

June 1, 2015

New York City Council Prohibits Employers from Requesting or Using Credit History to Evaluate Applicants and Employees

New York City Mayor Bill de Blasio has signed into law a bill prohibiting employers from using credit checks for employment purposes, which will take effect on September 2, 2015.

The new law makes it an unlawful discriminatory practice under the New York City Human Rights Law for employers with four or more employees in New York City to request or use for employment purposes an applicant's or employee's consumer credit history, or to otherwise discriminate against an applicant or employee based on such credit history (*i.e.*, with regard to hiring, compensation or other terms and conditions of employment).

However, several relevant exceptions to the general prohibition make it likely that private employers will still have access to credit checks for at least a subset of applicants and employees. For example, employers required by state or federal law or regulations, or by a self-regulatory organization (such as FINRA), to use an individual's consumer credit history for employment purposes are exempt from the law. In addition, employers may continue using consumer credit checks for individuals applying for or employed in positions:

- in which the employee is or will be subject to background investigation by the New York City Department of Investigation or required to be bonded under local, state or federal law;
- which require the employee to possess security clearance under state or federal law;
- that are non-clerical positions which have, or will have, regular access to trade secrets, intelligence information or national security information;
- which have signatory authority over third-party funds or assets valued at \$10,000 or more or fiduciary responsibility and the authority to enter financial agreements valued at \$10,000 or more; or
- which involve regular duties that allow the employee to modify digital security systems that exist to prevent the unauthorized use of the employer's or a client's networks or databases.

Any permitted use of consumer credit reports will remain subject to the requirements of the federal and New York Fair Credit Reporting Acts. Employers with four or more employees in New York City are advised to review their practices for using consumer credit reports for employment purposes. Because the application of the exceptions to this law is business-specific, we encourage you to seek legal advice before instituting new policies or practices designed to conform to the new law. Any attorney in the Ropes & Gray [labor and employment](#) department will be able to assist you in this regard.