

New Minnesota Law Will Render Most Employment Applications Now In Use Unlawful

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On May 13, 2013, Minnesota Governor Mark Dayton signed a new law prohibiting Minnesota's private employers from inquiring into, considering or requiring an applicant for employment to disclose his/her criminal history (1) until *after* the applicant has been selected for an interview or (2) if there is no interview, until *after* a conditional offer of employment has been made to the applicant. Minn. Stat. § 364.021. Most public (governmental) employers have been subject to this requirement for some time. This new law takes effect January 1, 2014, for private (non-governmental) employers and is in keeping with Minnesota's long stated public policy of encouraging and contributing to criminal offenders' rehabilitation and return to the workforce. The new law includes some exceptions allowing for earlier inquiry into an applicant's criminal history, including for employers who have a statutory duty to conduct a criminal background check or otherwise take into consideration an applicant's criminal history during the hiring process.

If your company is like most, this new law will render your current employment application and/or hiring process unlawful. The new law means most Minnesota employers must remove all questions or "check-the-box" inquiries regarding an applicant's criminal history from their employment applications. The law provides that an employer may, however, include a notice on its employment application that the company's policy is to require applicants to disclose criminal history if selected for an interview, or if there is no interview, after a conditional offer of employment has been made, and may make employment decisions on this basis depending on the nature of the applicant's criminal history and the position sought. It is possible such a notice will deter applicants with a criminal history from applying for employment, presumably saving the employer some time and resources in its hiring process.

Under the new law, if an employer wishes to ask applicants about criminal history after an interview has been granted, the employer should create a written communication to applicants confirming that an interview has been requested and making such inquiry with instructions for how to respond. If an offer of employment will be made without an interview, the employer should include language in the offer letter stating that the offer is conditioned on the applicant's response to the employer's inquiry as to criminal history, and include such inquiry with instructions for how to respond.



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As has been the case for some time, we recommend that any such inquiry, whether coupled with an invitation for an interview or a conditional offer of employment, be uniformly applied company-wide (or for designated positions), be limited to convictions, and include a disclaimer that a conviction will not necessarily disqualify the applicant from employment. In addition, we continue to recommend that employers consider applicants' criminal histories in conformance with the Equal Employment Opportunity Commission's recent guidance on the topic. For more information on this issue, please see Anne Radolinski's article, **Arrest and Conviction Records - A Fresh Look**.

For a review of how this new law affects your company's application for employment, offer letter or hiring practices, please contact an attorney in Fredrikson & Byron's **Employment & Labor Law Group**.