



# Employment Screening in NYC

## 1 INTRODUCTION

In recent times New York City Council have passed a number of laws restricting a private employer's ability to conduct employment screening checks on Candidates. The majority of this new legislation stems from the widely held perception that the use of consumer credit and criminal record history as part of the hiring process have a disproportionate and adverse impact on the opportunities of ethnic minority applicants, arguably constituting discrimination.

Advocates of this legislation also purport that in the majority of cases factors like criminal and credit history do not have a direct bearing on an individual's ability to perform a role. Critics meanwhile feel these restrictions leave employers at a disadvantage, and open to negligent hiring lawsuits or poor hiring decisions.

## 2 BAN THE BOX

Ban the box or the Fair Chance Act came into force in 2015. Essentially it prevents 'most' employers from asking about a Candidate's criminal record **until they have received a conditional job offer**. This arguably allows Candidates to get a foot in the door, rather than being denied the opportunity to demonstrate their suitability for a role simply because of a historic or irrelevant conviction. Importantly certain exceptions exist to the legislation whereby another law would restrict or forbid applicants with certain convictions from carrying out a particular job.

## 3 CRIMINAL RECORD CHECKS

Section 23-A of the New York Correction Law requires employers who make enquiry into a Candidate's criminal history as part of the hiring process to consider the following factors when making any adverse decisions:

- 1) New York State's public policy of encouraging the employment of persons with prior convictions.
- 2) Specific duties and responsibilities relating to the licence or employment sought.
- 3) What bearing, if any, the criminal offence will have on the individual's ability to perform a role.
- 4) Time elapsed since the offence.
- 5) Age of the person at the time of the offence.
- 6) Seriousness and gravity of the offence.
- 7) Any evidence of rehabilitation.
- 8) Legitimate interest of the employer in regard to safeguarding property, employees or the general public.



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## 4 CREDIT CHECKS

In September 2015 New York City Council enacted legislation affecting the ability of private employers to request or use consumer credit history as part of the hiring process. This legislation effectively amended New York City Human Rights legislation. It was adopted as a measure to prevent discrimination on the basis of an individual's consumer credit history, when it was often deemed to have little impact on an individual's ability to perform a role and had an adverse impact on minority applicants.

The term consumer credit history applies broadly to include many instances of financial integrity including: bankruptcy, judgements, credit score, credit worthiness, and payment history. This wide definition of consumer credit history appears to demonstrate a commitment by the Council to prevent employers from interpreting the legislation more narrowly and attempting to circumvent the purpose of the Act.

There are a number of exceptions whereby some employers are able to request or access a Candidate's consumer credit history as part of the hiring process, these include:

- Non-clerical positions involving regular access to trade secrets
- Positions where an individual has signatory authority over 3<sup>rd</sup> party assets (in excess of \$10,000)
- Positions required to have such checks by some other regulation, national or state law
- Positions where an individual can modify digital security systems that is intended to prevent access to an employer or Client's network or databases.
- Positions where an individual has authority (from employer) to enter agreements valued at \$10,000

It is perhaps surprising the Council did not create a longer list of exceptions, especially given the importance of New York as both a financial and business hub in the US. In any instance, the stance of New York City appears to demonstrate the city legislature's commitment to driving forward a human rights agenda, and curbing what it deems discriminatory and unnecessary practices.

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## 5 FURTHER INFORMATION

Importantly, employers are reminded employment screening is still possible in New York and both criminal and credit checks are legitimate practice when compliant with applicable legislation. It is only outside of this that employers risk fines or sanction. Employers should therefore liaise with local counsel or HR to formulate acceptable hiring practices that take into account this legislation.

Vero maintain an extensive library of documents relating to screening specific topics, including legislation and regulation. If you require further information on this or any other topic, please contact your Client Relationship Manager or get in touch via the 'contact us' page on our website.