The Use of Consumer Credit Information by Employers:
The Colorado Employment Opportunity Act
§ 8-2-126, C.R.S.

Frequently Asked Questions

Overview: The Colorado Employment Opportunity Act, § 8-2-126, C.R.S., restricts the use of consumer credit information by employers in Colorado. The law applies to Colorado employers on and after July 1, 2013. For more information, visit www.colorado.gov/cdle/eoa

1. Which employers does the law cover?

The law applies to private and public Colorado employers who employ 4 or more employees. The law also covers prospective employers with 4 or more employees. See § 8-2-126(2)(e), C.R.S., and § 8-1-101, C.R.S.

The law does not apply to:

i) State or local law enforcement agencies;
ii) Employers of private domestic servants or farm and ranch labor;
iii) Employers who employ less than four employees;
iv) Banks and financial institutions.

2. How are employees defined under the law?

The term employee refers to every person who may be permitted, required, or directed by any employer in consideration of direct or indirect gain or profit, to engage in any employment and includes an applicant for employment. See § 8-2-126(2)(d), C.R.S.

3. What are the core requirements of the law?

Employers may not request a prospective or current employee's credit report, or use consumer credit information for employment purposes, unless: the credit information is substantially related to the employee's current or potential job, or the person being evaluated or the employer are exempt as provided by the law. See questions 5 – 7 below concerning possible exemptions.

4. What types of consumer credit information does the law prohibit access to?

Consumer credit information means a written, oral, or other communication of information bearing on a consumer's creditworthiness, credit standing, credit capacity, or credit history.

Consumer credit information includes a credit score but does not include the address, name, or date of birth of an employee associated with a social security number.

Credit score is generally defined as an attempted numerical quantification of a person's creditworthiness or credit history. See § 8-2-126(2)(b)-(c), C.R.S.

5. Can an employer ever use a prospective or current employee's credit information?

In order for an employer to legally use consumer credit information for employment purposes in Colorado, the information must be "substantially related" to the employee's current or potential job. See § 8-2-126(3)(a), C.R.S.

"Substantially related" means the information contained in a credit report is related to the position for which the employee is being evaluated:

I. The position must constitute executive or management personnel or officers or employees who constitute professional staff to executive and management personnel (see the Colorado non-compete law, § 8-2-113, C.R.S.)

AND

II. The position must involve one or more of the following 4 responsibilities:

(1) Setting the direction or control of a business, division, unit, or an agency of a business;

(2) A fiduciary responsibility to the employer;

(3) Access to customers', employees', or the employer's personal or financial information other than information customarily provided in a retail transaction; or

(4) The authority to issue payments, collect debts, or enter into contracts.

Employers may legally use consumer credit information for employment purposes for positions with a bank or financial institution, or positions involving contracts with defense, intelligence, national security, or space agencies of the federal government. See § 8-2-126(2)(g), C.R.S.

6. Can an employer ever request a prospective or current employee's credit report?

In order for an employer to require an employee to consent to a request for a credit report that contains information about the employee's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers as a condition of employment, one of these 3 scenarios must apply:

(1) The employer must be a bank or financial institution, or

(2) The report must be required by law, or

(3) The report must be "substantially related" (see question 5 above) to the employee's current or potential job and the employer has a bona fide purpose for requesting or using information in the credit report that is substantially related to the employee's current or potential job and is disclosed in writing to the employee. See § 8-2-126(3)(a), C.R.S.

7. Are banks and financial institutions exempt from this law?

Yes, banks and financial institutions are exempt from § 8-2-126. According to §§ 8-2-126(2)(g) and (3)(a), C.R.S, banks and financial institutions are allowed to request and use an applicant's or employee's consumer credit information for employment purposes.

8. The exemptions in the law allow me, the employer, to use consumer credit information for a position, and I took an adverse action against an employee or applicant based upon such information. What are my obligations to the affected individual?

If an employer relies, in whole or in part, on consumer credit information to take adverse action regarding the employee whose information was obtained, the employer shall disclose that fact, and the particular information upon which the employer relies, to the employee. See § 8-2-126(4), C.R.S.

Adverse actions which require disclosure include: for an applicant for employment, denial of employment; for an employee, demotion, reassignment to a lower-ranked position or to a position with a lower level of compensation, decrease in compensation level, denial of promotion, or termination of employment; or any other decision for employment purposes that adversely affects an employee or applicant. See § 8-2-126(2)(a), C.R.S.

The employer shall make the disclosure required to an employee in writing or to an applicant using the same medium in which the application was made. See § 8-2-126(4), C.R.S.

9. Consumer credit information is substantially related to an employee's job (I, the employer, am allowed to request or use their information under one of the exemptions above); do I have to permit the employee to explain their negative consumer credit information?

When consumer credit information is substantially related to the employee's current or potential job, an employer may (but is not required to) inquire further of the employee to give him or her the opportunity to explain any unusual or mitigating circumstances where the consumer credit information may not reflect money management skills but is rather attributable to some other factor, including a layoff, error in the credit information, act of identity theft, medical expense, military separation, death, divorce, or separation in the employee's family, student debt, or a lack of credit history. See § 8-2-126(3)(b), C.R.S.

10. What are the penalties for non-compliance?

The Colorado Division of Labor investigates complaints, conducts hearings, and may issue a penalty of up to $2,500 to a prevailing party in the dispute (the employee, applicant, or employer). See § 8-2-126(5)-(6), C.R.S.

11. How do I file a complaint against my employer or prospective employer?

The Division of Labor accepts complaints from employees or applicants who have been subjected to alleged violations of the Employment Opportunity Act.

The Division only accepts complaints filed by individuals (or their representative) who have been directly affected by the employer's prohibited consumer credit practices (the specific employee or applicant whose consumer credit information was involved). The Division does not accept anonymous complaints, or complaints from individuals not directly affected by the employer's practices.

The Division investigates complaints, conducts hearings of appeals, and may issue a penalty of up to $2,500 to a prevailing party.

The applicant, employee, or employer may ultimately be determined to be the prevailing party, and may then be awarded the penalty of up to $2,500.

Complaint forms and instructions are available at www.colorado.gov/cdle/eoa

12. Is there any liability imposed upon individuals or consumer reporting agencies that provide an employer with consumer credit information?

No. The Colorado Employment Opportunity Act does not impose any liability on a person or a consumer reporting agency for providing an employer with consumer credit information. See § 8-2-126(7), C.R.S.

13. Where can I obtain more information on the law?

The Colorado Division of Labor enforces the provisions of this law. For more information, or to file a complaint against an employer or prospective employer, contact the Division of Labor at 303-318-8441, or visit www.colorado.gov/cdle/eoa