

FAQs for Stop Credit Discrimination in Employment Act

1. Who is protected under this law?

Many people are protected under this law, including part-time workers, undocumented workers, interns, many independent contractors, and probationary workers. If an employer has four or more employees, they must comply with the law.

2. How do employers comply with this law?

Employers should review forms used in their hiring and reassignment processes to ensure that they do not require individuals to consent to a credit check. Employers can be sure they are complying with this law by ceasing to ask potential or current employees about their credit and by not utilizing a service that reports on their potential or current employees' credit.

3. What are some examples of credit information that an employer cannot ask about?

Employers cannot inquire about payment history or credit worthiness, credit standing, or credit capacity. That includes credit card debt, child support, student loans, a foreclosure, missed or late payments, bankruptcies, judgments, and liens.

4. How can an employer know whether it fits an exemption and is allowed to check a current or potential employee's credit?

The Commission has guidance about what positions are exempted from the SCDEA. Because the exemptions do not apply to an entire industry or employer, however, an employer will have to examine whether a particular position is exempted from the SCDEA.

If an employer believes a certain position is exempted, it should document why. The SCDEA requires the Commission to report on employers' use of the exemptions and, if an employer is investigated by the Commission, we will expect an employer to justify its use of an exemption.

5. What are examples of some of the exemptions?

The SCDEA exempts positions where a credit check is required by law, police and peace officers, and high-level positions involving trade secrets, financial authority, and information technology. The exemptions do not include most entry-level, non-salaried employees. They do not include bank tellers, cashiers, salespeople, clerical workers, administrative staff, restaurant and bar workers, and private security employees.

6. What if an employer claims that a position is exempted, but it is mistaken?

Employers will be held liable even if they are honestly mistaken about whether or not an exemption applies.

7. What rights does a member of the public have when her or his credit is checked by an employer?

If an employer meets an SCDEA exemption and is able to check an employee's credit, employers must still follow the federal New York Fair Credit Reporting Acts. Under these laws, employers must give applicants notice and get their permission before requesting a consumer report. If an employer wants to use a consumer report against an applicant, it must give the person a copy of the report and a reasonable

time to review it before making a final decision. Lastly, if a decision is made against an applicant, she or he must be told how to request a copy of the report from the company that created it.

8. Can a consumer reporting agency that provides information to an employer violate the SCDEA?

Yes. The City Human Rights Law makes it unlawful to aid or abet any form of prohibited discrimination, including credit discrimination.

9. How can a person know whether her or his credit is the reason why she or he was denied employment?

A person with poor credit or some kind of negative information on their credit report should keep note of when an employer asks for information, like their date of birth and social security number, that would allow an employer to check her or his credit. People with poor credit who feel like that has prevented them from getting a job should contact the Commission, and we can investigate whether the employer did so.

10. Do certain employers or industries tend to check their employees' credit more than others?

Small businesses usually do not check employees' credit. Instead, larger employers in the restaurant and retail industry make employment decisions using consumer credit history.

11. Where there is a state or federal law requiring consumer credit checks before hiring for a certain position, may the employer periodically re-check credit after the employee has started in that position?

Employers who may be "required by state or federal law or regulations or by a self-regulatory organization" to use an individual's consumer credit history for employment purposes are specifically exempted from the provisions of the SCDEA. N.Y.C. Admin. Code § 8-107(24)(b)(1). If the applicable law or regulation only requires pre-employment credit checks, then choosing to re-check an employee's consumer credit history—after the employee has started in the position—will subject the employer to the SCDEA's provisions. Employers who are required by law or regulation to periodically re-check an employee's consumer credit history remain exempt from the SCDEA.

12. Does the trade secrets exemption apply to Human Resources personnel with access to confidential compensation data?

No, because a key element of the SCDEA's definition of trade secrets is that the information must "be the end product of significant innovation." N.Y.C. Admin. Code § 8-107(24)(d)(3). Although compensation data is often confidential and subject to efforts to maintain its secrecy, it is not the type of information that is "the end product of significant innovation." Therefore, positions with regular access to such information are not exempt.

13. Does the exemption for positions having signatory authority over third party funds or assets valued at \$10,000 or more include positions in financial institutions who are signatories for transactions with the institution's clients' money in amounts of \$10,000 or more?

Yes – if the positions have signatory authority over third-party funds of \$10,000 or more, including clients' funds, those positions are exempt from the law.

14. Does the exemption for positions having signatory authority over third party funds or assets valued at \$10,000 or more include positions in financial institutions who oversee large transactions between companies and are responsible for verifying the proper settlement of funds, even if they are not “signatories”?

Yes – if the positions are required to verify that a transaction of more than \$10,000 is settled, those positions are exempt from the law.

15. Does the exemption for positions having signatory authority over third party funds or assets valued at \$10,000 or more include positions where employees have corporate credit cards with limits above \$10,000?

It depends. If the position provides for a credit card that is paid directly by the employer and the employee may use the credit card to draw on employer funds without preliminary or subsequent approval in amounts above \$10,000, the position is exempt. If the position provides for a credit card that requires the employee to pay upfront and get reimbursed by the employer or if the position provides for a credit card that requires the employee to submit expense reports or other records of expenses for review and approval, even in amounts above \$10,000, the position is not exempt from the SCDEA.