

## **Employer Obtainment or Use of Credit History Information**

### **839-005-0060**

#### **Purpose and Scope**

(1) It is the policy of the State of Oregon to guarantee individuals the fullest possible participation in the social and economic life of the state, including employment. Obtainment or use by an employer of information in an applicant's credit history impacts the individual's privacy, and must relate only to the position for which the individual is being considered or holds. The people of Oregon have the right to employment without unlawful discrimination on the basis of credit history.

(2) Prohibited discrimination is a basis of unlawful practices described in ORS chapter 659A and other chapters of the Oregon statutes.

(3) Any individual claiming to be aggrieved by an unlawful practice including a violation of OL 2010, Ch. 102 may file a complaint under ORS 659A.820 or may bring a civil action under ORS 659A.885.

(4) The Civil Rights Division of the Bureau of Labor and Industries enforces Oregon Law 2010, Chapter 102 (OL 2010, Ch. 102). These rules implement and interpret OL 2010, Ch. 102.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805  
Stats. Implemented: OL 2010, Ch. 102

### **839-005-0065**

#### **Definitions**

(1) "Applicant" means an individual who has submitted information for the purpose of gaining employment.

(2) "Credit history" means any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing or credit capacity.

(3) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.

(4) "Employer" means any person who in this state, directly or through an agent, engages or uses the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed.

(5) "Respondent" includes any person against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(6) "Substantially job-related" is defined in OAR 839-005-0080.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805  
Stats. Implemented: OL 2010, Ch. 102

### **839-005-0070**

#### **Unlawful Discrimination**

(1) It is an unlawful employment practice for an employer to obtain or use for employment purposes information contained in the credit history of an applicant for employment or an employee, or to refuse to hire, discharge, demote, suspend, retaliate or otherwise discriminate against an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the credit history of the applicant or employee.

(2) Obtainment or use of credit history information may not be conducted in a manner that results in adverse impact discrimination as prohibited by 42 U.S.C. § 2000e-2, ORS 659A.030 and OAR 839-005-0010. A finding of adverse impact discrimination does not require establishment of intentional discrimination.

(3) OL 2010, Ch. 102 permits an employer to obtain or use for employment purposes information contained in the credit history of an applicant or employee under circumstances described at OL 2010, Ch. 102(2). OL 2010(2)(d) permits an employer to obtain or use information contained in the credit history of an applicant or employee if the credit history information is substantially job-related, and the employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing.

(a) The burden of proving the employer's disclosure to the employee of its reasons for the use of such information rests with the employer.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805  
Stats. Implemented: OL 2010, Ch. 102

### **839-005-0080**

#### **Substantially Job-Related**

(1) The determination of whether credit history information is substantially job-related must be evaluated with respect to the position for which the individual is being considered or holds.

(2) Credit history information of an applicant or employee is substantially job-related if:

(a) An essential function of the position at issue requires access to financial information not customarily provided in a retail transaction that is not a loan or extension of credit;

(A) Financial information customarily provided in a retail transaction includes information related to the exchange of cash, checks and credit or debit card numbers; or

(b) The position at issue is one for which an employer is required to obtain credit history as a condition of obtaining insurance or a surety or fidelity bond.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805

Stats. Implemented: OL 2010, Ch. 102

### **839-005-0085**

#### **Enforcement & Retaliation**

(1) An employer's duties and obligations under OL 2010, Ch. 102 extend to an employer that is a successor in interest as defined in OAR 839-005-0014.

(2) An applicant or employee claiming a violation of OL 2010, Ch. 102 or these rules may file a complaint with the Civil Rights Division of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

(3) An applicant or employee claiming a violation of OL 2010, Ch. 102 may bring a civil action under ORS 659A.885.

(4) Pursuant to ORS 659A.030(1)(f), it is an unlawful employment practice for an employer to discharge, expel or otherwise discriminate against any person because the person has filed a complaint, testified or assisted in any proceeding in connection with OL 2010, Ch. 102.

(5) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of OL 2010, Ch. 102, or to attempt to do so.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805

Stats. Implemented: OL 2010, Ch. 102