

## **Report on the Use of Exemptions Under the Stop Credit Discrimination in Employment Act by City Agencies and Non- Governmental Employers**

Prepared by the NYC Commission on Human  
Rights Pursuant to Local Law 37 (2015) and  
submitted to the New York City Council

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## Introduction

This report was prepared pursuant to Local Law 37 (2015) which states that the New York City Commission on Human Rights “shall request information from City agencies and non-governmental employers regarding the agencies’ and employers’ use of the exemptions established in subdivision 24 of section 8-107 of the administrative code for purposes of hiring and employment” and “submit to the council a report concerning the results of such request and any relevant feedback from agencies and employers.”<sup>1</sup> The law does not empower the Commission to compel non-governmental employers or City agencies to submit information regarding their use of exemptions.

### *The New York City Commission on Human Rights*

The New York City Commission on Human Rights (the “Commission”) is the agency responsible for the enforcement of the New York City Human Rights Law (“NYCHRL”), Title 8 of the Administrative Code of the City of New York. The NYCHRL is one of the most comprehensive anti-discrimination laws in the country. It includes protections in public accommodations, housing, and employment based on race; religion/creed; color; age; national origin; alienage or citizenship status; gender; gender identity and expression; sexual orientation; pregnancy; disability; and marital or partnership status. Additional protections are included in employment based on arrest or conviction record; status as a victim of domestic violence, stalking, or sex offenses; unemployment status; credit history; and status as a caregiver. The law further requires employers to make reasonable accommodations for disabilities; religious observances or practices; pregnancy, childbirth, or related medical conditions; and for victims of domestic violence, sex offenses, or stalking. Housing providers and public accommodations are also required to make reasonable accommodations for people with disabilities. More protections are afforded in housing based on status as a victim of domestic violence, stalking, or sex offenses; lawful occupation; lawful source of income; and the presence of children. The NYCHRL also prohibits retaliation, discriminatory harassment or violence, and bias-based profiling by law enforcement.

The Commission has three primary divisions – the Law Enforcement Bureau (“LEB”), Community Relations Bureau (“CRB”), and the Office of the Chairperson. LEB is responsible for the intake, investigation, and prosecution of NYCHRL violations, including systemic and pattern and practice cases. CRB, through borough-based Community Service Centers, helps cultivate understanding and respect among the City’s many diverse communities through pre-complaint interventions, conferences, workshops, and training sessions, among other initiatives. The Office of the Chairperson houses the legislative, inter-agency, regulatory, policy, and adjudicatory functions of the Commission and convenes meetings with the agency’s commissioners.

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<sup>1</sup> Local Law No. 37 (2015), [www1.nyc.gov/assets/cchr/downloads/pdf/amendments/int\\_no\\_261\\_a.pdf](http://www1.nyc.gov/assets/cchr/downloads/pdf/amendments/int_no_261_a.pdf) (last visited Aug. 24, 2017).

## *Legislative History of the Stop Credit Discrimination in Employment Act*

In April 2014, Council Member Brad Lander introduced Int. No. 261,<sup>2</sup> a bill that would prohibit employers from inquiring about a prospective employee's salary history during the employment process. In September 2014, the Committee on Civil Rights held a hearing on the bill at which civil rights advocates, representatives of the business community, and other interested parties testified.<sup>3</sup> In April 2015, the City Council's Committee on Civil Rights approved an amended version of the bill, Int. No. 261-A.<sup>4</sup> On April 16, 2015, the full City Council passed the amended bill.<sup>5</sup>

On May 6, 2015, Mayor de Blasio signed the Stop Credit Discrimination in Employment Act ("SCDEA") into law.<sup>6</sup> The law went into effect on September 3, 2015 and made it an unlawful discriminatory practice under the NYCHRL for employers, labor organizations, and employment agencies to request or use the consumer credit history of an applicant or employee for the purpose of making any employment decisions, including hiring, compensation, and other terms and conditions of employment under the NYCHRL.<sup>7</sup>

### **SCDEA Implementation**

In anticipation of the effective date of the law, the Commission developed new materials, publications, and other public-facing documents to explain the new protections, created a City-wide public awareness campaign, engaged in outreach to workers' rights organizations and attorneys who represent employers, and created new trainings addressing the new employment protections and obligations for employees/job seekers and employers under the NYCHRL.

#### *"You Are More Than Your Credit Score" Campaign and Publications*

To educate the public about their responsibilities under the SCDEA, the Commission launched a multi-media, offline, and online public awareness campaign with the tagline,

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<sup>2</sup> New York City Council, Full Text of Int. No. 261, (Apr. 10, 2014), <http://legistar.council.nyc.gov/View.ashx?M=F&ID=3697639&GUID=0B556CD6-A4CD-404E-9D8B-0E82FA643EAD> (last visited Aug. 30, 2017).

<sup>3</sup> New York City Council, Hearing Transcript of the Committee on Civil Rights, (Sep. 12, 2014), <http://legistar.council.nyc.gov/View.ashx?M=F&ID=3261011&GUID=C38D03D1-28AA-4F17-8DD4-53844D8257B8> (last visited Aug. 24, 2017).

<sup>4</sup> New York City Council, Hearing Transcript of the Committee on Civil Rights, 15 (Apr. 14, 2015), <http://legistar.council.nyc.gov/View.ashx?M=F&ID=3721035&GUID=76D9D8FF-0841-45C1-86F0-72769A236A7C> (last visited Aug. 30, 2017).

<sup>5</sup> New York City Council, Hearing Transcript of the New York City Council Stated Meeting, 230 (Apr. 16, 2015), <http://legistar.council.nyc.gov/View.ashx?M=F&ID=3722750&GUID=E43E5E48-92EE-48F9-BF8A-D6A715F1D2AC> (last visited Aug. 30, 2017).

<sup>6</sup> Office of the Mayor, "Mayor De Blasio Signs Legislation to Prohibit Employers from Using Credit Checks to Screen Applicants" (May 6, 2015), <http://www1.nyc.gov/office-of-the-mayor/news/293-15/mayor-de-blasio-signs-legislation-prohibit-employers-using-credit-checks-screen#0> (last visited Aug. 29, 2017).

<sup>7</sup> Office of the Mayor, "Mayor de Blasio and Human Rights Commissioner Malalis Announce New Law Taking Effect Today to Protect New Yorkers Against Employment Discrimination Based on Credit History", (Sep. 3, 2015), <http://www1.nyc.gov/office-of-the-mayor/news/591-15/mayor-de-blasio-human-rights-commissioner-malalis-new-law-taking-effect-today-to> (last visited Aug. 29, 2017).

*You Are More Than Your Credit Score.* The Commission placed print advertisements in City-wide and targeted ethnic media across New York City. Advertisements in English and Spanish were installed in subway cars and terminals as well as bus shelters across the City. Posters were placed in over 40 stores, hair and nail salons, and barbershops across the five boroughs.

The campaign also utilized digital advertising through online radio as well as YouTube, Instagram, Facebook, and Twitter using the hashtag #CreditCheckLawNYC. The Commission's Communications & Marketing Department produced a 60-second video that highlights the SCDEA which was viewed over 11,000 times. During the month-long campaign, the Commission's website, including the landing page for the law and other related pages, were visited over 15,000 times. The Commission estimates a campaign reach of over 100 million combined views and impressions on social media and out-of-home advertising.

In addition to the campaign, the Commission created a landing page on the agency's website to house all SCDEA-related publications, campaign materials, and information. The Commission published a one-pager for employees/job seekers and a one-pager for employers which states the rights and responsibilities for each party, steps to avoid discriminatory actions, and how to file a complaint with the Commission. The one-pagers are available in English, Spanish, Bengali, Chinese, Haitian Creole, Korean, and Russian. The Commission also published a series of Frequently Asked Questions (FAQs) on the Commission website along with common scenarios and possible violations of the law. To further support the Commission's outreach and educational efforts, the Commission published an informational tri-fold brochure on the SCDEA containing information in eleven languages: English, Spanish, Chinese, Bengali, Korean, Haitian Creole, Russian, French, Arabic, and Urdu.

On September 3, 2015, the law's effective date, the Commission issued a press release with a statement from Chair and Commissioner Carmelyn P. Malalis on the implications and reach of the new law. The Commission also announced the launch of the public awareness campaign and the roll-out of new training materials and publications. Mayor Bill de Blasio issued a statement in support of the new law along with advocates at the New Economy Project and the offices of Council Speaker Melissa Mark-Viverito, Council Member Brad Lander, State Senator Jeff Klein, and Assembly Member Jeffrey Dinowitz.<sup>8</sup>

Details of and materials from the public outreach campaign – including the one-pagers, FAQs, tri-fold brochure, press release, and other useful resources for employers and

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<sup>8</sup> Office of the Mayor, "Mayor de Blasio and Human Rights Commissioner Malalis Announce New Law Taking Effect Today to Protect New Yorkers Against Employment Discrimination Based on Credit History", (Sep. 3, 2015), <http://www1.nyc.gov/office-of-the-mayor/news/591-15/mayor-de-blasio-human-rights-commissioner-malalis-new-law-taking-effect-today-to> (last visited Aug. 29, 2017).

employees/job seekers – can be found on the SCDEA landing page on the Commission’s website.<sup>9</sup>

### *Trainings*

The Commission developed and piloted new trainings specifically on the protections of the SCDEA geared towards both employees/job seekers and employers. Commission staff in our CRB and LEB departments led “Know Your Rights” trainings for employees/job seekers and “Know Your Responsibilities” trainings for employers, including presentations at law firms that represent large NYC-based employers including Mintz Levin, Proskauer Rose, and Reed Smith. Over the past two years, the Commission has conducted 38 trainings on the SCDEA at our five borough-based Community Service Centers and throughout the city.

### *Legal Enforcement Guidance*

In September 2015, the Commission published legal enforcement guidance on the SCDEA’s protections under the NYCHRL, the first-ever in Commission history.<sup>10</sup> The guidance provides the public with needed clarity and transparency on how to comply with the SCDEA, and how the Commission’s LEB interprets, investigates, and prosecutes the new protections.

### *Rulemaking*

On July 10, 2017, the Commission published proposed rules in the City Record that clarify and strengthen the provisions of the NYCHRL implementing the SCDEA, pursuant to the City Administrative Procedure Act, N.Y. City Charter § 1041 *et seq.*<sup>11</sup>

The proposed rules add a new section to the Commission’s existing rules to: identify chargeable violations under the SCDEA; clarify that employers are prohibited from requesting or requiring waivers authorizing credit checks; clarify that exemptions to coverage under the SCDEA are to be construed narrowly; define positions involving a “high degree of public trust”<sup>12</sup> and provide detail regarding certain exemptions under the SCDEA; set penalties for administrative actions under the SCDEA; and provide notice that the Early Resolution process, which is included in the proposed rules, will be used

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<sup>9</sup> NYC Commission on Human Rights, Credit Check Law landing page, [www1.nyc.gov/site/cchr/media/credit-check-law.page](http://www1.nyc.gov/site/cchr/media/credit-check-law.page) (last visited Aug. 30, 2017).

<sup>10</sup> NYC Commission on Human Rights, NYC Commission on Human Rights Legal Enforcement Guidance on the Stop Credit Discrimination in Employment Act, N.Y.C. Admin. Code §§ 8-102(29), 8-107(9)(d), (24); Local Law No. 37 (2015), [www1.nyc.gov/assets/cchr/downloads/pdf/CreditHistory-InterpretiveGuide-LegalGuidance.pdf](http://www1.nyc.gov/assets/cchr/downloads/pdf/CreditHistory-InterpretiveGuide-LegalGuidance.pdf) (last visited Aug. 30, 2017).

<sup>11</sup> NYC Commission on Human Rights, Notice of Public Hearing and Opportunity to Comment on Proposed Rules, <http://www1.nyc.gov/assets/cchr/downloads/pdf/CCHR%20Proposed%20Rules%20-%20Implementation%20of%20Stop%20Credit%20Discrimination%20in%20Employment%20Act.pdf> (last visited Aug. 31, 2017).

<sup>12</sup> See N.Y.C. Admin. Code § 8-107(24)(b)(2)(B).

for certain *per se* violations of the SCDEA. The proposed rules were certified by the Mayor's Office of Operations and the NYC Law Department.

The Commission held a public hearing on the proposed rules on August 17, 2017, and accepted oral and written testimony from Mobilization for Justice, New Economy Project, Dēmos, the National Association of Professional Background Screeners, and the Consumer Data Industry Association. The Commission will review comments and vote on the adoption of these rules at an upcoming meeting of the Human Rights Commissioners.

## **Survey and Data Collection**

### *Process*

In order to solicit information on employers' use of exemptions under the SCDEA for this report, the Commission designed two distinct surveys with questions targeted to City agencies and non-governmental employers respectively. The anonymous and confidential surveys were administered through SurveyMonkey, a secure online survey development platform that was reviewed and approved through the NYC Department of Information Technology & Telecommunications' Cloud Review process for the collection of sensitive information, over a period of two months from June – August 2017.

### *Dissemination and Promotion of Survey*

In addition to the promotion of the survey on the Commission's social media accounts and website, the Commission partnered with the Department of Consumer Affairs (DCA) and the Department of Small Business Services (SBS) to disseminate the survey through its websites and social media.

- On June 19, 2017 and again on July 10, 2017, SBS sent the survey link to over 5,000 businesses on an SBS listserv.
- On August 15, 2017, SBS sent the survey link in its August e-newsletter to the City's 74 Business Improvement Districts ("BIDs") representing neighborhood businesses across the five boroughs.
- On June 28, 2017 and again on July 10, 2017, the Commission sent a request to complete the survey to 115 City agency General Counsels.
- On July 25, 2017, the Commission added a link to the survey on the SCDEA landing page on the Commission website, and published a tweet with a link to the survey to the Commission's over 6,500 followers in Twitter. The following day,

the Commission added a slide about the survey on the homepage of the Commission's website and promoted it on Facebook.

- On July 25, 2017, DCA posted a link to the survey on its website and re-tweeted the Commission's tweet promoting the survey to business owners to its over 12,500 followers on Twitter.
- Also on July 25, 2017, DCA sent the survey out to its listserv of 151 partner community-based organizations, both local and citywide, that work closely with businesses. These include local development corporations, BIDs, merchant associations, and Chambers of Commerce.
- On August 11, 2017, the Office of Council Member Brad Lander sent the survey to the Fifth Avenue, Atlantic Avenue, and North Flatbush BIDs to circulate to its businesses.



## Findings

We received 124 responses from non-governmental employers and 44 responses from City agencies. Of the 124 non-governmental employers, 10% (12) of participants indicated that they had used or requested a consumer credit report, credit score, or other credit information for an individual for the purposes of hiring or promotion. The breakdown in the type of exemption applied is as follows:

| Exemption used  | Responses |
|---|-----------|
| Position is required by state or federal law or regulations or by a self-regulatory organization to use an individual's consumer credit history for employment purposes | 1         |
| Position required bonding under federal, state, or City law or regulation   | 2         |
| Position required security clearance under federal or state law   | 1         |
| Position was non-clerical in role and required having regular access to trade secrets, intelligence information, or national security information                       | 3         |
| Position involved responsibility for funds or assets worth \$10,000 or more   | 3         |
| Position involved digital security systems  | 2         |

Of the 44 City agency responses, 14% (6) of participants indicated that they had used or requested a consumer credit report, credit score, or other credit information for an individual for the purposes of hiring or promotion. The breakdown in the type of exemption applied is as follows:

| Exemption used  | Responses |
|---|-----------|
| Position is required by state or federal Law or regulations or by a self-regulatory organization to use an individual's consumer credit history for employment purposes | 0         |
| Police officers, peace officers, or positions with a law enforcement or investigative function at the Department of Investigation ("DOI")                               | 1         |
| Position is subject to a DOI background investigation   | 4         |
| Position required bonding under federal, state, or City law or regulation   | 0         |
| Position required security clearance under federal or state law   | 0         |
| Position was non-clerical in role and required having regular access to trade secrets, intelligence information, or national security information                       | 0         |
| Position involved responsibility for funds or assets worth \$10,000 or more   | 1         |
| Position involved digital security systems  | 0         |

## Appendix: Survey Questions

For non-governmental employers:

1. What is the size of your business?
  - a. 1 employee
  - b. 2-4 employees
  - c. 5-10 employees
  - d. 11-25 employees
  - e. 26-50 employees
  - f. 51-100 employees
  - g. 100+ employees
  
2. Which of the following best describes the principal industry of your business?
  - a. Advertising & Marketing
  - b. Agriculture
  - c. Airlines & Aerospace (including Defense)
  - d. Automotive
  - e. Business Support & Logistics
  - f. Construction, Machinery, and Homes
  - g. Education
  - h. Entertainment & Leisure
  - i. Finance & Financial Services
  - j. Food & Beverages
  - k. Government
  - l. Healthcare & Pharmaceuticals
  - m. Insurance
  - n. Manufacturing
  - o. Nonprofit
  - p. Retail & Consumer Durables

- q. Real Estate
  - r. Telecommunications, Technology, Internet & Electronics
  - s. Transportation & Delivery
  - t. Utilities, Energy, and Extraction
  - u. Other (please specify)
3. In the past 2 years, have you used or requested a consumer credit report, credit score, or other credit information for an individual for the purposes of hiring or promotion?
- a. Yes
  - b. No
4. If yes, which of the exempted positions were you hiring for?
- a. Position is required by state or federal Law or regulations or by a self-regulatory organization to use an individual's consumer credit history for employment purposes
  - b. Position required bonding under federal, state, or City law or regulation
  - c. Position required security clearance under federal or state law
  - d. Position was non-clerical in role and required having regular access to trade secrets, intelligence information, or national security information
  - e. Position involved responsibility for funds or assets worth \$10,000 or more
  - f. Position involved digital security systems

For City Agencies:

1. What is the size of your agency?
- a. 1-10 employees
  - b. 11-25 employees
  - c. 26-50 employees
  - d. 51-100 employees

- e. 100-500 employees
  - f. 501-1,000 employees
  - g. more than 1,000 employees
2. In the past 2 years, have you used or requested a consumer credit report, credit score, or other credit information for an individual for the purposes of hiring or promotion?
- a. Yes
  - b. No
3. If yes, which of the exempted positions were you hiring for?
- a. Position is required by state or federal Law or regulations or by a self-regulatory organization to use an individual's consumer credit history for employment purposes
  - b. Police officers, peace officers, or positions with a law enforcement or investigative function at the Department of Investigation ("DOI")
  - c. Position is subject to a DOI background investigation
  - d. Position required bonding under federal, state, or City law or regulation
  - e. Position required security clearance under federal or state law
  - f. Position was non-clerical in role and required having regular access to trade secrets, intelligence information, or national security information
  - g. Position involved responsibility for funds or assets worth \$10,000 or more
  - h. Position involved digital security systems