

A Guide to Restrictions on Use of Credit Reports in Employment Decisions at State and City Levels



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State	Summary	Potential Damages
<p>California Labor Code Section 1024.5</p>	<p>Unless regulated by Gramm Leach Bliley, all employers are restricted from using credit reports unless the position is one of the following:</p> <ul style="list-style-type: none"> • A managerial position (as defined as exempt under CA law); • A position in the state Department of Justice; • A sworn peace officer or other law enforcement; • A position for which the information contained in the report is required by law to be disclosed or obtained; • A position that involves regular access to specified personal information for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment, such as bank or credit card account information, social security number, or date of birth; • A position in which the person is, or would be: A named signatory on the bank or credit card account of the employer; authorized to transfer money on behalf of the employer; or authorized to enter into financial contracts on behalf of the employer; • A position that involves access to confidential or proprietary information; • A position that involves regular access to \$10,000 or more of cash. <p>Before ordering a consumer credit report concerning a job applicant or employee, the employer must notify the individual in writing of the basis under Labor Code section 1024.5 for permissibly using the consumer credit report (<i>e.g.</i>, because the individual is applying for or holds a managerial position).</p>	<p>An individual who suffers damages as a result of the violation can sue for actual damages or \$10,000 for each violation, whichever is greater. The individual can also recover attorney's fees and court costs. The court can award punitive damages if it finds the violation was grossly negligent or willful. Class action lawsuits are allowed under the CA statute.</p>

State and City Credit Report Laws

State	Summary	Potential Damages
<p>Colorado SB 13-018; Colo. Rev. Stat. 8-2-126</p>	<p>Employers may not use a person’s consumer credit information to evaluate a person for employment, promotion, demotion, reassignment, adjustment and compensation level, or retention unless the report is “substantially related” to the employee’s current or potential job. “Substantially related” applies to positions that:</p> <ol style="list-style-type: none"> 1. consist of executive and management personnel or 2. involve contracts with defense, intelligence, national security, or space agencies of the federal government. <p>This rule does not apply to banks and financial institutions, as well as employers who are required by law to obtain consumer credit reports.</p>	<p>An individual who suffers damages may file a complaint with the Colorado Division of Labor. The individual may be awarded up to \$2,500.</p>
<p>Connecticut Public Act 11-223</p>	<p>An employer cannot use an employee’s or applicant’s credit report as a condition of employment, unless employer is a financial institution or believes the employee violated the law related to employee’s job.</p> <p>Prohibition does not apply when the position is a managerial job that:</p> <ol style="list-style-type: none"> 1. involves setting direction/control of business, 2. involves access to personal or financial information other than that customarily provided in a retail transaction, 3. involves a fiduciary responsibility to the employer, 4. provides expense account or corporate debit/credit card, 5. provides access to confidential or proprietary information, or 6. involves access to employer's nonfinancial assets valued at \$2005 or more. 	<p>The law imposes a \$300 civil penalty for violations, but does not provide for a private civil action. Aggrieved individuals must file a complaint with the Connecticut Labor Commissioner's office, which is empowered to investigate and impose penalties.</p>

State and City Credit Report Laws

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<p>District of Columbia D.C. Official Code § 2-1401.01 et seq.</p>	<p>Employers, including employment agencies and labor organizations, are prohibited from taking discriminatory action against prospective and current employees based on their credit information, directly or indirectly requiring, requesting, suggesting, or causing any employee to submit credit information and from using, accepting, referring to or inquiring into credit information unless the particular position is exempt from the law's prohibitions.</p> <p>Inquiry into an applicant's or employee's credit history is permitted if the position falls under one of the following:</p> <ul style="list-style-type: none"> • Where an employer is otherwise required by DC law to require, request, suggest or cause any employee to submit credit information, or use, accept, refer to or inquire into an employee's credit information; • Where an employee is applying for a position as or is employed as a police officer, as a special police officer or campus police officer, or in a position with law enforcement function; • Employees within the Office of the Chief Financial Officer of DC; • Where an employee is required to possess a security clearance under DC law; • To disclosures by DC government employees of their credit information to the Board of Ethics and Government Accountability or the Office of the Inspector General, or to the use of such disclosures by those agencies; • To financial institutions, where the position involves access to personal financial information; or • Where an employer requests or receives credit information pursuant to lawful subpoena, court order or law enforcement investigation. 	<p>If an employer is found to have violated the law, fines range from \$1,000 to \$5,000. Employers will face a \$1,000 fine for the first violation, \$2,500 fine for the second violation and \$5,000 for each violation thereafter. Individuals also will have a private right of action for violations of the Act, just as they would for any other unlawful discriminatory employment practice under the D.C. Human Rights Act.</p>

State	Summary	Potential Damages
<p>Hawaii Hawaii Revised Statutes Sec. 378-2(8).</p>	<p>Employer cannot use credit history as a condition of employment unless:</p> <ol style="list-style-type: none"> 1. such information directly relates to a bona fide occupational qualification, 2. the employer is expressly permitted/required to inquire into credit history for employment purposes by law, 3. the employer is a financial institution in which deposits are insured by a federal agency having jurisdiction over the financial institution, or 4. the inquiry/consideration involves a “managerial” or “supervisory” employee. <p>A managerial employee is “an individual who formulates and effectuates management policies by expressing and making operative the decisions of the individual's employer.” A supervisory employee is one who has the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, with independent discretion.</p>	<p>Employees or prospective employees may bring civil actions for damages, injunctive relief or both. The court may award costs and fees to a prevailing plaintiff.</p>

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<p>Illinois 820 ILCS 70/1-30</p>	<p>Employers may not:</p> <ol style="list-style-type: none"> 1. use an applicant's or employee's credit history or credit report as a factor in any employment decision, 2. inquire into an applicant's or employee's credit history, or 3. order or obtain an applicant's or employee's credit report from a consumer reporting agency unless such information is related to a "bona fide occupational requirement" (BFOQ) for a particular position or group of employees. <p>The BFOQ is generally restricted to positions involving money-handling or other confidential job duties (e.g., duties that require bonding by state or federal law; unsupervised access to cash or certain assets valued at \$2500 or more; signatory power over business assets of more than \$100; management or control of the business; or access to personal, financial, or confidential information, trade secrets, or state or national security information).</p>	<p>Employees or prospective employees may bring civil actions for damages, injunctive relief or both. The court may award costs and fees to a prevailing plaintiff.</p>
<p>Maryland SB 132/HB 87</p>	<p>Employer cannot request or use an employee's credit report as a condition of employment unless it has a bona fide purpose for requesting or using information that is substantially job-related and disclosed in writing to the employee or applicant.</p>	<p>Upon an aggrieved individual's complaint, the MD Commissioner of Labor and Industry may (1) assess a civil penalty of up to \$500 for an initial violation of the Act, or \$2,500 for a repeat violation of the Act; and (2) send an order to pay the civil penalty to the applicant or employee.</p>

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<p>Nevada SB 127, Chapter 76; amending Chapter 613</p>	<p>Employers are not allowed to consider a consumer credit report or other credit information when making employment decisions unless:</p> <ol style="list-style-type: none"> 1. the employer is expressly required to inquire into credit history for employment purposes by law, 2. the employer reasonably believes that the employee/prospective employee violated a state or federal law, or 3. the information contained in the consumer credit report or other credit information is “job related” to the position. <p>Something is “job related” if the position involves: responsibility for financial assets, access to confidential information, supervisory responsibility, responsibility for access to another person’s financial information, or employment with a licensed gaming establishment.</p>	<p>An individual may be able to receive:</p> <ol style="list-style-type: none"> 1. employment if they were prospective employees or reinstatement if they were already employees, 2. lost wages and benefits, and 3. reasonable costs and attorneys’ fees. <p>The law also allows the state Labor Commissioner to penalize an employer with an administrative penalty. The administrative penalty may be as high as \$9,000 per violation. The law also allows individuals to sue as a class.</p>

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<p>Oregon SB 1045, ORS Chapter 659a</p>	<p>Employers may not obtain or use an applicant's or employee's credit history for employment purposes, or use such information in any employment decision, unless:</p> <ol style="list-style-type: none"> 1. the individual is given advance written notice of the reasons for the use of such information, and 2. the credit history is substantially related to the position sought. <p>The Act does not apply to:</p> <ol style="list-style-type: none"> 1. employers that are federally insured banks or credit unions, 2. employers required by state or federal law to use credit history for employment purposes, or 3. public safety officers who are members of a law enforcement unit. <p>If an Oregon employer obtains credit information based on the substantially job-related exception, the employer must disclose its reasons for the use of such information in writing to the applicant or employee. The employer bears the burden of proving that the employer made this disclosure.</p>	<p>The Oregon law provides a private cause of action for individuals harmed by an employer's violation of the law. Aggrieved individuals may sue employers in court or may file a complaint with the Civil Rights Division to enforce the law.</p>

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<p>Puerto Rico PR Act. No 150 [Spanish Language]</p>	<p>Prohibits employers from refusing to hire, dismissing, or otherwise discriminating against an employee or applicant because of the information in a credit report or on account of the employee's credit history.</p> <p>The new law also prohibits employers from verifying or obtaining the credit history information or credit reports of an employee or applicant.</p> <p>Exceptions</p> <ul style="list-style-type: none"> • Credit reports may be obtained only for certain positions, including, for example: <ul style="list-style-type: none"> - Managerial positions; - Positions for which a credit report is required by law; - Positions that require access to financial or personal information of other persons and not the information usually provided for a purchase transaction; - Positions that require access to trade secrets (as defined by local law); - Positions that require a fiduciary responsibility to the employer; and certain positions that have regular access to cash or other goods in excess of \$10,00 on a daily basis. <p>Before requesting a credit report or credit history information from an employee or applicant who is covered by an exception, employers must obtain the employee's written consent</p>	<p>Fines for violation this Act may range between \$1,000 and \$25,000 for each violation</p>

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<p>Vermont 21 V.S.A. Sec. 495i; Vermont Act 154(S 95)</p>	<p>An employer cannot inquire about an applicant or employee's credit history or credit report. Employers may also not refuse to hire or otherwise discriminate against applicants or employees based on credit history. Decisions based on credit history permitted if information required by law, employer is financial institution or credit union, or position involves access to confidential financial, financial fiduciary, or payroll information. Must obtain written consent, disclose written reasons for access and any adverse action taken, and provide opportunity to contest accuracy. Employer must pay for costs associated with obtaining history/report. Credit history/report may not be sole factor in employment decision.</p>	<p>An applicant/employee has the right to bring a civil action against someone who violates their rights under credit reporting laws. The action can be brought against a credit reporting agency or a user of the credit report.</p>
<p>Washington RCW 19.182.020</p>	<p>An employer cannot use a credit report or credit history to make an employment decision unless:</p> <ol style="list-style-type: none"> 1. that information is substantially job related and the employer's reasons for the use of such information are disclosed to the consumer in writing, or 2. it is otherwise required by law. 	<p>The law provides a private cause of action. Aggrieved individuals may be awarded actual damages, costs and attorney's fees. "Willful" violations may also warrant a monetary penalty of \$1,000 for each violation.</p>

State and City Credit Report Laws

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<p>Chicago Chicago HR Ordinance, 2-160-010, et. seq</p>	<p>Employers may not:</p> <ol style="list-style-type: none"> 1. fire or refuse to hire or otherwise discriminate against an individual based on that individual's credit history; 2. inquire about an applicant's or employee's credit history; 3. order or obtain an applicant's or employee's credit report from a consumer reporting agency. <p>This law does not apply to: bank holding companies, banks, savings and loan associations, credit unions, trust companies; companies engaged in insurance or surety; municipal law enforcement or investigation; and any entity which state or federal statute defines as a debt collector.</p> <p>This law does not prevent inquiry or employment action if satisfactory credit history is a bona fide occupational qualification (BFOQ). Credit history is not a BFOQ unless one of the following circumstances applies:</p> <ol style="list-style-type: none"> 1. state or federal law requires bonding or security covering the individual; 2. the duties of the position include custody of assets valued at \$2,500 or more 3. the duties of the position include signatory power over assets of \$100.00 or more per transaction 4. the position is a managerial position involving setting direction or control of the business 5. the position involves access to sensitive information, financial information, trade secrets, or state or national security information 6. Federal or state law indicates that satisfactory credit history is a BFOQ for the position; 7. employee credit history is otherwise required by or exempt under other law. 	<p>The Illinois Human Rights Commission may impose a penalty between \$100.00 and \$500.00 for each offense, where each day constitutes a separate offense. Chicago law does not provide for private causes of action, but Illinois law does; specifically, aggrieved individuals can sue in state circuit court for injunctive relief and/or damages, plus costs and reasonable attorneys' fees if they prevail.</p>

City	Summary	Potential Damages
<p>City of New York N.Y.C. Admin. Code §8-107</p>	<p>Employers and Employment Agencies may not use an applicant or employee’s credit history for employment purposes or otherwise discriminate against the employee or applicant with regard to hiring, compensation, or terms and conditions of employment based on the applicant or employee’s credit history.</p> <p>The law does not apply to employers required by state or federal law or regulation to use credit information for employment purposes; to police officers and law enforcement; positions requiring employees to be bonded by City, state, or federal law; positions requiring a security clearance; non-clerical positions with access to trade secrets or national security information; positions having signatory authority over third party assets of over \$10,000; positions that have a fiduciary responsibility to enter financial agreements on the employer’s behalf for \$10,000 or more; and positions that are allowed to modify digital security systems protecting the employer or client’s networks or databases.</p>	<p>An individual may be able to receive:</p> <ol style="list-style-type: none"> 1. hiring, reinstatement, or upgrading; 2. back pay and front pay; 3. compensatory damages; 4. costs and reasonable attorney’s fees. <p>The law also allows the City Commission on Human Rights to apply a civil penalty of not more than \$125,000. Where the Commission finds that the act is malicious, the maximum penalty increases to \$250,000.</p>

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<p>City of Philadelphia Philadelphia Bill 160072; Phila. Code 9-1100</p>	<p>Employers may not inquire into or use credit information regarding an employee or applicant in connection with hiring, discharge, or any other term, condition, or privilege of employment.</p> <p>The law does not apply to:</p> <ol style="list-style-type: none"> 1. law enforcement agencies; 2. financial institutions; 3. employers required to obtain credit reports pursuant to federal or state law; 4. positions requiring an employee to be bonded under City, state, or federal law; 5. supervisory or managerial positions involving setting the direction or policies of a business or direction thereof; 6. positions involving significant financial responsibility to the employer, including authority to make payments, transfer money, collect debts, or enter contracts, but not including handling retail transactions; 7. positions requiring access to financial information pertaining to customers, other employees, or employers, other than information provided in a retail setting; 8. positions requiring access to confidential or proprietary information that derives substantial value from secrecy. <p>An employer that relies upon credit information, in whole or in part, to <i>consider</i> adverse employment action shall disclose the fact of such reliance to the employee or applicant in writing, and identify and provide the particular information relied upon; and give the employee or applicant an opportunity to explain the circumstances surrounding the information at issue before taking any such adverse action.</p>	<p>An individual may receive injunctive or equitable relief, such as back pay, hiring, or reinstatement, as well as compensatory damages, punitive damages not to exceed \$2,000 per violation, hearing costs, and attorneys' fees as awarded by the City's Commission on Human Relations. If the Commission dismisses the claim, the individual may bring a private action for compensatory damages, punitive damages, attorneys' fees, court costs, and other relief as deemed appropriate by the court.</p>