



# Bad Credit Shouldn't Block Employment

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How to Make State Bans on  
Employment Credit Checks  
More Effective

BY AMY TRAUB & SEAN MCELWEE

## About Demos

Demos is a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy.

Our name means “the people.” It is the root word of democracy, and it reminds us that in America, the true source of our greatness is the diversity of our people. Our nation’s highest challenge is to create a democracy that truly empowers people of all backgrounds, so that we all have a say in setting the policies that shape opportunity and provide for our common future. To help America meet that challenge, Demos is working to reduce both political and economic inequality, deploying original research, advocacy, litigation, and strategic communications to create the America the people deserve.

## Media Contact

DONTE DONALD

*Associate Director of  
Communications*

DDONALD@DEMOS.ORG

212.485.6062

[demos.org](https://demos.org)

220 Fifth Avenue, 2nd Fl.

New York, NY 10001

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## EXECUTIVE SUMMARY



Over the last ten years, a growing number of cities and states passed laws limiting the use of credit checks in hiring, promotion, and firing. Lawmakers are motivated by a number of well-founded concerns: although credit history is not relevant to employment, employment credit checks create barriers to opportunity and upward mobility, can exacerbate racial discrimination, and can lead to invasions of privacy. This report examines the effectiveness of the employment credit check laws enacted so far and finds that unjustified exemptions included in the laws, a failure to pursue enforcement, and a lack of public outreach have prevented these important employment protections from being as effective as they could be.

- **Eleven states have passed laws limiting the use of employment credit checks.** State laws to limit employer credit checks were enacted in California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont, and Washington. Cities, including New York City and Chicago, have restricted credit checks as well.
- **Credit check laws are effective at increasing employment among job applicants with poor credit.** A new study from researchers at Harvard and the Federal Reserve Bank finds that state laws banning credit checks successfully increase overall employment in low-credit census tracts by between 2.3 and 3.3 percent.
- **Despite important goals of reducing barriers to employment and eliminating a source of discrimination, existing state laws on credit checks are undermined by the significant exemptions they contain.** Although exemptions are not justified by peer-reviewed research, many state credit check laws include broad exemptions for employees handling cash or goods, for employees with access to financial information, for management positions, and for law enforcement positions. Some legislators also express concern that the number of exemptions that were

ultimately included in the laws make them more difficult to enforce.

- **Demos research found no successful legal actions or enforcement taken under the laws, even those that have existed for a number of years.** While the existence of the laws themselves may deter the use of employment credit checks, it is unlikely that every employer is in full compliance with the laws. Instead, the lack of any enforcement action against employers violating the laws suggests that credit check restrictions are not as effective as they could be.
- **A lack of public awareness on the right to be employed without a credit check may undercut effectiveness.** A key reason that states have not taken enforcement action is because they receive very few complaints about violations of the law. Demos finds that public education and outreach efforts about the credit check laws have been minimal in many states, suggesting that few people are aware of their rights.
- **New York City’s new law restricting the use of employment credit checks is an improvement on past laws.** In 2015, New York City passed the nation’s strongest law restricting employment credit checks. While New York’s law still contains a number of unjustified exemptions, these exclusions are narrower than in many other credit check laws, and New York’s public outreach effort is exemplary.

To learn more about the problems with employment credit checks that motivated many states laws, see Demos’ report, “Discredited: How Employment Credit Checks Keep Qualified Workers out of a Job,” available online at [Demos.org](http://Demos.org).

## INTRODUCTION



Over the last ten years, a growing number of cities and states passed laws limiting the use of personal credit history in employment, also known as employment credit checks. Lawmakers are motivated by a number of well-founded concerns: although credit history is not relevant to employment, employment credit checks create barriers to opportunity and upward mobility, can exacerbate racial discrimination, and can lead to invasions of privacy. States laws to limit employer credit checks were enacted in California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont, and Washington. Delaware has also restricted the use of credit checks in hiring for public employment. Cities, including New York City and Chicago, have restricted credit checks as well.<sup>1</sup> In 2014 there were 39 state bills introduced or pending aimed at limiting the use of credit checks in employment decisions, as well as federal legislation proposed in the House and Senate.<sup>2</sup> This report examines the impact of the credit check laws enacted so far, considers barriers to their effectiveness and discusses strategies to increase protections for workers.

In researching this report, Demos conducted a search of legal databases Westlaw and Lexis Nexis for cases brought under each statute, queried enforcement officials in each state about complaints and enforcement actions taken under the law, and contacted legislators for their impressions on the effectiveness of the legislation. We begin by looking more closely at the practice of employment credit checks and exploring the motivation for restrictions.

### **What Are Employment Credit Checks?**

Credit checks are widely used by employers making hiring decisions.<sup>3</sup> The federal Fair Credit Reporting Act (FCRA) also permits employers to request credit reports on existing employees for decisions on promoting or firing workers.<sup>4</sup> While employers generally cannot access three-digit credit scores, they can obtain credit reports that include information on mortgage debt; data on student loans; amounts of car payments; details on credit card accounts including balances, credit limits, and monthly payments;

bankruptcy records; bills, including medical debts, that are in collection; and tax liens. Under the statute, employers must first obtain written permission from the individual whose credit report they seek to review. Employers are also required to notify individuals before they take “adverse action” (in this case, failing to hire, promote or retain an employee) based in whole or in part on any information in the credit report. The employer is required to offer a copy of the credit report and a written summary of the consumer’s rights along with this notification. After providing job applicants with a short period of time (typically three to five business days) to identify and begin disputing any errors in their credit report, employers may then take action based on the report and must once again notify the job applicant.

Credit reports were developed to help lenders assess the risks associated with making a loan. Over the last few years, they have been aggressively marketed to employers as a means to gauge an applicant’s moral character, reliability or likelihood to commit theft or fraud. While the practice of checking credit may appear benign, a growing body of research suggests that credit checks do not accurately measure employment-related characteristics and may instead bar many qualified workers from employment. A 2013 Demos report found that 1 in 10 unemployed workers in a low or middle income household with credit card debt were denied a job because of a credit check.<sup>5</sup>

### **Why Restrict Employment Credit Checks?**

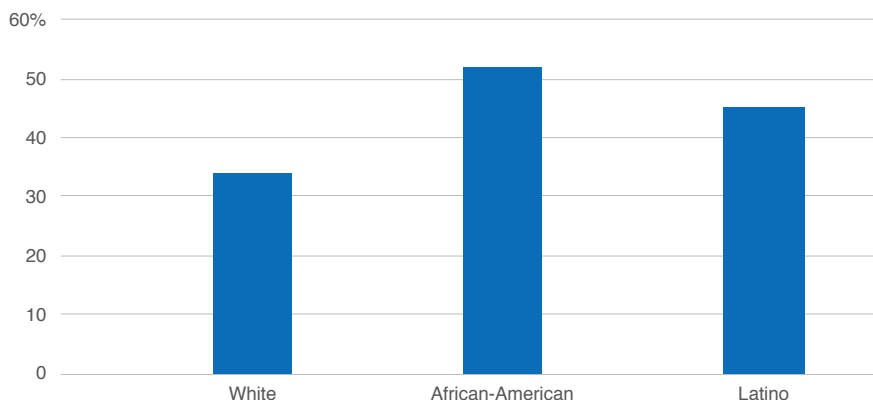
Credit checks bar qualified workers from jobs because poor credit is associated with unemployment, medical debt and lack of health coverage, which tell very little about personal job performance, but rather reveal systemic injustice, individual bad luck, and the impact of a weak economy.<sup>6</sup> The financial crisis and the Great Recession caused millions of Americans to be laid off from their jobs, see their home values plummet to less than their mortgage debt, and find their savings and retirement accounts decimated – all of which can affect credit history. Even seven years after the initial stock market crash, wages for all but the top 95th income percentile have not recovered.<sup>7</sup> Though job markets have recovered to some extent, the recovery has been slow and many Americans have been left behind.<sup>8</sup> These are largely factors that are outside an individual’s control and have no reflection on someone’s “moral character” or their ability to adequately perform their job. Rather, credit checks are unfair and discriminate against the long-term unemployed and other

disadvantaged groups, creating a barrier to upward mobility.

Because of the legacy of predatory lending and racial discrimination, people of color tend to have lower credit ratings than whites, and so may be disproportionately likely to be denied a job because of a credit check.<sup>9</sup> A persistent legacy of discriminatory lending, hiring, and housing policies has left people of color with worse credit, on average, than white households.<sup>10</sup> In recent years, historic disparities have been compounded by predatory lending schemes that targeted low-income communities and communities of color, putting them at greater risk of foreclosure and default on loans, further damaging their credit.<sup>11</sup> By evaluating prospective employees based on credit, employment credit checks can further extend this injustice.

Worryingly, credit reports are often riddled with errors. A Demos study of low- and middle-income households carrying credit card debt finds that 1 in 8 respondents who have poor credit cite “errors in my credit report” for their credit problems.<sup>12</sup> A Federal Trade Commission (FTC) study finds that five percent of consumers, amounting to 45 million Americans, had errors on at least one of their three major credit reports.<sup>13</sup> A follow-up study finds that majorities of these consumers still have outstanding errors on their credit report.<sup>14</sup> A 2011 industry-funded study by the Policy and Economic Research Council (PERC), found that 1 in 5 people who reviewed their credit report found incorrect information and 12.1 percent of those errors could have a material impact on their score.<sup>15</sup> As a result of employment credit checks, individuals can be disqualified from job because of a credit report that is not even factual.<sup>16</sup> As the *New York Times* editorial board noted, “the interest around this issue shows that more law makers are starting to realize

**Figure 1. Percentage of Study Participants Describing Their Credit As “Fair” or “Poor”**



Source: Amy Traub, 2014



how this unfair practice damages the lives and job prospects of millions of people.”<sup>17</sup>

The invasion of privacy is another concern when personal credit information is used in employment. Not only do credit reports reveal a great deal about an individual’s personal financial history, they also provide a window into even more deeply private matters such as medical history, divorce, and cases of domestic abuse. For example, surveys find that when a credit check is conducted, employers often ask individuals with flawed credit to explain why they are behind on their bills.<sup>18</sup> Given that past due medical bills make up the majority of accounts reported by collection agencies, many prospective employees will feel obliged to discuss their otherwise confidential medical histories as a pre-requisite for obtaining employment. Since divorce and domestic abuse are other leading causes of credit struggles, a discussion of these often painful and deeply private personal issues can also become compulsory if a job-seeker is asked to “explain” their poor credit to a prospective employer.

## STRENGTHS AND WEAKNESSES OF STATE LAWS ON EMPLOYMENT CREDIT CHECKS

**C**oncerns about employment credit checks led to numerous state laws to limit them: California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont, and Washington have all passed legislation. In 2014, Delaware passed a more limited law preventing public employers from using credit checks for employment decisions.<sup>19</sup> Chicago has also passed a law prohibiting credit checks from being used in employment decisions.<sup>20</sup> More recently, New York City banned credit checks, and made an effort to limit exemptions (see page 16).<sup>21</sup> There is evidence that there is broader interest, however, since thirty-nine bills in 19 states were introduced in 2014.<sup>22</sup> In addition, legislation has been presented at the federal level, including a bill by Sen. Elizabeth Warren (in the Senate) and Rep. Steven Cohen (in the House).<sup>23</sup> This report explores the effectiveness of the credit check laws, and finds that lack of clear enforcement mechanism, exemptions and a robust public outreach effort have all undermined the effectiveness of credit check laws.

### **Credit Check Laws Lift Employment in Areas with Poor Credit**

New research by Robert Clifford at the Federal Reserve Bank of Boston and Daniel Shoag at Harvard University's Kennedy School suggests that credit check laws are effective at increasing employment among job applicants with poor credit.<sup>24</sup> Drawing on credit bureau and employment data, the authors find that state laws banning credit checks increase overall employment in low-credit census tracts by between 2.3 and 3.3 percent. Despite exemptions that enable employers to continue conducting credit checks for many job categories, the authors find that credit check laws also led to a significant 7 to 11 percent reduction in employer use of credit checks.<sup>25</sup> The largest impact on jobs was found in the public sector, followed by employment in transportation and warehousing, information, and in-home services.

The authors find that as the use of credit information in hiring declined, employers elevated other employment criteria, increasingly requiring college degrees or additional work experience. Given that these factors contain more relevant information about

job performance than credit checks, this is a step forward.<sup>26</sup> However, inflating job requirements beyond what a given position genuinely demands may present its own problems, erecting new and unnecessary barriers to employment. Inflating employment criteria may help to explain a troubling finding of the study: African American workers experience slightly worse employment outcomes relative to white workers in states that have restricted employment credit checks. The authors of the study have acknowledged a number of uncontrolled variables (such as the over-representation of African Americans in public employment in states that have enacted employment credit check restrictions) may have skewed this result.<sup>27</sup> Nevertheless, it raises an important warning: credit check laws by themselves cannot eliminate employment discrimination, and policymakers must remain alert for the resurgence of discriminatory practices.

### **Credit Check Laws Include Unjustified Exemptions**

While state laws were ostensibly enacted to prevent employment credit checks from becoming an employment barriers for qualified workers, we find that these laws have been undermined by the numerous broad exemptions they contain. Currently, all state credit check laws include exemptions – job categories where credit checks continue to be permitted even as the law bans credit checks for other positions. Because these exemptions are often vague and cover large categories of workers, they have reduced the effectiveness of state laws. The most common exemptions are provisions that allow for a credit check if it is “substantially job related” or the employer is a financial institution. Other laws contain exemptions permitting credit checks for management positions, law enforcement jobs, or employees with access to cash or goods.

In an analysis of exemptions in state credit check laws, James Phillips and David Schein argue that states restricting employment credit checks “have virtually gutted those restrictions by exception.”<sup>28</sup> Legislators themselves have expressed concern about the significant exemptions that were ultimately included in the laws. In Vermont, Helen Head, Chair of the Committee on General, Housing & Military Affairs tells Demos that, “We are concerned that the large number of exceptions may make it more difficult to limit the practice of employer credit checks. In hindsight, I wish we had worked even harder than we did to limit the broad exclusions that were passed in the Vermont bill.” Vermont Representative Kesha Ram echoed the sentiment, noting that, “we included a

number of exemptions in terms of types of employment and that these may limit the effectiveness of the law.” These exemptions both make it more difficult for employees to know whether they can seek damages, and also more difficult for courts to rule in their favor. Further, exemptions can hamper enforcement, by making it more risky for the government agency tasked with enforcement to determine whether there has been a violation.

While these exceptions appear to have deeply hampered the effectiveness of these laws, their merit is dubious. The section below examines these exemptions and shows why most are unjustified and unnecessary.

- **Credit checks are not justified for employees handling cash or goods**

A number of state laws include exemptions permitting credit checks for employees that handle cash or have access to valuable property. These exemptions are based on the incorrect premise that a job applicant’s personal credit report can predict

**Figure 2. Number Of States With Exemption**



Source: Phillips and Schein, 2014

whether someone is likely to steal. TransUnion, a major credit reporting company admitted in public testimony, “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.”<sup>29</sup> As noted earlier in this report, poor credit scores reflect financial distress and racial disparities, not propensity to commit crimes.

- **Credit checks are not justified for employees with access to financial information**

The rationale for checking credit when hiring for positions with access to financial or other confidential information is the same as for employees who handle cash – a mistaken premise that poor credit can predict whether an employee will misuse information to steal or commit fraud. The credit reporting industry frequently cites the amount of money businesses lose to fraud annually to illustrate the seriousness of the problem.<sup>30</sup> However, as discussed above, there is little evidence that reviewing credit reports is an effective tool to screen out fraud-prone employees.

- **Credit checks are not justified for management positions**

Permitting credit checks for management or supervisory positions limits the advancement of people struggling to pay their bills, regardless of their qualifications. This is particularly troubling given racial disparities in credit quality and the lack of people of color in managerial positions.<sup>31</sup> Given the discriminatory impact of employment credit checks, creating exemptions for management or supervisory positions could statutorily create two tiers of job opportunity depending on race and class. In effect, exemptions that permit credit checks for managerial or supervisory positions would keep people who are struggling to pay their bills stuck on the bottom rungs of the job ladder, no matter how skilled they may be.

- **Credit checks are not justified for law enforcement positions**

Despite a lack of evidence that reviewing personal credit history can reveal how responsible, honest, or reliable an applicant will be on the job, many police departments continue

to conduct credit checks and reportedly disqualify candidates with poor credit.<sup>32</sup> This is particularly dangerous because using a faulty screening tool such as credit history may provide a false sense of security to law enforcement agencies if they erroneously believe a credit check will help to prevent them from hiring dishonest officers vulnerable to corruption. In addition, racial disparities in credit quality mean that the use of employment credit checks may make it more difficult for law enforcement agencies to hire and promote a racially diverse police force or one that better reflects the jurisdiction it is policing. As law enforcement agencies across the country continue to face decades-old concerns about sufficient opportunities for people of color to be hired and promoted within their ranks, the use of employment credit checks exacerbates this core civil rights concern.

- **Credit checks are not justified for employees of financial institutions**

Like other exemptions, a carve-out allowing banks and other financial institutions to continue doing credit checks is based on the misconception that someone who has faced financial challenges in their own life will not be a good employee at a financial institution. In fact, financial services is the *only* specific industry to have been the subject of a rigorous academic study, which concluded that credit reports do not predict job performance in a financial services job.<sup>33</sup> After analyzing employees holding jobs falling within a “financial services and collections” job category of a large financial services organization, the study found that information in the credit reports of these employees had no relationship with employee performance or employee terminations for misconduct (or any other negative reason).

- **Broad standards-based exceptions are entirely unjustified**

The worst categories of exceptions are those that permit credit checks based on broad standards, such as “relevance,” “fiduciary duty” or “substantially job related.” These exceptions are even less justified than exceptions for specific job categories, because they are overly expansive and leave many workers unprotected from the unfairness of employment credit checks. Such exemptions are particularly prone to abuse, giving employers almost unlimited leeway to circumvent the law.

- **To address concerns about federal preemption of state or local laws, an exemption permitting employment credit checks in cases where they are required by federal law is justified.**

Federal law mandates that an employment credit check be performed in a narrow range of cases, for example when hiring a mortgage loan originator.<sup>34</sup> To avoid a conflict between state and federal law that could result in litigation and the preemption of state law, permitting employment credit checks when they are explicitly required by federal law is a legitimate exemption.

As Phillips and Schein note, “nearly every state has articulated specific job related requirements that make clear when these exceptions are applicable and under what circumstances they will provide an employer with legally sufficient grounds to make a credit history check a requirement or condition of the employment.” They further note that, “exceptions to the ten state statutes have virtually swallowed those states’ legal prohibitions [indicating] that under state law, an employer is virtually free to utilize credit reports to make employment decisions.”<sup>35</sup>

### **Credit Check Laws Go Largely Unenforced**

States have a range of enforcement mechanisms for laws restricting employment credit checks. Some states give enforcement authority to the Department of Labor/Labor Commission (Connecticut, Colorado, Maryland, Nevada, Oregon) others to the Attorney General (Washington), one to the Department of Fair Employment and Housing (California), and one to the Civil Rights Commissioner (Hawaii) and Vermont splits enforcement between two agencies. In addition, Hawaii, Illinois, Nevada, Oregon and Vermont allow employees or jobseekers harmed by violations of the law to bring a private lawsuit against the violator. One significant shortcoming of many state enforcement efforts is that states are making little investment in investigating employment and hiring practices to detect violations of the law. Instead, the burden is placed on employees and job-seekers who had their credit checked in violation of the law to file a complaint before any action can be taken. Because potential employees may not know a violation has occurred, or even know that they are protected from employment credit checks, placing the burden on employees makes it far more likely that these laws will go unenforced.

Demos contacted state officials for insight on how these laws are being enforced.

- In Connecticut, Nancy Steffens, the Communications Director of the Department of Labor tells Demos that there have been no complaints found to be meritorious. In the four year period since the law went into place, only two complaints had been filed with the Wage and Workplace standards division.
- In Maryland, Geoff Garner, the Program Administrator of the Worker Classification Protection Unit, tells Demos that “only two actual complaints since the law went into effect. Both complaints were investigated and resolved informally (without citations or fines).”
- Charlie Burr, the Communications Director for the Oregon Bureau of Labor and Industries provided data on the eight cases that have been filed since the law was passed in 2010, which he notes is, “important worker protection, but it’s still relatively new.” The data he sent include eight cases over a four year period, with two under investigation at the time of inquiry. Three of the cases were closed because no substantial evidence of a violation was found. Another was settled privately, another withdrawn from court and the final led to a negotiated conciliation.
- In Vermont, one official in the Civil Rights Department of the Attorney General tells Demos that credit checks are “not really on our radar” at the office mainly because the department doesn’t have authority to audit and thus must wait for complaints. However, since only one complaint was ever filed, and the adverse consequence stemmed from a criminal background check, not an employment credit check, no enforcement resulted. Vermont tasked the Vermont Human Rights Commission with enforcing the credit check law for state employees. However, an official there tells Demos, “The HRC has not gotten any complaints about credit reporting since the law was enacted.”
- In Colorado, the Department of Labor is tasked with enforcing the employment credit check law. Elizabeth



Funk, Labor Standards Administrator, tells Demos, “Since 2013, the Division has received several complaint forms. I would say approximately 10 - 20 complaints, and over 100 inquiries in the form of email and phone calls.” She reports that, “Of the approximately 10-20 complaints, I would say half have led to an investigation conducted by our Division. The law gives the Division discretion to assess a penalty if an employer is found in violation of the law. “ As of yet, however, she notes that, “We are still in middle of the investigations so no penalties have been levied at this time.”

- In Washington, enforcement falls under the state’s Fair Credit Reporting Act, which is enforced by the Attorney General. The Attorney General’s Office declined to make information about the number of complaints received or actions taken available.
- In California, the department tasked with enforcement, the Department of Fair Employment and Housing, tells Demos that they don’t have a central database of complaints, and therefore could not provide an estimate. Herbert Yarbrough, the Administrator of the Department of Fair Employment and Housing, said that he couldn’t remember any instances. However, as was found in Maryland and Vermont, complaints that were filed tended to be lumped in with other violations.
- In Hawaii, Bill Hoshijo, the Executive Director of the Hawaii Civil Rights Commission, tells Demos that “a query of our database found no complaints raising a claim of employment discrimination based on credit history or credit report from enactment in 2009 through the present.”

Hawaii, Illinois, Nevada, Oregon and Vermont allow employees or jobseekers harmed by violations of the law to bring a private lawsuit against the violator. A search of Westlaw and Lexis Nexis returned no cases of individuals pursuing suits in these states.

## Greater Public Awareness Would Increase Effectiveness

Since states depend on public complaints to initiate an investigation and enforcement of their employment credit check laws, public awareness of the laws among employees and job seekers is critical to preventing the legislation from becoming a dead letter. It is equally essential that employers are aware of the law and understand their responsibilities so that they can comply. Demos asked state agencies responsible for enforcing the laws about any public awareness or outreach efforts surrounding the laws. No state pursued an advertising campaign (although see page 16 for details about the New York City law, which included a model outreach campaign). Yet some states pursued more outreach than others. It is notable that Colorado, which reported the greatest number of complaints under the employment credit checks law, was also among the states that reported a more vigorous public outreach effort to help workers and employers understand rights and responsibilities under the law.

- The Communications Director for the Oregon Bureau of Labor and Industries, reports that local newspapers had “initial coverage during the debate, a wave of coverage after its passage, and another round after the law took effect.” He cited four articles to this extent.<sup>36</sup>
- The Program Administrator of the Maryland Worker Classification Protection Unit tells Demos that in his state, “When a new law goes into effect, we don’t generally do outreach, but we try to post as much helpful information on our website as possible.”
- Elizabeth Funk the Labor Standards Administrator for the Colorado Division of Labor tell Demos that, “ We have a webpage on our Division of Labor website dedicated to this topic... On our webpage, we have a fact sheet available for individuals to download. We also have frequently asked questions on this law. There is also a specific complaint form with accompanying instructions that explains the basics of the law.” She notes that in addition, “In an effort to get the word out, the agency’s monthly and quarterly employer newsletter had articles and blurbs about this new law.” Funk further notes efforts to inform employers of the law. “Since the law passed, the Division has presented to

several law firms, employers, and bar associations. During those presentations, we have explained this new law and the available resources the Division has on our website.”

- Bill Hoshijo, the Executive Director of the Hawaii Civil Rights Commission tells Demos that, “There was initial outreach and education on the new law after Act 1 was enacted in 2009.” He included in his correspondence a copy of the press release, as well as a flier that was used for public outreach regarding recent developments. He notes that, “In 2010, we continued to include information on the credit history and credit report protection, including inserts on the new law in all outreach efforts.”

No other states could point to specific media outreach.

A look at other types of employment legislation underscores the importance of broad public awareness. For example, a study of New York City workers finds that employers frequently shirk common labor protections like the minimum wage.<sup>37</sup> One study of workers in Chicago, New York City and Los Angeles stunningly finds that 76 percent of workers “were not paid the legally required overtime rate.”<sup>38</sup> A study of Philadelphia’s Restaurant Industry finds that 61.5 percent of workers surveyed “did not know the correct legal minimum wage.”<sup>39</sup> Regarding illegal pay secrecy policies, Craig Becker, general counsel for the AFL-CIO tells *The Atlantic* that, “The problem isn’t so much that the remedies are inadequate, but that so few workers know their rights.”<sup>40</sup>

### Ending Credit Discrimination in New York City

New York City’s Stop Credit Discrimination in Employment Act was signed into law by Mayor Bill de Blasio on May 6, 2015 and went into effect on September 3, 2015. The legislation, sponsored by City Councilmember Brad Lander, amends the City’s Human Rights Law to make it an unlawful discriminatory practice for an employer to use an individual’s consumer credit history in making employment decisions. While New York’s law is too new to be evaluated for its effectiveness, the narrowness of the

bill's exemptions, the robust public awareness campaign, and strong enforcement mechanisms make it the strongest restriction on employment credit checks enacted anywhere in the U.S. at the time of this report's publication. However, exemptions that were added to the law as the result of political negotiations should not be considered a model for other jurisdictions.

- **How the law was enacted:** The Stop Credit Discrimination in Employment Act was the result of a multi-year campaign by a broad coalition of labor, community, student, legal services, civil rights, and consumer groups. The coalition organized New Yorkers impacted by employment credit checks to tell their stories, met with City Council Members and other municipal officials, held rallies and press conferences, published op-eds, and distributed out fliers. Initially, the legislation contained a single exemption, permitting employment credit checks only in cases where the credit check was required by state or federal law in order to avoid pre-emption challenges. However, opposition from the city's business lobby, law enforcement officials, and other interests resulted in a number of exemptions that ultimately weakened the law. Still New York City managed to avoid many of the broadest exemptions contained in the other state credit check laws discussed in this report.
- **What's in the law:** The Stop Credit Discrimination in Employment Act prohibits employers from requesting a credit check or inquiring about an employee or job seekers' credit history when making employment decisions for most positions. The law contains exemptions for police officers and peace officers; executive-level jobs with control over finances, computer security, or trade secrets; jobs subject to investigation by the city's Department of Investigation; and positions where bonding or security clearance is required by law. These exemptions were the result of local political compromises and should not be considered a model for future legislation. As part of New York's Human Rights law, the employees and job seekers are protected from retaliation for making a charge.

- **Strong enforcement mechanisms:** If an employer requests a credit check in violation of the NYC law, employees and jobseekers have one year to file a complaint with the city's Commission on Human Rights. Employers found to have violated the law may be required to pay damages to the employees affected and may be subject to civil penalties of up to \$125,000. A willful violation may be subject to a civil penalty of up to \$250,000.
- **A broad public awareness campaign:** One distinguishing feature of New York's law is the public awareness campaign undertaken by the city, which included ads on subways and buses and on the cover of the city's free newspapers alerting employees and employers about the new law; fliers about the law distributed at subway stations during the morning commute; and a social media campaign with a unique hashtag #CreditCheckLawNYC. The NYC Commission on Human Rights also set up web pages clearly explaining the law and its parameters, offered a series of free "know your rights" trainings for employees/job seekers and "know your obligations" trainings for employers, and published brochures about the law in the city's ten most spoken languages.

## POLICY RECOMMENDATIONS

**E**mployment credit checks are a discriminatory barrier to employment. Our research suggests that states motivated to curtail this practice can enact more effective legislation by:

- **Avoiding unjustified exemptions:** The exemptions in existing state laws are not substantiated by research or other evidence showing that credit checks are valid for the exempted positions. Indeed, no peer-reviewed studies find that a job applicant's personal credit report is a reliable indicator of the applicant's future performance on the job or likelihood of committing fraud or any other form of misconduct or crime. It makes sense for credit check laws to include an exemption that prevents state or local laws from conflicting with federal law and potentially triggering a preemption challenge, but no other exemption is empirically justified.
- **Launching a public outreach effort:** To ensure that workers know their rights and employers know the law, states should engage in extensive public outreach. Currently, media outreach primarily consists of a state website explaining the law. Even the stronger efforts rely heavily on media coverage, which may not occur. Given the relative obscurity of credit check laws, vigorous efforts are required. The outreach effort undertaken by New York City's Commission on Human Rights should be considered a model.
- **Investigating compliance:** Labor departments and other agencies tasked with enforcing the law should have the ability to audit compliance, rather than only respond reactively to complaints. The right to pursue individual lawsuits, though it has been under-utilized to date, should remain a part of these laws.
- **Clear record keeping:** In one state that Demos contacted, California, there was not a central database of complaints that could be used to determine how many complaints had

been received. In another, Washington, data are only made available to the public via a complaint form that requires an individual to select a specific business. To better track the effects of legislation, states should maintain a database of complaints and enforcement actions.

## CONCLUSION

**T**he use of employment credit checks creates barriers to opportunity and upward mobility, exacerbates racial discrimination, and can lead to invasions of privacy. Yet because of unjustified exemptions in the laws, lack of public awareness, and a dearth of proactive enforcement, laws against credit checks have not been as effective as they should be. Nevertheless, despite inconsistent coverage and enforcement, laws may have deterred credit checks. The number of employers reporting that they used credit checks when hiring for some or all positions fell from 60 percent in 2010 to 47 percent in 2012, according to the Society for Human Resources Management.<sup>41</sup> Both the laws, and the lack of evidence that credit checks are effective have been cited as reasons for the decline.<sup>42</sup> Research suggests the laws reduced the use of credit checks by between 7 and 11%.<sup>43</sup> However, it is worrying that nearly a decade since the first law was passed, Demos has failed to find evidence that a single employer fined for using an illegal credit check on a prospective employee.



## ENDNOTES

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