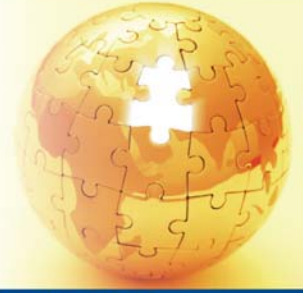




# ISSUE Insights



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## Employment and Use of Consumer Credit Reports

California law prohibits an employer from utilizing a consumer credit report for employment purposes unless the position of the person for whom the report is sought is any of the following:

- A managerial position.<sup>1</sup>
- A position that involves regular access, for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment, to all of the following types of information of any one person:
  - Bank or credit card account information.
  - Social security number.
  - Date of birth.
- A position in which the person is, or would be, any of the following:
  - A named signatory on the bank or credit card account of the employer.
  - Authorized to transfer money on behalf of the employer.
  - Authorized to enter into financial contracts on behalf of the employer.
- A position that involves access to confidential or proprietary information, including a formula, pattern, compilation, program, device, method, technique, process or trade secret that,
  - Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who may obtain economic value from the disclosure or use of the information, and
  - Is the subject of an effort that is reasonable under the circumstances to maintain secrecy of the information.
- A position that involves regular access to cash totaling ten thousand dollars (\$10,000) or more of the employer, a customer, or client, during the workday.<sup>2</sup>

<sup>1</sup> "Managerial position" means an employee covered by the executive exemption set forth in subparagraph (1) of paragraph (A) of Section 1 of Wage Order 4 of the Industrial Welfare Commission (8 Cal. Code Regs. 11040).  
<http://www.dir.ca.gov/t8/11040.html>

<sup>2</sup> Other exemptions under the law include financial institutions, as defined, a position in the state Department of Justice; a sworn peace officer, or other law enforcement position.



## **Mandatory Employer Written Disclosure – Prior to Requesting Reports**

Prior to requesting a consumer credit report for employment purposes, the user (e.g., the employer) of the report must provide written notice to the person (e.g., the job applicant) involved.

The notice must inform the job applicant that a report will be used, and shall identify the specific basis under the state law for use of the report (Labor Code Section 1024.5(a) outlined above). The notice must also inform the job applicant of the source of the report and must contain a box that the job applicant can check, requesting a copy of the credit report. If the job applicant indicates that he or she wishes to receive a copy of the report, the employer must request that a copy be provided to the person when the employer requests its copy from the credit reporting agency. The report to the employer and to the job applicant must be provided contemporaneously and at no charge to the subject applicant.

## **Notice by Employer When Applicant Denied Based on Credit Report**

Whenever an applicant for employment is denied a position based wholly or partly on information contained in a consumer credit report from a consumer credit reporting agency, the employer of the consumer credit report must advise the job applicant and supply the name and address or addresses of the consumer credit reporting agency that provided the report.<sup>3</sup>

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<sup>3</sup> A "consumer credit report" has the same meaning as defined in subdivision (c) of Section 1785.3 of the Civil Code, but does not include a report that (A) verifies income or employment, and (B) does not include credit-related information, such as credit history, credit score, or credit record.

Civil Code Section 1785.3(c) provides that a "consumer credit report" means any written, oral, or other communication of any information by a consumer credit reporting agency bearing on a consumer's credit worthiness, credit standing, or credit capacity, which is used or is expected to be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the consumer's eligibility for: (1) credit to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) hiring of a dwelling unit, as defined in subdivision (c) of Section 1940, or (4) other purposes authorized in Section 1785.11.

The term does not include (1) any report containing information solely as to transactions or experiences between the consumer and the person making the report, (2) any communication of that information or information from a credit application by a consumer that is internal within the organization that is the person making the report or that is made to an entity owned by, or affiliated by corporate control with, that person; provided that the consumer is informed by means of a clear and conspicuous written disclosure that information contained in the credit application may be provided to these persons; however, where a credit application is taken by telephone, disclosure shall initially be given orally at the time the application is taken, and a clear and conspicuous written disclosure shall be made to the consumer in the first written communication to that consumer after the application is taken, (3) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device, (4) any report by a person conveying a decision whether to make a specific extension of credit directly or indirectly to a consumer in response to a request by a third party, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures to the consumer required under Section 1785.20, (5) any report containing information solely on a consumer's character, general reputation, personal characteristics, or mode of living which is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on, or others with whom he is acquainted or who may have knowledge concerning those items of information, (6) any communication about a consumer in connection with a credit transaction which is not initiated by the consumer, between persons who are affiliated (as defined in Section 150 of the Corporations Code) by common ownership or common corporate control (as defined by Section 160 of the Corporations Code), if either of those persons has complied with paragraph (2) of subdivision (b) of Section 1785.20.1 with respect to a prequalifying report from which the information communicated is taken and provided the consumer has consented to the provision and use of the prequalifying report in writing, or (7) any consumer credit report furnished for use in connection with a transaction which consists of an extension of credit to be used solely for a commercial purpose.

