

# Colorado Employment Opportunity Act

## Use of Consumer Credit Information by Employers §8-2-126, C.R.S.

The Colorado Employment Opportunity Act 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 the [Job Postings & Hiring website](#).

### Coverage:

#### 8-2-126(2)(e)

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 8-1-101, C.R.S.

Does not apply to:

1. State or local law enforcement agencies
2. Employers of private domestic servants or farm and ranch labor
3. Employers who employ less than four employees
4. Banks and financial institutions

### Definition of Employee:

#### 8-2-126(2)(d)

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.

### Consumer Credit Information:

#### 8-2-126(2)(b)-(c)

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 defined as an attempted numerical quantification of a person's creditworthiness or credit history.

### Permissible Use of Consumer Credit Information for Employment Purposes:

#### 8-2-126(3)(a) & 8-2-126(2)(g)

In order for an employer to use consumer credit information for employment purposes in Colorado, the information must be "substantially related" to the employee's current or potential job. "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:

1. Executive personnel;
2. Management personnel;

3. Officers; or
4. Employees who constitute professional staff to executive and management personnel.

AND

II. The position must also 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 use consumer credit information for employment purposes for positions with a bank or financial institution, or positions involving contracts with defense, intelligence, national security, space agencies of the federal government.

### **Employer Requests for Credit Reports:**

#### **8-2-126(3)(a)**

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 section 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.

### **Disclosure Requirements:**

#### **8-2-126(3)(a) & 8-2-126(4)**

If the employer wishes to require an employee to consent to a request for a credit report:

The employer must demonstrate that the report is "substantially related" to the position, and disclose that in writing to the employee.

If adverse action is taken:

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 in writing, and the particular information upon which the employer relies, to the employee.

### **Explanation of Credit Information to the Employer:**

#### **8-2-126(3)(b)**

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.

### **Adverse Actions:**

#### **8-2-126(2)(a) & 8-2-126(4)**

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.

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.

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.

### **Liability:**

#### **8-2-126(7)**

Nothing in the Colorado Employment Opportunity Act imposes any liability on a person, including a consumer reporting agency, as that term is defined in § 12-14.3-102(4), C.R.S., for providing an employer with consumer credit information.

### **Complaints and Penalties:**

#### **8-2-126(5)-(6)**

The Division 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 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, and may issue a penalty of up to \$2,500 to a prevailing party. The prevailing party may be the employee, applicant, or employer.

Complaint forms and instructions are available at the [Job Postings & Hiring website](#).