

# OFFICE OF THE GENERAL COUNSEL

## Practice Group Advisory

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### SUMMARY

New California laws limit the use of credit related information for employment purposes and affect the type of notice employers are required to give applicants and employees prior to obtaining a consumer credit report about them.

If you have any questions regarding the effect of these new laws on background checks conducted by the University, please contact:

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## NEW STATE LAWS LIMIT USE OF CONSUMER CREDIT REPORTS FOR EMPLOYMENT PURPOSES AND IMPOSE NEW NOTICE REQUIREMENTS

On January 1, 2012, two new State laws went into effect that limit the use of consumer credit reports for employment purposes. Previously, employers could obtain consumer credit reports pertaining to any applicant or employee. California Labor Code section 1024.5 now provides that employers cannot use a "consumer credit report" for employment purposes unless the applicant or employee position falls into one of the expressly enumerated categories:

- A managerial position;
- A sworn peace officer or other law enforcement position;
- A position for which the information contained in the report is required by law to be disclosed or obtained;
- 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: (1) bank or credit card account information; (2) social security number; and (3) date of birth;
- A position in which the person is, or would be, any of the following: (1) a named signatory on the bank or credit card account of the employer; (2) authorized to transfer money on behalf of the employer; (3) 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 (1) 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 (2) is the subject of an effort that is reasonable under the circumstances to maintain secrecy of the information; or
- 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.

In addition, the Consumer Credit Reporting Agencies Act (specifically California Civil Code section 1785.20.5) requires that the written disclosure that an employer was already required to provide an applicant or employee *prior to* obtaining a consumer credit report regarding them now must also:

1. Identify the specific basis for the report (e.g., which of the categories above applies to the position the individual holds or is seeking); and
2. Contain a box that the person may check off to receive a copy of the credit report.

These statutes define "employment purpose" broadly to include use of the information for the purpose of evaluating an individual for employment, promotion, reassignment, or retention as an employee. Therefore, this law applies to background checks conducted regarding applicants as well as current employees. In addition, the statutes define "consumer credit reports" to include only reports that contain credit related information, such as credit history, credit score, or credit record. This law does not apply to a report that simply verifies income or employment, or that does not include credit related information.

In light of these new laws, the University is in the process of reviewing Personnel Policies for Staff Members 21 (Appointment) and the related Systemwide Guidelines on Designating Critical Positions to determine what changes need to be made to the provisions pertaining to the use of consumer credit reports when conducting background checks during the appointment process.