



AUGUST 2011

Connecticut Legislature Enacts Several Significant Laws Affecting Employers, Including Restrictions on the Use of Credit Reports

STATE PROHIBITION ON USE OF EMPLOYEE CREDIT REPORTS

Connecticut has enacted legislation that generally prohibits employers from requiring an employee or prospective employee to consent to a request for a credit report as a condition of employment. As of October 1, 2011, employers with one or more employees, **except for financial institutions**, are restricted from requesting any report that contains information about an employee's payment history, savings or checking account numbers or balances, credit score, and credit account balances. A "financial institution" is defined as any entity or affiliate of a state bank and trust company, a national banking association, a state or federally chartered savings bank, a state or federally chartered savings and loan association, a state or federally chartered credit union, an insurance company, an investment advisor, a broker-dealer, or an entity registered with the federal Securities and Exchange Commission.

In addition to the exception for financial institutions, there are several other exceptions to this new legislation. First, an employer may request a credit report if such report is required by law.

In addition, a credit report may be requested if the employer reasonably believes the employee has engaged in an activity that violates a law related to the employee's job.

Employers may also request a report if the report is substantially related to the employee's current or potential job or the employer has a bona fide purpose for requesting or using information in the credit report that is substantially job related and is disclosed in writing to the employee or applicant. Under this exception, a report is "substantially" related to the employee's current or potential job if one of the following applies:

1. It is a managerial position that involves setting the direction or control of a business, a division, a unit, or an agency of a business.

2. It involves access to personal or financial information of customers, employees, or employers, other than information customarily provided in a retail transaction.
3. It involves a fiduciary responsibility to the employer, including, but not limited to, the authority to issue payments, collect debts, transfer money, or enter into contracts.
4. It provides an expense account or corporate debit or credit card.
5. It provides access to certain confidential or proprietary business information.
6. It involves access to the employer's nonfinancial assets valued at \$2,500 or more, including, but not limited to, museum or library collections and prescription drugs and other pharmaceuticals.

The state Department of Labor is responsible for investigating alleged violations. Employers may be subjected to a civil penalty of \$300 for each unlawful inquiry. It is important to note that even if an employer falls within one of the above exceptions, it must still comply with the federal Fair Credit Reporting Act.

INCREASED PENALTIES FOR REPEAT OFFENDERS OF THE PERSONNEL FILES ACT

The Connecticut Personnel Files Act provides employees with rights of inspection, correction, and copying of their personnel files. New legislation allows the state Department of Labor to assess "any employer, officer, agent or other person" who violates the Personnel Files Act with a statutory penalty of \$500 for the first violation and a \$1,000 penalty for each subsequent violation.

This new legislation also takes effect on October 1, 2011.

PROHIBITION ON GENDER IDENTITY DISCRIMINATION

Under new legislation, employers are prohibited from discriminating against any applicant or employee on the basis of gender identity or expression. Specifically, the state's Fair Employment Practices Act has been amended to add a new protected category of "gender identity or expression," which is defined to mean "a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth." Gender-related identity can be shown by providing evidence such as medical history, care, or treatment of the gender-related identity; a consistent and uniform assertion of the gender-related identity; or any other evidence that the gender-related identity is sincerely held, is part of a person's core identity, or is not being asserted for an improper purpose. Complaints are enforced by the Commission on Human Rights and Opportunities.

This new legislation takes effect on October 1, 2011, as well.

PAID SICK LEAVE FOR EMPLOYEES

As reported in a previous update, employers with 50 or more employees will be required to provide certain service workers with paid sick leave, making Connecticut the first in the nation to pass such a measure. For more information, read the update "[Connecticut Employers Prepare Now to Comply With Nation's First Paid Sick Leave Law.](#)"

Employers may want to consider amending their job descriptions and personnel policies to reflect these new legislative changes. Please contact one of the attorneys in our [Labor & Employment Practice Group](#) with any questions regarding these new laws.

Nicole A. Bernabo
(860) 275-8394
nbernabo@rc.com

Britt-Marie K. Cole-Johnson
(860) 275-8279
bcole-johnson@rc.com

Alice E. DeTora
(860) 275-8234
adetora@rc.com

Jean E. Tomasco
(860) 275-8323
jtomasco@rc.com

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