

Fair Credit in Employment Amendment Act of 2016

- Fact Sheet for Employers, Employees and Applicants -



(updated October 5, 2017)

What is the law about generally and when will enforcement begin?

Under the new Fair Credit in Employment Amendment Act of 2016, employers, employment agencies, and labor organizations in the District of Columbia may not discriminate against an employee or an applicant based on their credit information. This means that employers, unless excluded by the law (see below), may not ask for, or rely on, credit information of a current or potential employee in making employment decisions. OHR will begin enforcing this law on **October 1, 2017**.

What are the specific requirements of the law?

Applicant

Employers must consider a person's employment application without asking about the applicant's credit information or requiring the applicant to submit their credit information. This means that employers may not directly or indirectly require, request, suggest, ask, use, accept, refer to, or inquire into an applicant's credit information. Thus, if the employer receives an applicant's credit information without asking, the employer may not rely on such information in making the employment decision.

Current Employee

Employers may not ask, obtain, or rely on a person's credit information in making any employment decisions.

What does "credit information" mean?

The law defines "credit information" as "any written, oral, or other communication of information bearing on an employee's credit worthiness, credit standing, credit capacity, or credit history."

What does "inquire" mean?

The law defines "Inquire" as "any direct or indirect conduct intended to gather credit information using any method, including application forms, interviews, and credit history checks."

Are certain employers and employees excluded from the application of this law?

Yes, the law does not apply in 7 situations:

1. Where DC law requires an employer to obtain an employee's credit information;
2. Where an individual applies for, or is employed as, a police officer with the Metropolitan Police Department, as a special police officer or campus police officer, or in a position with a law enforcement function;
3. Where credit information has to be provided to the Office of the Chief Financial Officer of D.C.;
4. Where an employee must have a security clearance under District law, however in some instances federal law may preempt District law;
5. Where DC government employees have to provide disclosures to the Board of Ethics and Government Accountability, or to the Office of the Inspector General;
6. Where the job position would require the employee to access personal financial information, such as when employed in financial institutions; or
7. Where an employer is following a lawful court order or cooperating with a law enforcement investigation.

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What if an employer requires or requests credit information?

The applicant or employee may file a complaint with the DC Office of Human Rights and the employer may be fined if a violation is found. The complaint may be submitted online at ohr.dc.gov, by email, or by hard-copy using the OHR Intake Questionnaire form.

What is the complaint process at OHR?

Once OHR receives the initial Intake Questionnaire, OHR will schedule an intake interview. If, after the interview, OHR docket the Questionnaire as a formal Charge of Discrimination, the parties will be scheduled for mandatory mediation. If mediation fails, OHR will launch a full investigation of the matter. If OHR finds probable cause to believe that a violation occurred, the case will be sent for mandatory conciliation (much like mediation). If the case does not resolve at conciliation, the case will be sent to a full hearing before the Commission on Human Rights for private sector cases or before an Administrative Law Judge for District government cases.

What are the penalties for employers and awards for employees?

If, after the hearing, the employer is found in violation, the employer will be ordered to immediately discontinue the unlawful discriminatory action, and the employer will be subject to the following fines to be paid to the complainant:

- \$1,000 for the first violation;
- \$2,500 for the 2nd violation; and
- \$5,000 for each subsequent violation.