

Service

Labor & Employment

Governor Quinn Approves Illinois "Ban the Box" Legislation Limiting Ability of Private Employers to Inquire About Past Criminal Convictions

Last week, Illinois Governor Pat Quinn signed the Job Opportunities for Qualified Applicants Act (the Act) into law. The Act prohibits private employers (with more than 15 employees) and employment agencies from inquiring about, considering or requiring disclosure of an applicant's past criminal convictions until after the employer has determined that an applicant is qualified for the position and has offered the applicant an interview. If no interviews are conducted, the Act prohibits employers from inquiring about, considering or requiring disclosure of an applicant's criminal convictions until after the employer has extended a conditional offer of employment. The law will take effect on January 1, 2015.

There are several limited exceptions to the Act. First, the Act does not apply to positions where federal or state law requires employers to exclude applicants with certain criminal convictions. Second, if a standard fidelity bond or other bond is required for the position and certain convictions would disqualify the applicant from obtaining the bond, the employer may inquire about convictions for those offenses. Finally, if the employer hires individuals licensed under the Emergency Medical Services Systems Act, the Act does not apply.

The Act does not prohibit Illinois employers 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.

The Illinois Department of Labor has been tasked with enforcing the Act and investigating alleged violations. Employers that do not comply with the Act will be subject to civil penalties outlined in the Act. Multiple violations and/or the failure to remedy violations may subject employers to higher penalties.

The Job Opportunities for Qualified Applicants Act expands existing Illinois law and adds Illinois to a growing number of states that have enacted “ban the box” legislation applicable to private employers. In October 2013, Governor Quinn issued an Administrative Order prohibiting public employers from requesting criminal history information from applicants before determining that the applicant is qualified and considering the applicant for a specific position. In addition, since 2010, the Illinois Human Rights Act has prohibited employers from inquiring into or using arrest records or criminal history record information ordered expunged, sealed or impounded in making employment decisions.

What This Means to You

The Job Opportunities for Qualified Applicants Act is a dramatic shift in requirements for Illinois employers, and penalties for noncompliance can be steep. Covered employers should review hiring procedures and application materials to ensure compliance with the Act before its January 1, 2015 effective date. Employers should review job descriptions and requirements carefully to determine whether any positions fall under the limited exceptions. Employers should remove all questions about criminal history from applications unless the position is one covered by the Act’s exceptions.

If criminal history information is gathered, employers must ensure that such information is only requested after an applicant is offered an interview or after a conditional offer of employment has been made. Employers should also continue to comply with the Illinois Human Rights Act by not inquiring into or using arrest records or criminal history record information that has been ordered expunged, sealed or impounded when making employment decisions.

Contact Information

For more information concerning this or other issues affecting labor and employment, please contact your Husch Blackwell attorney or an attorney in our Labor & Employment practice group.