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Employment Alert

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Using Credit Checks to Screen Job Applicants: Proceed With Caution

By: Carrie L. Sponseller, Esq.

Using credit checks as an employment screening tool has become a more prevalent and increasingly controversial issue. Job applicants searching for work in the current economy argue they are caught in a “Catch-22” situation: they have bad credit because they cannot find work and they cannot find work because they have bad credit. Employers, on the other hand, maintain that a review of applicants’ credit histories, along with their skills, experience and qualifications, provides useful information about the applicants’ integrity and responsibility and that the Fair Credit Reporting Act already provides adequate protection of applicants’ rights. Amid these competing interests, the EEOC held a public hearing on this issue in October of 2010 and many states, including Ohio, have proposed legislation to restrict or prohibit employers’ ability to consider applicants’ credit histories as a screening tool.

A recent study conducted by the Society for Human Resource Management (“SHRM”) revealed that more employers are using credit checks to evaluate job candidates than ever before; in 2010, 60% of employers ran credit checks on at least some job candidates, up from 42% in 2006 and 25% in 1998. SHRM reported the following additional findings about employers’ current use of credit checks:

- 13% of employers surveyed conduct credit checks on all job candidates;
- 40% of employers never conduct credit checks on job candidates;
- 47% of employers consider credit histories of candidates for selected jobs only; and
- 91% of employers that conducted credit checks did so for positions with financial or fiduciary responsibilities such as handling cash, accounting and banking.

While in the minority, employers that indiscriminately check credit histories of all candidates do so at their own risk. The EEOC recently filed suit against Kaplan Higher Education Corporation, alleging that the company rejected candidates based upon their credit histories since at least 2008. The EEOC further alleged that Kaplan’s use of credit checks was neither job-related nor justified by business necessity and adversely impacted African-American applicants. The EEOC warned employers to “be mindful that any hiring practice be job-related and not screen out groups of people, even if it does so unintentionally.”

States are responding similarly: Ohio is one of many states with legislation pending that would prohibit or significantly restrict employers' abilities to consider applicants' credit histories. Unlike some other states, however, Ohio's proposed legislation makes no exception for positions with financial or fiduciary responsibilities, which if passed, would unjustifiably limit access to relevant information and expose businesses to threats of theft or other forms of financial impropriety.

For now, credit checks are one of many pre-employment screening tools that may provide useful information about final job candidates who will have significant financial or fiduciary duties. Employers who currently use credit checks should closely monitor legal developments in this area and ensure that there is an objective correlation between the position at issue and the candidate's financial history. Checking credit histories of all candidates exposes your company to risks simply not worth taking.

If you have any questions regarding this or any other workers' compensation or labor and employment law issue, please contact any member of the Labor and Employment Section at 419-241-6000 or visit our website at www.eastmansmith.com.

Toledo Office:

One Seagate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699
Phone: 419-241-6000
Fax: 419-247-1777

Columbus Office:

100 East Broad St.
Ste. 2100
Columbus, Ohio 43215
Phone: 614-564-1445
Fax: 614-280-1777

Findlay Office:

510 South Main St.
Findlay, Ohio 45840
Phone: 419-424-1971
Fax: 419-424-1988

Novi Office:

28175 Haggerty Rd.
Novi, Michigan 48377
Phone: 248-994-7757
Fax: 248-994-7758