

Chicago Updates Its “Ban the Box” Rule to Limit an Employer’s Consideration of Conviction Records

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The City of Chicago recently updated its existing “Ban the Box” Ordinance to further limit an employer’s ability to consider conviction records of both new and current employees. With the new amendments, employers covered by the Ordinance who wish to review conviction records must engage in an individualized assessment, provide pre-adverse and final adverse action notices, and include additional language to the notices regarding the right to file a claim.

Under the Ordinance, Chicago employers are prohibited from using a person’s conviction record as a basis for, among other things, refusing to hire, promote, discharge, or discipline, unless (i) there is a substantial relationship between one or more of the criminal offenses in the conviction record and the employment sought or held, (ii) the granting or continuation of employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public, or (iii) the use of the conviction record is otherwise authorized by law.

The prior version of the Ordinance largely mirrored the state’s Job Opportunities for Qualified Applicants Act, which generally set forth that an employer or employment agency may not inquire about or into, consider, or require disclosure of the criminal record or criminal history of an applicant until the applicant has been determined qualified for the position and notified that the applicant has been selected for an interview by the employer or employment agency. If there is no interview, the employer cannot consider this information until after a conditional offer of employment is made to the applicant by the employer or employment agency.

The revised provisions nearly match those set forth in the Illinois Human Rights Act (“IHRA”), 775 ILCS 5/2-103.1(A), but there are key differences for Chicago employers to consider.

First, employers not otherwise covered by the IHRA may be covered by the Chicago requirements. The revised Chicago Ordinance covers all employers that (i) are subject to Chicago’s licensing requirements, or (ii) maintain a business facility within the geographic boundaries of Chicago. This definition of “employer” differs from that in the parallel IHRA provision, which covers any employer employing “one or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation.” 775 ILCS 5/2-101(B).

Second, covered employers who make a final decision to disqualify or take an adverse action against

an employee or applicant based at least in part on the individual's conviction record must notify the individual of the right to file a complaint with the Chicago Commission on Human Relations. The parallel IHRA provision requires the employer to provide a similar notice that references the employee's right to file a charge with the Illinois Department of Human Rights ("IDHR"). Chicago employers covered by both laws will now need to reference both the complaint filing rights at the Chicago Commission and charge filing rights with the IDHR.

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