

Austin, Texas, Passes Ordinance Banning Pre-Offer Inquiry into Applicant's Criminal History

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Austin, Texas, has enacted a city ordinance prohibiting employers from asking about or considering a job applicant's criminal history before making a conditional offer of employment. Austin is the first city in the South to enact such a "Fair Chance" or "Ban the Box" law.

Under the new Austin ordinance, enacted on March 24, 2016, an employer of at least 15 Austin-based employees *may not*:

- Publish information about a job that states or implies that applicants with criminal histories are automatically disqualified from consideration;
- Ask about an applicant's criminal history on a job application;
- Ask for information about an applicant's criminal history or consider an applicant's criminal history before the employer makes a conditional offer of employment to the applicant;
- Refuse to consider an applicant who does not provide criminal history information before receiving a conditional offer of employment; or
- Take adverse action (refusing to hire, refusing to promote, or the revocation of an offer of employment or promotion) against an individual based on his or her criminal history unless the employer has a good faith belief, after making an individual assessment of the applicant, the criminal history and the job, that the criminal history bears a direct relation to the duties and responsibilities of the job, and makes the individual unsuitable for the job.

The statute also requires employers who take adverse action on the basis of criminal history to inform the applicant in writing of that fact.

The ordinance imposes no criminal penalty or private right of action. Instead, complaints of violation of the ordinance will be investigated by the City's Fair Employment/Fair Housing Office. Violators may be fined \$500 per job at issue, but no fine may be assessed for an offense occurring during the first year of the ordinance.

Austin employers should consider:

- Reviewing their job applications to remove questions about an applicant's criminal history;
- Establishing a protocol for obtaining and considering criminal history information, performing individualized assessments of that information, and notifying in writing any applicant disqualified because of criminal history; and
- Training employees involved in the hiring process regarding the ordinance's requirements.

Jackson Lewis attorneys are available to answer inquiries and provide assistance regarding this and other workplace developments.

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