

Checking the Criminal History of Applicants? – The law has changed

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Effective January 1, 2015, the new Illinois Job Opportunities for Qualified Applicants Act takes effect. The Act, signed by Governor Quinn on July 18, 2014, prohibits private employers with 15 or more employees from inquiring about or into, considering or requiring disclosure of criminal record or criminal history of an applicant for employment until the applicant has been determined qualified for the position and notified that the applicant has been selected for an interview or if there is no interview until after a conditional offer of employment is made to the applicant. This law represents a significant change in how most employers check into criminal record or criminal history information of employment applicants.

The Act exempts positions (not employers) for which employers are required to exclude applicants with certain criminal convictions from employment due to federal or state laws; where a standard fidelity or equivalent bond is required for the position and/or when an applicant's conviction of one or more specified criminal offenses would disqualify the applicant from obtaining such a bond. Only in those cases may an employer include a question or otherwise inquire whether the applicant has ever been convicted of any of those criminal offenses which would disqualify the applicant from obtaining the bond.

The Act exempts positions with respect to employers who employ individuals licensed under the Emergency Medical Services Systems Act.

The statute also permits employers to notify applicants in writing of the specific offenses that would disqualify an applicant from employment in a particular position due to federal or state law or the employer's policy. This particular provision may discourage applicants who have criminal records with respect to specific offenses pursuant to employer's policies once notified during the selection process.

Employers should, before January 1, 2015, amend policies to specify offenses which, if they appear on a criminal record or a criminal history check of an applicant, will disqualify that applicant.

The Act will be administered by the Illinois Department of Labor and has a list of remedies for violations which include civil penalties up to \$1,500. Fortunately, there is no private right of action against an employer for violation of the statute; only the Department of Labor can pursue remedies. Interestingly, all monies recovered as civil penalties by the Department of Labor for violations of the Act are not payable to applicants. Civil penalties are deposited into a Job Opportunities for Qualified Applicants Enforcement Fund which are used exclusively to enforce "employer violations of this Act" (what the Act probably meant to say here was to enforce enforcement of the Act for employer violations).

Finally, the Department is authorized to adopt rules which will be forthcoming after the law takes effect.

Employers should consult legal counsel such as Sandberg Phoenix & von Gontard P.C.'s Employment Law Team for assistance with respect to compliance and a proactive strategy with regard to this new statute.

By John Gilbert

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