

New Hiring Restrictions in New York

*How the Credit Check Ban Changes Background Checks
and Hiring Practices*

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Why This Matters

- Not just about “credit checks”
- Affects
 - Background screening
 - Hiring workflows
 - Vendor relationships
- Many employers already have risk built into existing processes
- Based on 2015 NYC law

What Changed?

- NYS FCRA now broadly prohibits use of consumer credit history reports for employment purposes
 - Hiring
 - Promotion
 - Compensation
 - Discipline
- Labeled “unlawful discriminatory practice,” though not part of the NYS Human Rights Law

Timing & Urgency

- Enacted December 2025
- Takes Effect April 18, 2026
- Requires immediate process changes, not just policy updates

What Is Prohibited?

- Employers may not
 - Request, or
 - Use for employment purposes . . .

Consumer credit history

“Consumer Credit History”

An individual’s credit worthiness, credit standing, credit capacity or payment history, as indicated by:

- Consumer credit reports;
- Credit scores; or
- Information the employer obtains directly from the applicant about
 - Credit accounts
 - Bankruptcies, liens, judgments

Not limited to “background checks”

Exceptions

- Legal/regulatory requirements
- Law enforcement/security clearance
- Certain financial authority roles
- Access to sensitive systems or trade secrets

Most jobs will NOT qualify

Finance Roles

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Finance Roles

- Not automatically permitted for “accounting” and “payroll” positions
- Must meet specific statutory criteria
- Role-by-role analysis
- Document justification

Statutory Conditions

- Employee is required to be bonded under state or federal law; or
- Employee has signatory authority over third-party funds or assets valued at \$10,000+; or
- Position involves fiduciary responsibility to the employer with the authority to enter financial agreements valued at \$10,000+ on employer's behalf

Special Exceptions

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Legally Regulated Positions

- Some positions are subject to mandatory credit checks, such as per the Securities Exchange Act
- Positions subject to Financial Industry Regulatory Authority (FINRA) disclosure and monitoring
- Defense contractors and government employees may be subject to security clearance requirements
- Positions subject to state agency background check, where designated “high degree of public trust”

Security Issues

- Employees with regular duties that allow them to modify digital security systems established to prevent the unauthorized use of the employer's or client's networks or database
- Employees in a “non-clerical” position having regular access to **trade secrets**, intelligence information, or national security information

Trade Secrets

- Information that
 - Derives independent economic value from not being generally known by other persons;
 - Is the subject of reasonable efforts to maintain its secrecy; AND
 - Can reasonably be said to be the end product of significant innovation
- Does not include mere access to client, customer, or mailing lists

Background Check Reports

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Consumer Credit Reports

- Written notice and approval requirements still apply where credit reports remain permissible
- Changes limit information that “bears on a consumer’s creditworthiness, credit standing, credit capacity or credit history”
- Make sure vendors remove credit data, unless exception is confirmed

Consumer Reports

- Changes don't directly address criminal history, which are also typically obtained through consumer reports
- Information bearing on a consumer's "general reputation, personal characteristics, or mode of living" may still be obtainable

Multi-State Employers

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Risks & Challenges

- Don't apply federal standards broadly where state laws have greater restrictions
- Implement New York-specific workflows and vendor instructions
- Avoid violations with relocations and promotions
- NY law may apply if employee works remotely in NY

Applications & Interviews

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Prohibited Inquiries

- Can't ask about personal financial issues
- Remove from applications
- Avoid in interviews
- Handle consistently if necessary, where exception applies

Vendor Reliance

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Employer's Obligation

- Don't assume background check provider will adhere to legal restrictions
- Update contracts, work orders, etc.
- Confirm actual report contents before using in decisionmaking process

Enforcement & Penalties

- Enforced through private lawsuits
- Prevailing plaintiffs can recover actual damages, legal costs, and attorneys' fees
- Punitive damages may be recoverable with proof of willful violations
- No Division of Human Rights jurisdiction, but DHR is directed to request information from employers regarding exemption usage and report to the Legislature

Biggest Employer Risks

- Over-relying on exceptions
- Using outdated templates
- Not knowing what vendors provide
- Informal decisionmaking
- Failing to localize multi-state processes

What to Review Now

- Applications and hiring forms
- Background check policies
- Vendor relationships
- Hiring workflows
- Interview practices
- Position classifications

Key Takeaways

1. Broader than a “credit check ban”
2. Most risk comes from continuing existing systems
3. Employers must control information flow
4. Vendors are not a compliance solution
5. Act now—don’t wait for a problem

Questions?



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