

GENERAL ANNOUNCEMENT #4

Washington State Limits Employers Use of Consumer Reports

Is Washington State setting a new nationwide trend for tightening the reigns on employers' use of credit information in making employment decisions? On April 18, 2007, Washington Governor Christine Gregoire signed into law a bill prohibiting employers from accessing a consumer report on an employee's or applicant's credit worthiness, credit standing, or credit capacity for employment purposes unless such information is substantially related to the individual's current or potential job or required by law. An employer also must provide to the employee or applicant in writing the reasons for using the consumer credit report. This "advance" notice provision would not apply to an employer investigation involving an employee "who the employer has reasonable cause to believe has engaged in specific activity that constitutes a violation of law." This change to Washington's fair credit reporting law goes into effect July 22, 2007.

Under federal and state fair employment laws, employers should already be considering the job-relatedness of credit information in making employment decisions. Rejecting applicants based upon poor credit history may disproportionately exclude certain minority groups from consideration. The EEOC contends an organization should not use such information if it causes an "adverse impact," unless justified by job-relatedness and business necessity. There is good news for Washington employers, too. This new law will reduce the risk of successful disparate impact claims based upon denial of employment because of poor credit history, since employers either will abandon pre-employment credit checks entirely or meet the higher substantially related standard.

With greater scrutiny being placed on background checks generally, employers in Washington and elsewhere should review whether the information sought about applicants and employees is consistent with applicable laws. For example, some states already restrict conviction inquiries. Therefore, a misstep in the background check process can lead to potential liability under a variety of laws.

Posted 05/17/2007 to 06/17/2007