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New Nevada Law Restricts Use of Credit Checks for Employment Purposes

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Nevada recently joined the ever-growing list of states that restrict the use of credit reports by employers. Effective October 1, 2013, Senate Bill 127 will, with limited exceptions, prohibit Nevada employers from making an adverse employment decision based on credit information and from requesting or requiring any prospective or current employee to submit a consumer credit report as a condition of employment.

Use of Credit Reports as an Unfair Employment Practice

By amending the Employment Practices chapter of the Nevada Revised Statutes, Senate Bill 127 makes it unlawful for any Nevada employer to:

- 1) Directly or indirectly require, request, suggest or cause any employee or prospective employee to submit a consumer credit report or other credit information as a condition of employment;
- 2) Use, accept, refer to or inquire about a consumer credit report or other credit information;
- 3) Discipline, discharge, discriminate against or deny employment or promotion, or threaten to take such action, against any prospective or current employee on the basis of the results of a credit report or for refusing or failing to provide a credit report; or
- 4) Discipline, discharge, discriminate against or deny employment or promotion or threaten to take such action against any prospective or current employee for filing a complaint or instituting (or causing to be instituted) a legal proceeding under this law, testifying in any legal proceeding (actually or potentially) to enforce the provisions of this law, or exercising (individually or on behalf of another) rights afforded under this statute.

Exceptions Allowing the Use of Credit Information

Under this new law, employers are permitted to request or consider consumer credit reports or other credit information for the purpose of evaluating an employee or prospective employee for employment, promotion, reassignment or retention under the following circumstances:

- When required or authorized by state or federal law;

- Upon reasonable belief that the individual has engaged in specific activity which may constitute a violation of state or federal law; or
- When information in the credit report is reasonably related to the position for which the employee or prospective employee is being considered (including retention as an employee).

For most employers seeking to use credit reports to evaluate employees and applicants, it is this last exception that typically comes into play. Importantly, the new law defines what shall be deemed "reasonably related" to include positions where the duties involve one or more of the following non-exclusive categories:

- Care, custody and handling of, or responsibility for, money, financial accounts, corporate credit or debit cards or other assets;
- Access to trade secrets or other proprietary or confidential information;
- Managerial or supervisory responsibility;
- The direct exercise of law enforcement authority as a state or local law enforcement agency employee;
- The care, custody and handling of, or responsibility for, the personal information of another person;
- Access to the personal financial information of another person;
- Employment with a financial institution chartered under state or federal law (including subsidiaries or affiliates of such financial institutions); or
- Employment with a licensed gaming establishment.

Public and Private Enforcement of Credit Report Law

This new law provides for two types of enforcement mechanisms with a three year statute of limitations. First, an individual harmed by a violation of this statute may file a private lawsuit against the allegedly offending employer. The lawsuit may be filed on behalf of the individual employee or prospective employee, or on behalf of other similarly situated employees or prospective employees. Courts may grant successful plaintiffs various remedies including employment, reinstatement or promotion to the position applied for, lost wages and benefits, attorney's fees and costs and any other equitable relief deemed appropriate (without the issuance of a bond).

Second, the Nevada Labor Commissioner may impose an administrative penalty against an employer of up to \$9,000 for each violation of the law or may bring a civil lawsuit against the employer to obtain equitable relief as may be appropriate, such as employment, reinstatement or promotion of the employee and the payment of lost wages and benefits.

Complying with Credit Restriction Laws in Ten States

In enacting this new law, Nevada became the tenth state to restrict the use of credit reports for employment purposes, joining California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Oregon, Vermont and Washington. Additional states are considering similar legislation. Further, the Equal

Employment Opportunity Commission (EEOC) has targeted employers for the use of credit reports as potentially causing disparate impact on certain protected groups. Complying with these laws can be challenging, especially for multi-state employers.

Prior to the October 1, 2013 effective date of Nevada's new law, employers who use credit reports or credit information in their hiring or evaluation process need to review their screening policies. Specifically, employers hiring individuals in Nevada need to evaluate each position for which they want to use credit reports and determine if the position falls under one of the enumerated exceptions in Senate Bill 127 that allows the use of credit information on applicants and/or current employees. If the duties of the position do not fall within the list of exceptions, employers should evaluate whether the credit report "is reasonably related to the position." If the answer to both of these questions is "no," then the employer should not request or use credit reports or other information from a consumer reporting agency when evaluating candidates for that position. Employers with operations or hiring needs in multiple states need to stay abreast of the latest legal requirements to ensure that their credit screening policies comply with each applicable state restriction. This may mean implementing a different credit screening policy in those states where the use of credit reports is restricted by law.

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