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Chicago's Ban-the-Box Ordinance: What Employers Need to Know

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Chicago has begun to restrict the ability of employers with fewer than 15 employees to use *applicants' criminal background* information early in the application process. The restriction began on January 1, 2015. An ***Illinois*** law on the same subject, but applicable to employers with at least 15 employees, also went into effect the same day.

Chicago employers should ensure compliance with the new ordinance, as penalties can be stiff and steps taken to comply with the state law may not be enough.

Background

Chicago's ban-the-box ordinance works in tandem with the state law, the Job Opportunities for Qualified Applicant Act. The ordinance extends the state's restrictions to employers not otherwise covered, namely, those that maintain a Chicago facility or are licensed by the city but have fewer than 15 employees, and the City of Chicago itself.

The ordinance does not override the Illinois law, but expands on it.

Common Requirements

Both the Illinois law and the Chicago ordinance prohibit employers from inquiring about or into, considering, or requiring that an applicant disclose his or her criminal record until after either:

• the applicant is determined qualified and notified of selection for an interview, or

• if there is no interview, a conditional offer isextended.

The Illinois law and the Chicago ordinance do not apply where:

• employers are required to exclude applicants with certain convictions under state or federal law,

• a standard fidelity bond or equivalent is required and an applicant's conviction would be disqualifying, in which case the employer may inquire whether an applicant has been convicted of a

relevant offense, and

• a license under the Emergency Medical Services Systems Act is required.

Finally, both laws permit employers to inform applicants early in the process of specific offenses that would disqualify the applicant from a particular position.

Key Differences

Key provisions of the Chicago ordinance that differ from the Illinois law and are important to Chicago employers include:

• A requirement that all employers, including those with at least 15 employees who otherwise would be subject to the Illinois law, inform applicants of decisions not to hire based entirely or partially on applicants' criminal records when applicants are told of decisions not to hire.

• A penalty structure that can lead to significant liability for small employers on even the first violation.

While the Illinois law provides a warning for a first violation, even a first violation of the Chicago ordinance leads to fines of between $100 and $1,000 for each violation and/or the possible suspension or revocation of the employer's city business license. Thus, a small employer couldincur significant economic consequences from violations, particularly if its offending actions are recurring in its recruitment efforts.

Recommendations

In addition to complying with Illinois law, Chicago employers must take the additional step of complying with the requirement that applicantsbe informed of decisions not to hire based entirely or partially on a criminal record when applicants are told of decisions not to hire. A Chicago employer may consider whether it ever informs applicants of application results and whether communications sent pursuant to other laws, such as the Fair Credit Reporting Act, already may be sufficient.

A growing list of municipalities and states has passed ban-the-box laws. Employers, particularly those that operate in more than one jurisdiction, must ensure they are in compliance.

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