



Interpretive Notice & Formal Opinion (“INFO”) #9D:

Accessing Consumer Credit Information: The Colorado Employment Opportunity Act

Overview

The [Colorado Employment Opportunity Act](#) (“EOA,” C.R.S. § 8-2-126) and the [Posting, Screening, and Transparency \(POST\) Rules](#) (7 CCR 1103-18) restrict the use of **consumer credit information** by **employers** in Colorado. Under the EOA, in order for an employer to use an **employee’s** consumer credit information, the information must be required by law or **substantially related** to the job.

Coverage

- The EOA covers all private and public Colorado **employers** with **4 or more employees** except state and local law enforcement agencies.
- The EOA’s protections apply to “**employees**,” which under the Act means any person who may be permitted, required, or directed by any employer, including job applicants.
- **Consumer credit information** means **written, oral, or any other communication of information** related to a person’s credit score, creditworthiness, credit standing, credit capacity, and/or credit history.

When Employers *May* Request or Use Consumer Credit Information:

- For an employer, or potential employer, to lawfully request consumer credit information, the employer must be a **bank or financial institution** or the request must be (1) **required by law**, or (2) for credit information that is **substantially related to the position**.

Example 1: A standardized job application for a software company includes a statement, “A credit check is required” and requires applicants to check a box that states, “I acknowledge this requirement.” This acknowledgement violates the EOA because it is a broad request for authorization, without regard to whether the credit check is required by law or substantially related to the position.

- For consumer credit information to be **substantially related** to a position, the position must:
 - Involve contracts with the federal government related to defense, intelligence, national security, or space agencies;
 - Be with a bank or financial institution; or
 - Be an executive, management, or officer position (or is a professional staff member to such a position), **and** the position must include at least one of the following **duties**:
 - (1) **Sets the direction or control** of a division, unit, or an agency of a business;
 - (2) Has a **fiduciary responsibility** to the employer;
 - (3) Is able to **access** customers', employees', or employer's **personal or financial** information other than information usually provided in a retail transaction; or
 - (4) Has **authority to issue** payments, collect debts, or enter into contracts.

Example 2: As part of a conditional offer for a Director of Accounting position at a benefits administration company, the company requires a credit check. Duties for the position include managing the company's national budget and resolving accounting issues for clients. **This credit check is substantially related** to the position because the job is a management position that has access to customers' financial data.

How to Request Consumer Credit Information:

- To request consumer credit information, the employer or its agent must:
 - Determine consumer credit information is **substantially related** to the position;
 - Make the request **in writing**; and
 - Have a **bona fide reason or purpose** for requesting the information.
- The employer may give the employee or applicant 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.

Using Consumer Credit Information for Adverse Actions

- Employers who rely, in whole or in part, on credit information to take **adverse action** against an employee, **must disclose** that fact and the information relied on to the employee **in writing**.
- **Adverse action** against an **employee** includes termination, demotion, reassignment to a lower-ranked position or to a position with a lower level of compensation, decrease in compensation, denial of promotion, or any other decision for employment purposes that negatively affects an employee.
- **Adverse action** against a **job applicant** includes denial of employment or any other decision for employment purposes that negatively affects an applicant.

Limitation on Liability for Providing Consumer Credit Information

- Nothing in the EOA imposes any liability on a person, including a consumer reporting agency, as defined under C.R.S. § 12-14.3-102(4), for **providing an employer with consumer credit information**.

Enforcement by the Division of Labor Standards and Statistics

- The Division accepts [complaints](#) from employees or applicants who have been subjected to alleged violations of the Employment Opportunity Act.
 - The Division accepts anonymous complaints as well as 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 employee.

For Additional Information

Visit the Division's [website](#), call 303-318-8441, or email cdle_labor_standards@state.co.us.