

## City of Chicago Expands “Ban the Box” Law to Smaller Employers and City Agencies

Colleen G. DeRosa | January 8, 2015

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Effective January 1, 2015, the City of Chicago expanded the coverage of [Illinois’s “ban the box” law](#) within city limits. The amended Human Rights Ordinance, Section 2-160-010 of the Municipal Code of Chicago, effectively makes Illinois’s [Job Opportunities for Qualified Applicants Act](#) applicable to private employers that are licensed in Chicago and/or maintain a business facility within city limits and that have fewer than 15 employees and to a number of City “agencies” including the City of Chicago, Chicago Public Schools, Chicago Park District, Chicago Transit Authority, City Colleges of Chicago, the Chicago Housing Authority, and the Public Building Commission of Chicago.

Employers subject to the ordinance, like those subject to the state law, may not inquire about, consider or require disclosure of an applicant’s criminal record or criminal history until after the applicant has been determined qualified for the position and notified that he or she will be interviewed or, if there will be no interviews, after a conditional offer of employment has been made. The ordinance provides for the same limited exceptions that apply under state law:

1. The ordinance includes an exception for applicants who are licensed under the Emergency Medical Services (EMS) Systems Act.
2. The ordinance includes an exception for employers that are subject to state or federal laws that require applicants with certain criminal convictions to be excluded from employment.
3. The ordinance provides an exception for employers that require a standard fidelity bond where an applicant’s criminal conviction would disqualify the individual for a bond.

An additional aspect of the ordinance, according to which an employer may not disqualify an applicant based solely on a criminal conviction, applies only to certain City agencies. In such cases, the City agency’s decision as to whether to employ the applicant must take into account the following factors:

1. the nature of the applicant’s specific offense or offenses;
2. the nature of the applicant’s sentencing;
3. how many convictions the applicant has;
4. the length of time that has passed following the applicant’s most recent relevant position;
5. the relationship between the applicant’s crimes and the nature of the relevant position;
6. the age of the applicant at the time of his most recent conviction;
7. “any evidence of rehabilitation, including, but not limited to, whether the applicant has completed a treatment or counseling program or received a certification of relief from disabilities or good conduct”;
8. the extent to which the applicant has been open, honest, and cooperative in examining his or her background; and
9. any other information pertinent to the applicant’s suitability for the relevant position.

These factors are similar to the U.S. Equal Employment Opportunity Commission’s (EEOC) [multi-factor individualized assessment analysis for excluding an applicant from employment based on past criminal conduct](#), as outlined in the EEOC’s [Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions](#).

There is one aspect of the amendments that applies to all Chicago employers, regardless of size. If a private employer or City agency decides not to hire an applicant based, entirely or partially, on the applicant’s criminal record or history, the employer is required to

inform the applicant of the basis for its decision.

The City of Chicago's Commission on Human Relations is tasked with enforcing the ordinance. Violators face a fine ranging from \$100 to \$1,000 for each offense, and any City licensee who violates the ordinance may be subject to license discipline.

### **Practical Impact of the “Ban the Box” Expansion**

The primary impact of the ordinance is on Chicago employers with fewer than 15 employees, which are not subject to the state's “ban the box” law. Moreover, the ordinance affects all employers—regardless of size—with its requirement that employers notify applicants if they were not selected for employment on the basis of their criminal history. Going forward, it will be important for Chicago employers to carefully consider the defensibility of decisions not to hire applicants based on criminal record information—as such decisions will also be scrutinized by the EEOC, Illinois Department of Human Rights, and the Illinois Department of Labor.

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