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PRATT'S  
**PRIVACY &  
CYBERSECURITY  
LAW**  
REPORT



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# Pratt's Privacy & Cybersecurity Law Report

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# Cook County “Piggybacks” on State of Illinois and City of Chicago Employee Credit Privacy Laws

*By Howard L. Mocerf\**

*This article summarizes the similarities and the few differences between three Illinois laws restricting the use of credit history or credit reports in making employment decisions.*

Joining a growing trend among states and local governments, the Cook County, Illinois Human Rights Ordinance was amended effective as of June 1, 2015 to add an employee or applicant’s credit history or credit report as a prohibited type of employment discrimination. The amendments<sup>1</sup> are substantially the same as the provisions of the Illinois Employee Credit Privacy Act,<sup>2</sup> and those restricting the use of credit history or credit reports in making employment decisions under counterpart provisions of City of Chicago Human Rights Ordinance of the Chicago Municipal Code.<sup>3</sup> This article summarizes the similarities and the few differences between these laws.

## THE PROHIBITIONS

Each of the three laws prohibits employers that are subject to them from:

- Inquiring about an applicant’s or employee’s credit history;
- Ordering or obtaining an applicant’s or employee’s credit report from a consumer reporting agency; or
- Failing or refusing to hire or recruit, fire or otherwise discriminate against any individual with respect to employment, compensation or any term, privilege or condition of employment because of the individual’s credit history or credit report.

None of these prohibitions, however, apply to jobs that:

- Require bonding or other security under federal or state law;
- Include having custody of or unsupervised access to cash or marketable assets, as defined by the laws, valued at \$2,500 or more;
- Give the individual signatory power over business assets of \$100 or more per transaction;

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<sup>1</sup> Bill No. 3088.

<sup>2</sup> 820 ILCS 70/1, et seq.

<sup>3</sup> § 1-160-010, et seq.

- Are managerial jobs that involving setting the direction and control of the business;
- Involve access to personal or confidential information, financial information, trade secrets or state or national security information, as defined by the laws;
- Meet criteria set forth in any administrative rules of the U.S. Department of Labor or Illinois Department of Labor that define the circumstances in which a credit history is a bona fide occupational qualification; or
- An applicant's or employee's credit history is otherwise required by or exempt under any other applicable law.

### **WHO DO THE LAWS APPLY TO?**

All three laws apply to any individual or entity that employs at least one employee or accepts applications for employment within the State of Illinois, Cook County, and the City of Chicago, respectively, with the following exceptions:

- Bank holding companies, financial holding companies, banks, savings banks, savings and loan associations, credit unions or trust companies, or any subsidiary or affiliate thereof, that is authorized to do business under Illinois or U.S. law; or
- Companies authorized to engage in any kind of insurance or surety business pursuant to the Illinois Insurance Code.

### **HOW DO THE LAWS DIFFER?**

The Illinois, Cook County, and City of Chicago laws differ in the following ways:

- The Illinois law exempts from the definition of employer covered by the state law any Illinois state law enforcement agency or investigative unit, but does not exempt similar county or municipal agencies. However, the Illinois state law also exempts from the definition of employer, any Illinois state or local government agency that otherwise requires the use of an employee's or applicant's credit history or report. Pursuant to the latter exemption, the City of Chicago law exempts the City's law enforcement and investigative units. The Cook County law, somewhat differently, exempts any county law enforcement, investigative unit or agency that requires the use of an employee's credit history or credit report.
- The Illinois law exempts from the definition of employer covered by the state law any entity that is defined as a debt collector under federal or state statute, but does not exempt a debt collector as defined under local law. The Cook County law extends this exemption to debt collectors as defined in the County ordinance. The City of Chicago law does not similarly extend the exemption.

- The enforcement mechanisms under the three laws are different. Actions for violation of the Illinois law must be brought in the state circuit courts. Complaints for alleged violations of Cook County and City of Chicago Human Rights Ordinances must be filed before the Cook County Human Rights Commission and City of Chicago Human Relations Commission, respectively, and are subject to the exclusive administrative investigatory and adjudicatory provisions of those ordinances and the agencies' regulations. However, the Cook County Human Rights Ordinance contains provisions that allow a complainant to obtain a right to sue in the Circuit Court of Cook County under certain circumstances and, thereby, terminate the administrative proceeding. No such right exists under the City of Chicago Human Rights Ordinance.
- The remedial provisions under these laws are similar but somewhat different. The Illinois law provides for injunctive relief, damages, costs and reasonable attorney's fees to a prevailing employee or applicant. The Cook County Human Rights Ordinance and the City of Chicago Human Relations Enabling Ordinance specify the full panoply of the types of relief typically allowed a prevailing employee or applicant in an employment discrimination case. These include damages, reinstatement or order to hire, back pay, attorney's fees, costs, witness fees, expert witness fees, and copying fees.

## CONCLUSION

While Cook County's enactment of employee credit privacy protections should have little impact on most employers who employ workers in the county or the City of Chicago in view of the existing Illinois and City of Chicago laws, it serves as a reminder to such employers to review their existing policies concerning the use of credit histories and credit reports to evaluate whether it is obtaining and using such information in a lawful manner. Further, since nine other states and some local governments have enacted similar laws, employers who obtain and use such information in making employment decisions affecting applicants or employees in other jurisdictions should be aware of any laws in those other jurisdictions that impact their practices.