



NYC Hiring Law Changes

Pre-Hiring Credit & Criminal Record Checks to be Restricted

New York City private employers with four or more employees should be aware of two upcoming changes to the city's hiring practice laws.

First, on September 3, 2015, it will become an illegal discriminatory practice in most cases to consider an individual's "consumer credit history" as part of a hiring decision. For the purpose of this [law](#), "consumer credit history" means information about a prospective employee's credit worthiness, credit standing, credit capacity, or payment history. It can be indicated by a consumer credit report, credit score, or information obtained directly from the prospective employee, such as his/her credit accounts or prior bankruptcies, judgments, or liens.

Certain types of employers will be exempt from the credit check ban, such as those required to conduct credit checks by state or federal law, or by self-regulatory organizations in the securities industry, as defined under the Securities Exchange Act of 1934. Specific types of positions are also exempt, including those:

- In law enforcement;
- Where an employee would have authority over third party assets or funds worth \$10,000 or more, or would be able to enter into financial agreements on behalf of his/her employer worth \$10,000 or more;
- Where an employee would be able to modify digital security systems designed to prevent the unauthorized use of the employer's or a client's networks or databases;
- Where city, state, or federal law requires the employee to be bonded;
- Where state or federal law requires the employee to have a security clearance; or
- For a non-clerical job where the employee would have regular access to trade secrets or national security information.

Second, the [NYC Fair Chance Act](#), which goes into effect 120 days after Mayor Bill de Blasio signs it into law, requires employers to make a conditional job offer before inquiring into a job applicant's criminal history. Thus, employers may not ask about an applicant's criminal history on job application forms or websites. For the purpose of this law, an inquiry constitutes either asking an applicant (verbally or in writing) about his/her criminal history, or searching publicly available records or consumer reports to determine if the applicant has a criminal

history. Employers will also be prohibited from advertising a limitation on employment due to a potential applicant having been arrested for or convicted of a crime.

After making a conditional offer of employment, an employer may then look into an applicant's criminal history. If, after receiving information regarding the applicant's record, the employer no longer wants to employ the applicant, the employer must:

- Perform an analysis as required by Article 23(a) of the New York Correction Law;
- Provide the applicant with a written copy of both the inquiry and the analysis; and
- Allow the applicant three business days to respond, during which time the position must remain open for that applicant.

The NYC Fair Chance Act does not apply if an employer is required to conduct a criminal history check for employment purposes in accordance with federal, state or local laws, or where any such laws bar employment based on an applicant's criminal history. It also excludes law enforcement positions and certain Department of Citywide Administrative Services positions, such as those involving the provision of services to persons who may be vulnerable to abuse. Employers who violate this law may face a private legal action and/or an administrative proceeding by the New York City Commission on Human Rights.

If you would like to discuss these regulations in greater detail, please contact [Roni E. Glaser](#).

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