

Illinois Passes Ban-the-Box Legislation Limiting Employers' Criminal Background Checks on Applicants

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A new Illinois law prohibits employers from inquiring into a prospective employee's criminal background on its application or during the early stages of application review.

The "Job Opportunities for Qualified Applicants Act" ([House Bill 5701](#)), signed by Governor Pat Quinn on July 19, 2014, prohibits employers, or any agent of an employer, from considering or inquiring into a job applicant's criminal record or history until the individual has been determined qualified for the position and notified of an impending interview, or, if the applicant will not be interviewed, until after a conditional offer of employment is made. The Act explicitly excludes three categories of job applicants from this restriction. Applicants for all other positions will be entitled to the protections of the Act.

Alleged violations of the Act will be investigated by the Illinois Department of Labor and violations will result in progressively substantial civil penalties. The Act becomes effective on January 1, 2015.

Employers Covered

The Act applies to any employer that is considering an applicant. An "employer" is any person or private entity that has at least 15 employees in the current or preceding calendar year, and any agent of such a person or entity. An "applicant" is any person pursuing employment with an employer or with or through an employment agency. "Employment" means any occupation or vocation.

The Act does not apply in the following situations:

- If the employer is required to exclude applicants with certain criminal convictions from employment under federal or state law;
- If a standard fidelity bond or an equivalent bond is required and a conviction of certain criminal offenses would disqualify the applicant from obtaining such a bond, the employer may inquire whether the applicant has ever been convicted of those offenses prior to determining whether the individual is qualified for the position; and
- If the employer hires individuals licensed under the Emergency Medical Services (EMS) Systems Act.

The Act *does not preclude* an employer from notifying applicants in writing of specific offenses that will disqualify an applicant from employment in a particular position due to federal or state law or the employer's policy.

Enforcement

The Act grants the Illinois Department of Labor investigatory power over alleged violations. If the Department finds that a violation has occurred, the Director of Labor may impose civil penalties as follows:

1. A written warning on the first offense with notice regarding penalties for subsequent violations. The employer has 30 days to remedy the violation.
2. A civil penalty of up to \$500 on the second offense *OR* if the first offense is not corrected within 30 days of notice.
3. A civil penalty of up to \$1,500 on the third offense *OR* if the first offense is not corrected within

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60 days of notice.

4. Additional civil penalties of up to \$1,500 for every subsequent violation *OR* if the first violation is not remedied within 90 days of notice, additional penalties of up to \$1,500 for every 30 days that passes without correction.

The Attorney General will represent the Department in any suit brought in any circuit court or in any administrative adjudicative proceeding under the Act. Any money recovered will be deposited into the Job Opportunities for Qualified Applicants Enforcement Fund, which will be used to enforce employer violations of the Act.

Recommendations

As many employment applications ask about prior convictions, the new law will significantly affect the application process. Covered employers should review their employment application materials and make any necessary revisions before January 1, 2015. They should not conduct a criminal background check or ask about an applicant's criminal background prior to scheduling an interview or, if the applicant will not be interviewed, before making a conditional offer of employment. Employers also should review job descriptions and requirements carefully to determine whether any positions fall under one of the listed exceptions. Finally, they should remove all questions about criminal convictions from applications used in Illinois for positions that are not exempt from the Act.

Criminal status is not a protected class under federal law. However, employers will be liable under state law for misuse of criminal history information about an applicant or employee. Illinois employers may not request information about or make adverse employment decisions based on arrest records or convictions that have been impounded, sealed, or expunged. 775 ILCS 5/2-103, *also* 20 ILCS 2630/12. Nothing in the "Job Opportunities for Qualified Applicants Act" should be read to contradict these requirements or the requirements of any other federal or state regulations regarding the use of employee criminal history records.

If you have questions regarding this new statute or need assistance to review application materials and procedures to ensure compliance with the Act, please contact the Jackson Lewis attorney with whom you regularly work.

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