



**L E G A L
S E R V I C E S**

I N C O R P O R A T E D

TESTIMONY

ON

INT. 261-2014

**A LOCAL LAW TO AMEND THE ADMINISTRATIVE
CODE OF THE CITY OF NEW YORK, IN RELATION TO
PROHIBITING DISCRIMINATION BASED ON ONE'S
CONSUMER CREDIT HISTORY**

PRESENTED BEFORE:

**THE NEW YORK CITY COUNCIL
COMMITTEE ON CIVIL RIGHTS**

PRESENTED BY:

**ANAMARIA SEGURA
MFY LEGAL SERVICES, INC.**

SEPTEMBER 12, 2014

MFY Legal Services, Inc. (MFY) submits this testimony to New York City Council Committee on Civil Rights to express our support for the passage of Int. 261-2014.

MFY envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 9,000 New Yorkers each year. We submit this testimony based on our experience with clients from MFY's Workplace Justice Project (WJP), which advocates on behalf of low-income workers most vulnerable to exploitation and handles a range of employment problems, including discrimination and other barriers to employment, and MFY's Consumer Rights Project (CRP), which provides advice, counsel and representation to low-income New Yorkers on consumer problems, including credit-related issues.

MFY commends the Committee on Civil Rights for holding this hearing about this important legislation. Int. 261-2014, if enacted, would remove unnecessary barriers to employment by making it illegal for an employer to request or use information in a credit report for the purpose of making decisions with regard to hiring, firing, promotion, demotion, discipline, compensation, or the terms, conditions or privileges of employment. This bill removes arbitrary, baseless, and unfair barriers to employment faced by our low-income clients for whom a paycheck can mean the difference between survival and poverty. The legislation will increase employment opportunities for many unemployed New Yorkers who desperately wish to work.

Employer Credit Checks are Pervasive and Create Barriers to Employment

Research conducted by Dēmos has found that as many as 25% of unemployed workers said that a prospective employer had requested a credit check as part of a job application.¹ That same research found that among job applicants with poor credit histories, one in seven had been told that they were being denied a job because of their credit.² The use of credit checks presents a significant barrier to employment, especially for low-income New Yorkers and unemployed New Yorkers, whose credit has been harmed because of the economic downturn and other events beyond their control. The use of credit checks also disadvantages students who graduate from college or vocational programs with crushing student loan debt. Borrowers of private student loans generally do not have the same six-month grace period after graduation, or hardship deferments or forbearances offered by federal student loans, which can protect their credit during a difficult job search.

One example of a low-income New Yorker harmed by an employer credit check is MFY client, Mr. P, who contacted us last year after he was denied a job due to his credit history. Mr. P. had applied for an entry-level position as a document messenger with an investment banking firm in early February 2013. The pay was only \$9.50 an hour, but he was looking forward to being employed. However, the company ran a credit check and Mr. P's credit report reflected three

¹ See Dēmos, *Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job* 3 (Feb. 2013), available at <http://www.demos.org/sites/default/files/publications/Discredited-Demos.pdf>.

² See *id.*

judgments; the prospective employer gave him 30 days to clear up the credit problems or lose out on the job opportunity. Due to the events of September 11, 2001 Mr. P had lost his job and his home, and also was the victim of identity theft. As a result, a few years later he was sued by three debt buyers who purchase charged off debt for pennies on the dollar and file lawsuits in bulk in the New York City Civil Courts. However, because he was never served with the lawsuits, which is common in debt collection lawsuits filed in New York City, he only discovered that there were judgments against him after he applied for the messenger position. Though he went through the process of moving to vacate the judgments and having them removed from his credit report, the impact on his credit had already caused him hardship. As our consumer attorneys know well, it is virtually impossible to vacate a default judgment and have it removed from a person's credit report in only 30 days; such a request as a condition to being hired by a prospective employer operates as a flat-out job denial.

Another MFY client, Ms. S, a 38 year-old mother of two from Queens, used to work at a bank. She took time off to care for her disabled young son, and when she tried to re-enter the workforce, she was denied multiple positions at banks because of her poor credit history. Fortunately she ultimately was able to find work as a teller at a check-cashing store, but she makes half as much as she did in her bank job.

As Mr. P and Ms. S's stories illustrate, employers' use of credit checks blocks qualified applicants — including people whose credit was damaged as a result of life events beyond their control, such as medical debts, divorce, identity theft, or layoffs — from desperately needed jobs. Practically speaking, it is hard to imagine why Mr. P.'s past personal economic misfortunes would have any bearing whatsoever on his ability to work as a messenger. As a result, and as the economic crisis continues, a growing number of New Yorkers like Mr. P find themselves in a Catch-22: they are unable to secure a job because of damaged credit, but also unable to escape debt and improve their credit because they can't find work. This adds to the problem of long-term unemployment. Moreover, employer credit checks are unfair and harmful for several other reasons.

Employer Credit Checks Are Discriminatory

Employer credit checks have a discriminatory impact on lower income New Yorkers, women and people of color, who have been disproportionately affected by the economic downturn. The Equal Employment Opportunity Commission has warned of a discriminatory impact on people of color due to the fact that credit reports reflect existing racial disparities caused, for example, by predatory lending and unequal employment opportunities.³ Moreover, civil rights organizations, including the NAACP, National Council of La Raza, Leadership Conference on Civil and Human Rights, and the Lawyers Committee for Civil Rights under Law have publicly opposed the use of employer credit checks, citing their racially discriminatory potential.⁴ As reported by the National Partnership for Women in Families, employer credit checks are particularly harmful to women, whose credit is often damaged because of domestic violence, and

³ See Equal Employment Opportunity Commission, Laws, Regulations and Guidance: Prohibited Practices, *Pre-Employment Inquiries and Credit Rating or Economic Status*, available at http://www.eeoc.gov/laws/practices/inquiries_credit.cfm.

⁴ See *id* at 9.

having been disproportionately targeted for toxic loans, among other reasons.⁵

Credit Reports are Notoriously Unreliable

Credit reports are often riddled with errors. According to a comprehensive study released in February 2013 by the Federal Trade Commission, 26 percent of American consumers had an error on a credit report from at least one of the three major credit reporting agencies.⁶ That same study found that 13 percent of consumers had errors that were damaging enough to lower their credit scores.⁷ The states are beginning to take action on behalf of their consumers to address this problem as well. For example, in June 2014, the state of Mississippi filed a lawsuit against Experian, one of the “big three” credit reporting agencies, alleging that the company allowed erroneous information to be included on consumers’ credit reports, and that it refused to correct the errors when consumers complained about them, even in the face of proof that the information was incorrect.⁸

The consumer attorneys at MFY hear from numerous clients each year who are affected by errors and problems on their credit reports, which, in our experience, are difficult and extremely time-consuming to remedy. Many of our clients do not even know they have errors on their credit reports until they are denied employment, housing, or a loan. And, although the Fair Credit Reporting Act provides people with a procedure for disputing errors on their reports, in our experience those disputes are often given a perfunctory review by the credit reporting agencies, which most often leave the errors uncorrected and the reports unchanged. Moreover, even successfully correcting errors often takes a very long time. Employers are not willing to hold jobs for potential employees while they sort out disputes with credit reporting agencies.

Employer Credit Checks Constitute an Invasion of Privacy

The use of credit checks by employers also represents an unprecedented invasion of privacy, particularly given that past due medical bills make up a significant number of accounts reported by collection agencies. For many job applicants, this means that as a pre-requisite to employment, they have to expose and discuss their personal medical histories, as well as other highly personal events that appear in an individual’s credit history, such as divorce.

Employer Credit Checks Are an Example of “Mission Creep” by the Credit Reporting Industry

Credit reports were originally intended to be a means of using a person’s past credit history to help lenders predict how likely that person will be to pay back an extension of credit. However,

⁵ See Fact Sheet, National Partnership for Women in Families, *Losing Ground: Unwarranted Credit Checks Create Barriers to Employment for Women* (November 2012) available at http://www.nationalpartnership.org/site/DocServer/Women_and_Credit_Checks_Fact_Sheet.pdf?docID=11521.

⁶ See Federal Trade Commission, Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 at 1 (December 2012); released to the public February 11, 2013), available at <http://www.ftc.gov/os/2013/02/130211factareport.pdf>.

⁷ See *id.*

⁸ See *State of Mississippi v. Experian Information Solutions, Inc.*, 14-CV-00243, U.S. District Court, Southern District of Mississippi (Jackson.)

in recent years, members of the credit reporting industry have pushed to extend the use of their reports to areas of workers' lives where they have no place – affecting workers' ability to obtain insurance,⁹ receive medical care,¹⁰ and, yes, whether we can get jobs. And it's only getting worse. NBC News has reported that one of the “big three” credit reporting agencies, Equifax, has assembled a private database containing 190 million employment and salary records covering more than one-third of U.S. adults.¹¹ Equifax profits off this database – which contains weekly paystub information, people's health care providers, whether someone has dental insurance, and if they've ever filed an unemployment claim – by selling the data to third parties, including debt collectors and other financial services companies. This is just the latest example of how the credit reporting industry is profiting from the misuse of employment and credit data.

There is No Correlation Between a Worker's Credit and Job Performance

There is no reliable research that has shown that a worker's credit history has a correlation with negative job performance.¹² In fact, recent research has found that Even TransUnion, another of the “big three” credit reporting bureaus, admitted at a legislative hearing in Oregon in 2010: “At this point we don't have any research to show any statistical correlation between what's in somebody's credit report and their job performance or their likelihood to commit fraud.”¹³ Nevertheless, and although credit reports were not designed as an employment screening tool, they are heavily marketed to employers by the major credit bureaus.

Conclusion

Last December, Senator Elizabeth Warren introduced the Equal Employment for All Act, which would amend the Fair Credit Reporting Act to prohibit the use of consumer credit checks for the purposes of making adverse employment decisions.¹⁴ That is a step in the right direction, but New York City should not wait for Congress to act. We should be at the forefront of putting a stop to this abusive, ineffective practice and protecting the rights of all New Yorkers by prohibiting credit discrimination in the workplace.

Passing Int. 261-2014 will ensure that qualified applicants can obtain employment without regard to credit reports that may contain errors or reflect life events beyond their control. It will protect employee privacy in the hiring process, and guard against the perpetuation of existing racial disparities in lending and employment. It will also contribute to New York's economic

⁹ Amy Traub, *Credit Reporting “Mission Creep”: Home and Car Insurance*, Demos Blog, June 29, 2011, available at <http://www.demos.org/blog/credit-reporting-%E2%80%9Cmission-creep%E2%80%9D-home-and-car-insurance>.

¹⁰ Sarah Rubenstein, *Why Hospitals Want Your Credit Report*, THE WALL STREET JOURNAL, Mar. 18, 2008, available at <http://online.wsj.com/article/SB120580305267343947.html>.

¹¹ Bob Sullivan, *EXCLUSIVE: Your employer may share your salary, and Equifax might sell that data*, NBC NEWS, Jan. 30, 2013, available at http://redtape.nbcnews.com/_news/2013/01/30/16762661-exclusive-your-employer-may-share-your-salary-and-equifax-might-sell-that-data?lite.

¹² See, e.g. Demos, *Discrediting Workers: How Credit Reports are Distorting the Job Market, Prolonging Unemployment, and Denying Equal Opportunity to Workers 1-2* (2010) available at http://www.demos.org/sites/default/files/publications/Discrediting_Workers_Demos.pdf; see also Weaver, Andrew, *Is Credit Status a Good Signal of Productivity?* (July 26, 2013) available at SSRN: <http://ssrn.com/abstract=2266496>.

¹³ Editorial, *Millions Need Not Apply*, N.Y. TIMES, May 29, 2011 at A18.

¹⁴ Equal Employment for All Act of 2013, S. 1837, 113th Cong. (1st. Sess. 2013)

recovery by helping reduce unemployment, especially long-term unemployment. In January 2013 the City Council passed Int. 814-2012, a bill outlawing discrimination in hiring based on a job applicant's unemployment status. Passing Int. 261 and making credit checks an illegal discriminatory practice is the next logical step for the Council to take toward removing another illegitimate barrier to employment.

MFY applauds the Committee on Civil Rights for holding this hearing, and urges the Council to pass this important legislation without delay. Thank you for the opportunity to submit testimony on this important bill.

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