

Illinois's New "Ban the Box" Law Prohibits Asking About Criminal Histories on Job Applications

Colleen G. DeRosa | July 21, 2014

On July 19, 2014, Illinois Governor Pat Quinn signed the [Job Opportunities for Qualified Applicants Act](#), making Illinois the fifth state to bar private employers from asking job applicants about their criminal backgrounds until the applicants are deemed "qualified" for the positions. This law expands to private employers the "ban the box" rules that have applied to public sector jobs in Illinois since October, 2013.

Effective January 1, 2015, employment agencies and private employers with 15 or more employees will no longer be able to inquire about or consider an applicant's criminal background until after the applicant has been notified that he or she will be interviewed, or, if there will be no interviews, after a conditional offer of employment is made.

Three limited exceptions to the new rules apply to certain applicants and employers: (1) applicants licensed under the Emergency Medical Services (EMS) Systems Act may be asked about their criminal histories; (2) employers subject to state or federal laws that require applicants with certain criminal convictions be excluded may inquire; and (3) employers that require a standard fidelity bond may seek this information when an applicant's criminal conviction would disqualify the individual for a bond.

Under the [Job Opportunities for Qualified Applicants Act](#), applicants do not have a private right to sue employers directly for alleged violations of the law. Rather, the Illinois Department of Labor is charged with enforcing the act. Statutory penalties include the issuance of a written notice and a 30-day remedy period for the first violation; a \$500 fine for a second violation or for a first violation that has not been remedied in 30 days; \$1,500 for a third violation or for a first violation that has not been remedied in 60 days; and an additional \$1,500 for each subsequent violation or, if the first violation has not been remedied in 90 days, for every 30 days that passes.

While the act adds another layer of protection for job applicants in Illinois, it will increase the level of scrutiny on employers' hiring practices. Under the [Illinois Human Rights Act](#), employers, employment agencies, and labor organizations are already prohibited from inquiring into or basing their employment decisions on the fact of an arrest or expunged, sealed, or impounded criminal history record. The same prohibitions apply to government contractors. And the U.S. Equal Employment Opportunity Commission (EEOC) vigorously enforces its [Guidance on Consideration of Arrest and Conviction Records in Employment Decisions](#), which requires a multi-factor individualized assessment of employers' decisions not to hire applicants based on the applicants' criminal convictions.

Before the new Illinois law becomes effective, employers should ensure that their hiring processes are up-to-date and in full compliance with the law. Job applications should no longer request any criminal history information and background checks should not be run until after applicants have been selected for interviews or made conditional offers of employment (if the employer is not planning on conducting interviews). It is also important to carefully consider the defensibility of decisions not to hire applicants based on criminal record information. Such decisions will be scrutinized by the EEOC, the Illinois Department of Human Rights, and now the Illinois Department of Labor.

Colleen G. DeRosa is an associate in the Chicago office of Ogletree Deakins.

July 21, 2014 | TAGS: [criminal record information](#), [EEOC enforcement](#), [Guidance on Consideration of Arrest and](#)

Conviction Records in Employment Decisions, hiring process, Illinois Department of Human Rights, Illinois Department of Labor, Illinois employment screening and criminal background checks, Illinois Governor Pat Quinn, Illinois Human Rights Act, job applicant criminal backgrounds, Job Opportunities for Qualified Applicants Act, U.S. Equal Employment Opportunity Commission, “ban-the-box”.

Related Posts:

1. **R.I. Enacts “Ban-the-Box” Law, Limiting Employer Inquiries into Applicants’ Criminal Histories**
2. **San Francisco Passes Fair Chance Ordinance Restricting Employers’ Ability to Use Criminal History Information**
3. **Illinois State Police Releases Sign Required to Prohibit Concealed Weapons on Property**
4. **New Law on the Horizon for Illinois Employers Settling Tort Claims**

Posting and viewing of the information on this website is not intended to constitute legal advice or create an attorney-client relationship.
©2014, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All rights reserved.

Source URL: <http://blog.ogletreedeakins.com/illinois-new-ban-the-box-law-prohibits-asking-about-criminal-histories-on-job-applications/>