

Illinois Employers Must Think Outside the “Box” Regarding Applicants’ Criminal History

Illinois is one of latest states to enact "ban the box" legislation, a law that precludes employers from screening applicants based on criminal history prior to the interview or conditional offer stage. The law—entitled the Job Opportunities for Qualified Applicants Act ("Act")—supplements existing Illinois law that prohibits employers from making employment decisions on the basis of an individual's arrest or expunged criminal records.

Starting January 1, 2015, Illinois private employers with 15 or more employees may not ask applicants about their criminal record or criminal history on the initial job application. A covered employer must instead delay any inquiries into criminal history until after the employer has deemed an applicant qualified for the position and either (1) offered the applicant an interview or (2) made the applicant a conditional offer of employment.

The Act permits employers to provide applicants with advance notice about specific convictions that would disqualify them from consideration under state or federal law, or pursuant to an employer's policy. Illinois employers must, however, be mindful of the Equal Employment Opportunity Commission's ("EEOC") recent criminal history enforcement guidance that cautioned employers to avoid utilizing "blanket" disqualification policies unless such policies are job related and consistent with business necessity.

Notably, the Act does not apply: (1) where state or federal law requires an employer to exclude applicants who have been convicted of certain crimes; (2) to positions that require licensing under the Illinois Emergency Medical Services Systems Act, or (3) where a selected conviction would preclude an applicant from obtaining a fidelity (or equivalent) bond needed to perform the position in question.

Authority for investigating and enforcing the Act rests with the Illinois Department of Labor, which may impose civil monetary penalties against noncompliant employers. Penalties range from a written warning for an initial violation to fees up to \$1,500 for repeated or uncorrected violations. The Illinois Department of Labor may recover such penalties in administrative proceedings or in civil actions before the Illinois Circuit Court.

POSTED:

Oct 29, 2014

RELATED PRACTICES:

[Labor and Employment](#)

<https://www.reinhartlaw.com/practices/labor-and-employment>



In advance of the Act's January 1, 2015 effective date, Illinois employers should remove all criminal history questions from their initial job application documents and refrain from asking about or investigating such criminal history information until after an applicant is offered an interview or a conditional offer of employment. Covered employers should also train supervisors on the permissible use of criminal history information and review any hiring policies to ensure compliance with the Act. Lastly, Illinois employers conducting background checks and taking adverse employment actions against applicants on the basis of criminal history must also be careful to comply with any obligations imposed by the Fair Credit Reporting Act, Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, and other potentially applicable local, state and federal laws.

If you have any questions about the "ban the box" legislation, please contact your Reinhart attorney or any member of Reinhart's [Labor & Employment group](#).

These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.