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NEW YORK CITY PROHIBITS USE OF CREDIT CHECKS IN EMPLOYMENT

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On May 6, 2015, New York City Mayor Bill de Blasio signed into law a bill that, effective September 3, 2015, prohibits employers in the five boroughs from requesting or using consumer credit reports in any employment decision. This follows the trend of several other states and local legislatures that have outlawed the practice in recent years.

The new enactment bans not only the use of credit reports themselves, but also the use of credit scores, bankruptcies or any other credit information obtained directly from an employee or prospective employee. The law does include limited exceptions available for private employers when hiring employees for sensitive job positions, such as:

- Where the use of consumer credit information is required by law, such as certain positions in the financial services sector;
- Where the employee is required to have security clearance under federal or state law;
- Where the employee is non-clerical and his or her job involves the use of trade secrets, intelligence information or national security information;
- Where the employee can enter into agreements on behalf of the employer valued at more than \$10,000 (or the employee has signatory

authority for third-parties valued at more than \$10,000); and

- Where the employee's job duties allow him or her to modify the employer's digital security systems.

Despite these available exceptions, litigation will probably ensue, challenging the application of the above exceptions to various job classifications and differing employers. For instance, what exactly constitutes "trade secrets" will likely require interpretation by the courts. In addition, employers or prospective employers who violate the consumer credit report ban can be liable for compensatory damages, unlimited punitive damages, attorneys' fees and costs.

As a result of this new law, employers in New York City must now be more diligent than ever in their pre-employment interview processes in light of this law in order to identify and avoid potential security and theft risks from prospective employees. In addition, for employers with businesses that require pre-employment credit checks for certain sensitive positions under one of the law's exceptions, any such credit inquiries should be closely reviewed by legal counsel to ensure compliance with the latest interpretive guidance from the courts. Indeed,

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employers who lawfully conduct pre-employment credit checks for their New York City employees must also ensure that in conducting such checks they comply with all of the requirements of the federal Fair Credit Reporting Act, the New York Fair Credit Reporting Act and Article 23-A of the New York Corrections Law.

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