

Connecticut Prohibits Employer Use of Credit Reports in Employment Decisions

July 26, 2011

By Peter M. Stein and Dean R. Singewald II

On July 13, 2011, Connecticut Governor Dan Malloy signed into law Public Act No. 11-223 (the “Act”), which prevents the use of credit reports by certain employers in hiring and other employment decisions. (A copy of the Act can be accessed [here](#)). When the Act goes into effect on October 1, 2011, Connecticut will be the sixth state in the nation with such legislation.

Specifically, the Act prohibits an employer (or its agents, representatives, or designees) from requiring an employee or applicant to consent to the employer obtaining the individual’s credit report (which contains information about the individual’s credit score, credit account balances, payment history, or savings or checking account balances or account numbers) as a condition of employment.

The Act applies to all employers in Connecticut with at least one employee, but several exceptions permit an employer to require employees or applicants to provide the consent needed for the employer to obtain the credit report. The exceptions include when:

- The employer is a “financial institution” (the term “financial institution” includes any entity or affiliate of a state bank and trust company, national banking association, state or federally chartered savings bank, state or federally chartered savings and loan association, state or federally chartered credit union, insurance company, investment advisor, broker-dealer, or an entity registered with the securities and exchange commission);
- 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 employer has a bona fide purpose for requesting or using information in the credit report that is substantially job-related and that purpose is disclosed in writing to the employee or candidate; or
- The report is “substantially related to the employee’s current or potential job.”

According to the Act, the information contained in a credit report would be deemed “substantially related to the employee’s current or potential job” if the position:

- Is a managerial position responsible for setting the direction or control of a business, division, unit, or an 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 (e.g., the authority to issue payments, collect debts, transfer money, or enter into contracts);
- Provides an expense account or corporate debit or credit card;
- Provides access to confidential or proprietary business information;
- Provides access to information, including a formula, pattern, compilation, program, device, method, technique, process, or trade secret, that:
 - derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from the disclosure or use of the information; and
 - is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;
- Involves access to the employer’s nonfinancial assets valued at \$2,005 or more, including, but not limited to, museum and library collections; or
- Involves access to prescription drugs and other pharmaceuticals.

Employees or applicants claiming a violation of the Act may file a complaint with the Connecticut Labor Commissioner. When an employer is found in violation of the law, the Labor Commissioner may impose a civil penalty.

What Employers Should Do Now

If you obtain credit reports as part of the hiring process, or otherwise acquire credit reports from your employees, consider taking the following action steps:

- Review the reasons for utilizing credit checks as part of the hiring process (or otherwise in connection with employment), even in positions where it may be permissible to do so under the Act, and consider eliminating the use of such checks from the process;

- Identify those Connecticut positions where you deem an individual's credit report to be "substantially related" to the position;
- Ensure the job descriptions of those "substantially related" positions demonstrate that your request to obtain a credit report is warranted, given the clearly articulated responsibilities of the position;
- Adopt a personnel policy that notifies employees of the Act's requirements, notably the circumstances that permit you to obtain an individual's credit report; and
- Train managers and human resources personnel on the substantive requirements of the law.

For more information about this Advisory, please contact:

Peter M. Stein
Stamford
203-326-7420
PStein@ebglaw.com

Dean R. Singewald II
Stamford
203-326-7410
DSingewald@ebglaw.com

This Advisory has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice.

About EpsteinBeckerGreen

Epstein Becker & Green, P.C., founded in 1973, is a national law firm with approximately 300 lawyers practicing in 10 offices, in Atlanta, Boston, Chicago, Houston, Los Angeles, New York, Newark, San Francisco, Stamford, and Washington, D.C. The Firm is uncompromising in its pursuit of legal excellence and client service in its areas of practice: [Health Care and Life Sciences](#), [Labor and Employment](#), [Litigation](#), [Corporate Services](#), and [Employee Benefits](#). EpsteinBeckerGreen was founded to serve the health care industry and has been at the forefront of health care legal developments since 1973. The Firm is also proud to be a trusted advisor to clients in the financial services and hospitality industries, among others, representing entities from Fortune 100 companies to startups. Our commitment to these practices and industries reflects the founders' belief in focused proficiency paired with seasoned experience. For more information, visit www.ebglaw.com.

© 2011 Epstein Becker & Green, P.C.

Attorney Advertising

