

## Employment Alert

Aug-11-2010

### Special Alert for Illinois Employers

#### New Illinois Law Bans Credit Checks For Many New Hires and Current Employees

Yesterday, Illinois Governor Pat Quinn signed a new law banning most Illinois employers from conducting credit checks on many categories of employment applicants and incumbent employees. This is the second employee-friendly law the Governor, who is running for reelection, has signed this month. The new law, termed "The Employee Credit Privacy Act," will become effective January 1, 2011. **It bans conditioning employment on a satisfactory credit check or report, as well as even obtaining such reports, unless a satisfactory credit history is an "established bona fide occupational requirement for a particular position" ("BFOR test").** Circumstances where this BFOR test can be met are defined and presented below.

Certain types of employers are exempt from the law. The exempt employers include: bank holding companies, financial holding companies, banks, savings banks, savings and loan associations, credit unions, trust companies, or any subsidiary or affiliate of those companies. Any company authorized to engage in any kind of insurance or surety business under the Illinois Insurance Code is also exempt, as are the employees, agents and employees of agents acting on behalf of a company engaged in the insurance or surety business. Further, debt collectors, as defined under federal or state statutes also are exempt. In the public sector, State law enforcement agencies and any State or local government agency which otherwise requires use of an employee's or applicant's credit history or report are also exempt. Positions for which federal or State law require a credit a credit history are also exempt, as are positions which meet criteria in US or Illinois Department of Labor rules establishing when a credit history may be obtained. This last exemption provides room for some rulemaking in the future.

For employers which are not exempt, there are defined categories of employees and applicants for whom credit checks are regarded as a bona fide occupational requirement. These employees include: employees required to be bonded by state or federal law; employees with unsupervised custody or access to cash or marketable securities valued at \$2500, or more, (this does not include items such as fixtures, furnishings, or equipment of the employer); employees whose position includes signatory power over business of \$100 or more per transaction; employees in a managerial position which involves setting the direction or control of the business; and employees with access to personal or confidential information, financial information, trade secrets or State or national security information.

As to this last category, the law defines trade secrets narrowly to include only sensitive information regarding overall business plans and strategy. Similarly, personal and confidential information means only sensitive information entrusted by a customer or client which is kept in secure repositories and which only managers and a select few employees can obtain.

Like the amendments to the Wage Payment and Collection Act discussed here recently, alleged violations of this new law can be taken directly to Circuit Court, and damages and attorneys' fees may be awarded. The law does not specifically prohibit punitive damages, although the scope of damage awards will need to be determined through experience.

As mentioned above, the new law is clearly employee-friendly, and it places more restrictions on employers seeking to obtain detailed background information on applicants and employees. That said, the new law does give employers some leeway in designating where a credit report is a bona fide occupational requirement. In particular, positions with signatory authority over \$100, and managerial positions involving the direction and control of the business seem to give employers some leeway to

continue credit check on critical employees. This also holds true for financial personnel.

However, Illinois employers should be cautious. Specifically, those employers that typically do a credit check for all applicants should rethink that practice and all employers covered should review on which applicants they seek credit checks to make sure that they are in compliance with the law before January 1st.

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For more information, please contact Brian Bulger, Paul Garry or any other MBT labor and employment lawyer at (312) 474-7900.

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