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[EEOC Alleges That The Use Of Credit Histories To Make Employment Decisions May Have A Disparate Impact On Minorities](#)

The new year is a good time for employers to review their hiring practices to ensure that they are job-related and justified by business necessity. Indeed, even seemingly neutral hiring criteria may inadvertently have an adverse effect on a protected group of people. Recently, the use of credit histories to make hiring decisions has come under fire because it allegedly has a disparate impact on certain minority job applicants. On December 22, 2010, the Equal Employment Opportunity Commission's Cleveland Field Office filed suit against Kaplan Higher Education Corp. in the U.S. District Court for the Northern District of Ohio (Civil Action No. 1:10-cv-02882) alleging that Kaplan engaged in a pattern or practice of unlawful discrimination by refusing to hire a class of black applicants nationwide based on their credit history. Kaplan contends that it conducts background checks on all applicants, regardless of race, and that the use of credit reports is a necessary component of its background checks into applicants who would be dealing with financial matters, such as financial aid, if hired. The EEOC alleges that this practice violates Title VII of the Civil Rights Act of 1964 because it has a discriminatory impact on applicants due to their race and it is neither job-related nor justified by a business necessity.

Although it is legal for employers to review the credit history of applicants, employers should use the practice with caution, especially in light of this recent lawsuit. If credit histories are used to evaluate applicants, policies and procedures should be in place to ensure that the use is relevant and fair. Employers should also determine whether there is a sound business reason to obtain such information because, if it is not directly job related, it could be considered discriminatory. Indeed, running credit reports on all applicants, regardless of position, can have the effect of discriminating against protected classes, as alleged in the Kaplan lawsuit. Moreover, employers should be aware that credit checks are not always accurate indicators of a person's qualification for a particular job or a valid predictor of job performance. On the other hand, an employer may be subject to allegations of negligent hiring if it does not run a credit report on an applicant who will work in a position that requires the handling of money or assets, makes fiduciary decisions, or has access to private financial data.

Several states, including Hawaii, Washington, Oregon, and Illinois have banned or severely limited the use of credit reports in hiring. Other states, including Connecticut, Georgia, Maine, Maryland, Michigan, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Vermont, and Wisconsin have proposed similar legislation. The California Legislature passed legislation limiting the use of credit reports in hiring, but it was vetoed by the Governor in 2008 and 2009.

Due to the increased scrutiny of the use of credit history as a hiring criteria, employers who use them should ensure that they are directly related to the job and necessary for business purposes. Employers should also review other hiring practices to ensure that they do not screen out groups of people, even if they do so unintentionally.

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