

CLIENT ALERT

California Enacts Legislation Limiting Employers' Use of Consumer Credit Reports for Employment Purposes

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On October 9, 2011, California Governor Edmund G. Brown, Jr., signed legislation that significantly limits employers' use of consumer credit reports for employment purposes. The law, which amends a provision of the state's Consumer Credit Reporting Agencies Act ("CCRAA") and adds a new section to the California Labor Code, prohibits employers or prospective employers, with the exception of certain financial institutions, from obtaining a consumer credit report for employment purposes except for individuals seeking, or currently holding, a position in one of eight categories: (1) positions within California's Department of Justice; (2) managerial positions; (3) sworn peace officers or other law enforcement positions; (4) positions for which the information contained in the report is required by law to be disclosed or obtained; (5) positions that involve regular access to specified personal information for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment; (6) positions in which the person is, or would be, a named signatory on the employer's bank or credit card account, or authorized to transfer money or enter into financial contracts on the employer's behalf; (7) positions that involve access to confidential or proprietary information; and (8) positions that involve regular access to \$10,000 or more of cash.

The law is scheduled to take effect on January 1, 2012. The California state legislature previously passed three similar bills aimed at limiting the use of credit reports by employers, but these measures were vetoed by then Governor Arnold Schwarzenegger.

The CCRAA, which currently permits employers to obtain consumer credit reports for employment purposes, requires employers to provide written notice to an employee or applicant of their intention to obtain a consumer credit report and the source of the report. Pursuant to the amendments to the CCRAA, employers must now also identify which of the eight enumerated categories, as set forth above, serves as the basis for obtaining and using the report.

The CCRAA currently provides, moreover, that employees and applicants be provided a copy of the consumer credit report if they request one, and that employers advise employees and applicants if an adverse employment decision is being taken as a result of information contained in the report.

Laws limiting the use of consumer credit reports have already been enacted in Hawaii, Washington, Oregon, Illinois, Maryland and Connecticut. Legislative initiatives related to the procurement and use of consumer credit reports were introduced in a number of other jurisdictions this year. Some of these jurisdictions include Colorado, the District of Columbia, Nevada and New York.

In light of recent legislative enactments and initiatives aimed at restricting employers' use of consumer credit reports for employment purposes, it is prudent for employers to review their practices in connection with obtaining and using such reports in order to ensure that they are compliant with controlling law.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Kris D. Meade

Partner – Washington, D.C.

Phone: +1 202.624.2854

Email: kmeade@crowell.com