

Credit Checks: What You Should Know

From an employer's perspective, it sometimes makes sense to look at a job applicant's credit history. The argument is that credit history reflects financial responsibility, which can be useful for making hiring decisions that involve financial functions or duties. While credit history checks are not as standard as criminal history checks in the employee screening process, employers do use them semi-regularly for jobs in finance. From banks to brokerages, many businesses want to know how their candidates handle personal funds before giving them responsibility for other people's money.

What employers might not know is that the rules around running credit history checks for employment are exceptionally complex. In this white paper, we will explore some of these regulations as well as the arguments regarding whether employers should use credit checks at all.

Regulations for Credit History Checks: A Brief Overview

For employers thinking about using credit checks to vet their candidates, the biggest challenge is that laws regarding employment-related credit history checks vary significantly by area. There has been a recent trend of state and local regions outlawing or restricting the use of these checks. As a result, what is perfectly legal in one area might not be legal in another state, county, or city.

The complexity goes beyond local laws, too. Even in areas where credit history checks are allowed, employers must follow federal statutes to the letter to avoid discriminatory or noncompliant use of these checks. Key federal statutes include the Fair Credit Reporting Act (FCRA), as well as guidance issued by the Equal Employment Opportunity Commission (EEOC).

If you wish to use credit history checks in hiring, it is critical to make sure that you understand all the laws or regulations that may apply—including both local and federal laws.

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State and Local Regulations

Now that we've had a brief overview of what employers are facing when they add credit history checks to their candidate screening process, let's take a closer look.

To start, it's good to know about state or local laws that may apply to your organization. These laws could render the entire conversation about credit history checks moot. So far, ten states have banned or restricted the use of credit reports for employment situations. These states include:

- California
- Colorado
- Connecticut
- Hawaii
- Illinois
- Maryland
- Nevada
- Oregon
- Vermont
- Washington

Washington, D.C. has also restricted these types of checks.

Each law is a little bit different, so reviewing legislation in your state is vital. Most of these states are not banning credit history checks outright. There are exceptions to each law that enable the use of credit checks for certain jobs or within certain types of companies. A common type of exception grants banks and financial institutions the ability to look into the credit histories of their candidates. Colorado, Connecticut, Hawaii, Maryland, Oregon, Vermont, and Washington, D.C. all make this exception. Other exceptions might include managerial positions, (California, Colorado, Hawaii, Illinois); jobs in law enforcement (California, Oregon, Vermont, Washington, D.C.); positions that involve access to sensitive personal information (California, Maryland); positions that involve access to confidential or proprietary information (California, Connecticut, Illinois, Maryland, Vermont); or even positions that give employees company credit cards or expense accounts (Connecticut, Maryland).

In addition to state laws, a few well-known jurisdictions (including New York City, Philadelphia, and Cook County, Illinois) have passed laws or ordinances restricting the use of credit checks by employers. Fortunately for employers, the list of local jurisdictions with credit history regulations is very small at this point. If you aren't in one of these three local areas, you can mostly keep your focus on state laws. However, it's also important to remember that local laws can change a lot faster than state or federal laws can. To be safe, check local laws to determine if your city or county government has passed (or is considering) any ordinances to this effect.

At backgroundchecks.com, we have compiled this detailed resource, which outlines the state and local restrictions on credit history background checks, including information about exceptions. Use the document to gain a fuller understanding of what the regulations look like in your area.

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Bottom line: as with ban the box, there is a growing movement targeting credit history checks as a tool for employment screening. The result of this trend is that new laws and regulations are cropping up regularly. Employers must monitor legislative happenings in their states and local areas to make sure that they know what their compliance requirements are today and what they could be in the future.

A Note on Federal Laws: As of yet, there are no federal laws that bar or significantly restrict employers from running credit history checks on their applicants or employees. However, there have been pushes at the federal level to implement laws that would extend some of the stricter state laws to the federal level. Presidential candidate Elizabeth Warren has repeatedly championed these types of bills during her time as a senator. So far, these bills have not managed to get enough support to become law. As with local and state laws, though, it would be wise for employers that rely on credit history checks to keep an eye on future legislative developments.

EEOC and FCRA

The federal laws that do affect credit history background checks are the aforementioned FCRA and EEOC. Even if employers are legally allowed to conduct employment-related credit history checks based on their state or local legislation, they must abide by these federal laws and guidance.

EEOC

In general, the EEOC holds that using credit checks for hiring purposes has a disparate impact on minority groups and should be limited to scenarios in which these checks are expressly relevant to the position at hand.

Sometimes, that relevance is reflected by other laws that require credit history checks. For instance, for any position in which someone will have authority or control over \$10,000 or more of third-party assets, it is both relevant and legally required for the employer to run a credit history check on the candidate. These legal requirements also preempt local or state laws that otherwise restrict these types of checks.

Overall, EEOC guidance is not as specific as the FCRA in terms of rules that employers must follow. However, per the EEOC, employers should think a lot about why they are running credit history checks before proceeding. If you are hiring someone to a position that involves no handling of money or finances whatsoever, even the worst credit history would have little bearing on their ability to do the job effectively. Refusing to hire this individual based on credit history would test the EEOC's guidance regarding relevance to the job at hand and could lead to a lawsuit from the federal commission—especially if the candidate was part of a minority group or some other protected class.

FCRA

Despite the specific reference to “credit” in its name, the FCRA doesn't apply only to credit reports. Rather, it dictates how employers should handle all types of consumer reports, including criminal history background checks. Specifically, it governs how employers should go about conducting background checks (in this case, credit history checks) in situations in which they are legally allowed to do so.

For a full recap of FCRA compliance requirements, visit our Learning Center.

The Debate: Why So Much Controversy Around Credit History Checks?

While there have been laws restricting background checks in certain ways—the popular ban the box movement, for instance, has pushed employers to delay criminal history inquiries until later in the candidate screening process—few types of background checks have been banned or heavily regulated on the level of credit history checks. What is it about this particular type of pre-employment check that has ignited such controversy and debate?

Proponents of credit history checks argue for them in much the same way that they argue in favor of criminal history screenings. Employers use credit checks in certain situations as an added form of due diligence or a source of peace of mind. Especially if they are handing over the responsibility of financial accounts, investments, or company credit cards to someone, they want to know that person has been financially responsible in his or her own life. Some employers believe that credit history checks can raise red flags for candidates who, if hired, might mismanage funds or commit crimes (such as embezzlement, theft of a customer's personal information, and more).

Critics of employment-related credit checks, meanwhile, argue that an applicant's personal credit or financial information is private and not an employer's business. The argument is typically that how a person manages his or her own finances offers no reliable or predictive insight for whether he or she will be responsible in a job that involves financial management duties. This argument is gaining steam as debt—particularly student loan debt—becomes more common for Americans. Bad credit can be the result of a lot of different factors (unexpected medical expenses, for instance) and may not be a fair metric for employers to use in hiring decisions.

So far, this debate has yet to be settled. There are valid points on both sides, and even the staunchest proponents or harshest critics could likely recognize value in the opposing arguments. There is a reason that even the laws that have banned credit history checks for employment have had to include lengthy lists of exceptions. The fact is that, for certain types of jobs, credit checks are essential for making a smart hiring decisions. However, it's also undeniable that these checks are not always relevant and have the potential to be abused to draw inaccurate, unfounded conclusions about a job applicant's character.

The Outlook: Should Your Business Run Credit History Checks?

If you're asking whether your business should still use credit history checks as part of the pre-employment screening process, the answer ultimately depends. Many businesses are using these checks more sparingly than they have in the past—even financial firms. Companies don't want to stumble into a compliance violation that might lead to a lawsuit, or to draw the ire of the growing contingent of people that believe employment-related credit checks are unnecessary or even harmful.

At the same time, some jobs require information about a person's financial background. Financial responsibility is a skill, and it's an important one to consider for jobs that require a person to manage accounts for your business or for outside clients. Credit checks are still the best way to assess that skill—even if factors largely outside of a person's control can end up having a considerable impact on their credit.

At the end of the day, employers need to be cognizant about whether the law requires them to run these checks or restricts them from doing so. Are there laws in your area that restrict the use of credit checks? If so, is there an exception in the law that would apply to your business or the job you are trying to fill? If not, can you draw a clear line between the job at hand and whatever a credit history would tell you about a candidate? There is a balancing

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act here that isn't easy to master but asking yourself these types of questions will make it easier to determine where you should land on using or not using credit history checks.

Conclusion

Not many things in life are black and white. Mostly, we live in a grey area where a lot of complex considerations can affect what something means or whether it's "right" or "wrong." Credit history checks occupy this grey area: they can be extremely useful and beneficial but can also be an unnecessary roadblock for people trying honestly to change their financial situation. It is important for employers that use these checks to make sure they are doing so in a way that moves them toward the former and away from the latter.

At backgroundchecks.com, we are proud to offer credit history background checks to businesses that use them responsibly. We know that there are many situations in which these checks are an essential part of the candidate vetting process. If you require advice on how to handle credit history checks in your background check policy, or even whether you should use them at all, we are happy to help.

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