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NYC Bans Use of Credit Histories in Employment Decisions

On May 6, New York City Mayor Bill de Blasio signed into law the Stop Credit Discrimination in Employment Act, which bans employers in New York City from using applicants' and employees' credit histories in hiring and employment decisions. City Council members who supported the bill, labor unions, and activist organizations have long argued that reliance on credit checks discriminates against minorities and low-income New Yorkers with poor credit histories, and prevents such individuals from improving their credit status. The law amends the city's Human Rights Law and broadly defines credit history to include credit scores, credit reports, details about credit accounts, late or missed payments, charged-off debts, bankruptcies, judgments, or liens. The city joins 10 states and Chicago in banning employer credit checks. The law takes effect on September 3, 2015.

The law includes a number of carve-outs that allow consideration of credit history in certain situations. Employers may still use credit histories when required by state or federal law; when hiring for certain positions, namely, police officers, peace officers, or positions with a law enforcement or investigative function at the department of investigation; for positions that involve a high level of public trust and are subject to background investigation by the department of investigation; for positions that require the employee to possess security clearance under federal or state law; for positions in which employees are required to be bonded by city, state, or federal law; for positions with signatory authority over assets valued at $10,000 or more; for positions 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; and for nonclerical positions having regular access to national security information, intelligence information or trade secrets.

The law defines "trade secrets" as information 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 its disclosure or use; is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and can reasonably be said to be the end product of significant innovation. According to the law, the term "trade secrets" does not include general proprietary company information, such as handbooks and policies, and the term "regular access to trade secrets" does not include access to or the use of client, customer, or mailing lists.

The legal landscape affecting employers in New York City and New York state has seen many recent changes, and many expect more pro-employee legislation in the coming months. Employers should stay up to date on the law and ensure their compliance with the new requirements.