

Maine Limits Employers from Requesting Criminal History of Applicants Pre-Offer

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Maine's new "[An Act Relating to Fair Chance in Employment](#)" prohibits employers from requesting an applicant's criminal history on their initial employment applications. An employer may ask about an applicant's criminal history during an interview or once the applicant has been determined qualified for the position.

The new law was signed by Governor Janet Mills on July 6, 2021, and goes into effect October 18, 2021.

There are exceptions to the prohibition. An employer may ask about criminal convictions on the application if:

- The position is one in which any federal or state law or regulation or rule creates a mandatory or presumptive disqualification based on a conviction for one or more types of criminal offenses and the questions on the initial employee application form are limited to the types of criminal offenses creating the disqualification;
- The employer is subject to an obligation imposed by any federal or state law or regulation or rule not to employ a person, in either one or more positions, who has been convicted of one or more types of criminal offenses and the questions on the initial employee application form are limited to the types of criminal offenses creating the obligation;
- The employer is required by federal or state law or regulation or rule to conduct a criminal history record check for the position for which the prospective employee is applying; or
- The employer participates in a program that encourages employment of persons with criminal convictions.

An employer also may not state, either on the application or in an advertisement, that a person with a criminal history cannot apply or will not be considered for a position. The exceptions to this rule are where federal or state law, regulation, or rule create a mandatory disqualification based on a conviction or the employer is required under federal or state law, regulation, or rule to conduct a criminal background check.

If an employer enquires about an applicant's criminal history or an applicant's criminal history is revealed otherwise during the process, a best practice remains: giving the candidate the opportunity to explain the conviction and the circumstances around it. An individualized assessment gives the individual the opportunity to present information (for example, about any rehabilitation) and the employer to assess a variety of factors to determine job-relatedness and whether the decision is consistent with business necessity.

Individuals or the state Department of Labor may bring a civil action for violations of this statute and the Attorney General may investigate and bring an enforcement action for complaints of employment discrimination under this new statute.

Jackson Lewis attorneys will continue to monitor this and other employment law developments. Background check laws are constantly evolving. If you have any questions about the new law, updating application forms, or workplace training, please contact the Jackson Lewis attorney(s) with whom you regularly work.

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