

LEGAL UPDATES

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## Effective January 1, 2021: City of St. Louis Private Employers Must Comply with Ban-the-Box Ordinance

Effective January 1, 2021, private sector employers with 10 or more employees in the City of St. Louis must comply with Ordinance 71074 (the Ordinance), a ban-the-box ordinance that prohibits employers from asking job applicants about criminal histories during the initial employment screening process. Compliance with the Ordinance is required to obtain and maintain a business operating license in the City of St. Louis.

The City of St. Louis joins a growing number of cities and states that have extended ban-the-box policies to private sector employers. Ban-the-box policies are intended to aid with the reintegration of individuals with criminal records into the workforce by increasing access to employment opportunities and mitigating discrimination against individuals with criminal records.

Husch Blackwell's Kayt Kopen and Tracey Oakes O'Brien recently sat down with Charles Bryson, Director of the City's Civil Rights Enforcement Agency (CREA). The CREA is the entity responsible for investigating alleged violations of this new Ordinance. We invite you to listen to our conversation with Charles and review the below summary of the Ordinance.

### **What conduct is prohibited by the Ordinance?**

The Ordinance prohibits private sector employers from taking the following actions during the employment screening process:

1. Using an individual's criminal history or a criminal sentence as a basis for a decision to hire or promote an individual, unless the employer can demonstrate its decision is based on all available information—including the frequency, severity, and recentness of the criminal record—and the criminal conduct is reasonably related to or bears upon the duties of the job position;

2. Inquiring about a job applicant's criminal history until after the employer has determined the applicant is qualified for the job and has interviewed the job applicant (and inquiries about criminal history are made of all job applicants who are in the final selection pool from which the position will be filled);
3. Publishing job advertisements in either electronic or hard copy format that exclude job applicants based on their criminal history;
4. Including statements on employment applications and other hiring forms that indicate job applicants with a criminal history are excluded from consideration;
5. Requiring job applicants to disclose their criminal history on initial employment application forms or other hiring documents; and
6. Seeking publicly available information regarding job applicants' criminal histories.

Prohibitions 3 – 6 above do not apply to jobs where federal or state laws or regulations or city ordinances prohibit the employer from hiring individuals with certain criminal histories.

### **How will the Ordinance be enforced?**

The CREA will investigate complaints alleging violations of the Ordinance and will refer substantiated complaints to the Office of the License Collector for enforcement, including imposition of penalties. The Office of the License Collector, in coordination with the CREA, will promulgate rules and procedures for imposing penalties. As of December 30, 2020, the offices have published FAQs for employers and employees regarding the Ordinance.

Penalties imposed for noncompliance with the Ordinance are as follows:

First violation: either a warning issued by the Office of the License Collector or an order requiring the business to comply with the Ordinance within 30 days;

Second violation: an order issued by the Office of the License Collector requiring compliance within 30 days and a civil penalty in an amount to be determined by the Office of the License Collector; and

Third violation: potential revocation of an employer's business operating license as deemed appropriate by the Office of the License Collector.

### **What this means to you**

Non-compliance with the Ordinance jeopardizes the ability of employers to continue to do business in the City of St. Louis. As a result, covered employers should undertake the following actions immediately:

Review hiring practices, promotion practices and related documentation—including all employment advertisements, policies, forms, applications and documents used in the hiring process to review and screen job applicants (whether in electronic or hard copy format)—to remove statements and inquiries regarding criminal history and sentencing, as required by the Ordinance;

Ensure the timing of inquiries into criminal history complies with the provisions of the Ordinance;  
and

Train all human resource or other personnel responsible for hiring and screening job applicants and promoting personnel regarding the restrictions imposed by the Ordinance on employment practices.

### **Podcast: A Discussion with Charles Bryson, Director of the CREA, on St. Louis City's Ban-the-Box Ordinance**

Charles Bryson, Director of the CREA, provides inside guidance regarding the new Ordinance in this 36-minute podcast. Tune in for additional details regarding how the CREA will investigate potential violations and for answers to some frequently-asked questions.

### **Contact us**

If you have any other questions about the St. Louis City ban-the-box ordinance or other employment-related practices and policies, contact Kayt Kopen or your Husch Blackwell attorney.

*Tracey Oakes O'Brien, Knowledge Manager, is a co-author of this content.*