

## EEOC Files Class Action Lawsuit Focusing On Employer Use of Credit Checks

In the latest move toward restricting employer use of credit reports, the Equal Employment Opportunity Commission (“EEOC”) recently filed a class action lawsuit against Kaplan Higher Education (*EEOC v. Kaplan Higher Educ. Inc.*, N.D. Ohio, No. 1:10-cv-2882). The EEOC alleges that Kaplan engaged in racial discrimination against black applicants by using credit reports as a criterion for employment. The EEOC’s claim is premised on blacks and other racial minorities tending to have lower credit scores than whites. Under existing EEOC regulations, any screening or testing that disproportionately disqualifies a particular racial group must be “job-related” and “consistent with business necessity.” Determining whether these standards are met can be difficult since there is little guidance on when credit history is sufficiently related to the duties of a particular job. In a statement by Kaplan, the higher education company said that it conducts background checks on all employees, “For employees whose responsibilities include financial matters, such as those who advise students on financial aid, background checks also include job-related credit histories.”

The EEOC held a public hearing on employer use of credit checks in October and has indicated it may issue guidance to employers on the use of credit checks, but so far has not done so. This case and another EEOC class action challenging background screening criteria, *EEOC v. Freeman Cos.*, D. Md., No. 09-CV-02573, will be watched closely as employers struggle to develop screening policies that effectively reduce risk while avoiding potential discrimination claims.

### State Restrictions on Use of Credit Reports

In addition to EEOC actions, legislation to restrict employer use of credit reports was recently introduced in at least eight states, with more likely to follow. A new law in [Illinois goes into effect January 1](#). The law prohibits employers from obtaining or using credit reports unless one of the following are met:

- State or federal law requires bonding or other security covering an individual holding the position;
- The duties of the position include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more;
- The duties of the position include signatory power over business assets of \$100 or more per transaction;
- The position is a managerial position which involves setting the direction or control of the business;
- The position involves access to personal or confidential information, financial information, trade secrets, or State or National Security information;
- The position meets criteria in administrative rules, if any, that the U.S. Department of Labor or the Illinois Department of Labor has promulgated to establish the circumstances in which a credit history is a bona fide occupational requirement; or
- The employee’s or applicant’s credit history is otherwise required by or exempt under federal or state law.

Hawaii, Oregon and Washington already have similar laws in effect.

Source: [www.krollbackgroundscreening.com](http://www.krollbackgroundscreening.com)  
Used by permission