

Illinois Jumps on the 'Ban-Wagon': Job Opportunities for Qualified Applicants Act

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Illinois has joined the increasing number of states that have enacted "**Ban the Box**" laws (so named because they prohibit employers from including on job applications a box for applicants to check if they have ever been convicted of a crime). On July 19, 2014, the Governor of Illinois signed the **Job Opportunities for Qualified Applicants Act (JOQAA)**. That law, with certain exceptions, prohibits Illinois employers and employment agencies from inquiring into, considering, or requiring disclosure of a job applicant's criminal record or criminal history until the applicant has been determined qualified for the position sought and notified that he/she has been selected for an interview, or if there is no interview, until after a conditional offer of employment is made.

The law goes into effect January 1, 2015, and applies to all private sector employers that employ 15 or more employees in Illinois during the year in which the violation occurs or in the preceding year, and any responsible agents of such an employer, as well as all employment agencies in Illinois. Other significant features of the JOQAA are:

1. The prohibition on premature inquiries about criminal convictions does not apply to positions where:

- an employer is required to exclude applicants with certain convictions from employment due to federal or state law;
- a standard fidelity bond or an equivalent bond is required and an applicant's conviction of a crime specified in the bond would disqualify the applicant from obtaining the bond, in which case the employer may inquire whether the applicant has ever been convicted of any disqualifying crime; or
- an employer employs workers under the Illinois Emergency Medical Systems Act.

2. The prohibition does prevent an employer from notifying applicants in writing of the specific offenses that will disqualify an applicant from employment in a particular position due to federal or state law or the employer's policy.

3. The JOQAA will be enforced by the Illinois Department of Labor. The Department is empowered to levy the following civil penalties: first violation, written warning and 30 days to remedy the violation; second violation or failure to remedy a first violation within 30 days of notice by the Department, fine of up to \$500; third violation or failure to remedy a first violation within 60 days of notice, an additional fine of up to \$1,500; subsequent violations, or if a first violation is not remedied within 90 of notice, an additional fine of up to \$1,500 for every 30 days thereafter during which the employer is non-compliant. The JOQAA does not provide for criminal penalties or for private causes of action by applicants.

The JOQAA will require employers in Illinois to review their employment applications and all aspects of their recruitment and hiring processes and revise them if necessary to comply with the law before January 1, 2015. Employers who use employment agencies or other recruitment sources will need to make sure those agencies comply with law as well, because their actions as the employers' agents could expose such employers to liability.

The JOQAA addresses only the timing and processes by which employers may lawfully obtain information about applicants' criminal records; it does not prohibit employers from rejecting applicants with criminal records. However, the rejection of an applicant because of a criminal conviction can potentially expose the employer to liability under discrimination laws, such as where the practice disproportionately affects minority applicants. A number of courts, as well as the Equal Employment Opportunity Commission (EEOC), have addressed this issue. The EEOC has formulated guidelines concerning the use of applicants' criminal histories in the decision-making process. Although the EEOC guidelines are not binding, they probably represent best practices to follow that will afford better protection from EEOC attacks. Accordingly, when reviewing their recruitment and hiring processes to comply with the JOQAA, Illinois employers should also review the decision-making process they use when considering whether to reject an applicant who has a criminal record.

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