

Don't Screen Out State Laws When Hiring

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A recent decision from the Northern District of Illinois serves as a reminder to employers to consider both federal and state laws regarding pre-employment screening when making hiring decisions. In ***Stratton v. Merrill Lynch***, 2012 U.S. Dist. LEXIS 60426, 2012 WL 1533456 (N.D. Ill. Apr. 25, 2012), the court determined that the Federal Deposit Insurance Act (FDIA) did not preempt the Illinois Human Rights Act, 775 ILCS 5/2-103, which prohibits employers from using the fact of an *arrest* as a basis for taking an adverse employment action. The FDIA § 1829 prohibits any individual who has been *convicted* of any crime involving dishonesty, breach of trust, or money laundering from institutional affiliation with any insured depository institution.

Stating that “[n]othing in § 1829 demonstrates a Congressional intent to completely preempt state civil rights employment laws,” the Court remanded the case to state court.

In light of this decision, employers are encouraged to ensure their policies comply with all applicable laws concerning pre-employment screening. Federal laws will not always prevent the application of state laws, which may contain different restrictions on information permissible to use in making employment decisions.

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