to intelligence information, national security information, or trade secrets (the term "trade secrets" does not include general proprietary company information such as handbooks and policies, and "regular access" to trade secrets does not include access to or the use of client, customer, or mailing lists);
- a position having signatory authority over third-party funds or assets valued at \$10,000 or more;
- a position in which the employee has a fiduciary responsibility to the employer with the authority to enter financial arrangements valued at \$10,000 or more on behalf of the employer; or
- a position with regular duties that permit the employee to modify digital security systems established to prevent the unauthorized use of the employer's or client's networks or databases.

According to the law, the New York City Commission on Human Rights will request information from employers regarding the employers' use of the exemptions for purposes of hiring and employment and, within two years of the effective date of the law, submit to the New York City Council the results of the request along with any feedback it receives from employers.

Prior to the effective date of the amendment, all employers who hire or employ individuals in New York City should evaluate their procedures with respect to requesting and using consumer credit histories for their New York City applicants and employees to ensure that the procedures comport with the new law. In performing this evaluation, employers should analyze which New York City-based

positions, if any, fall within the exemptions afforded by the law.

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