Proskauer

New Illinois "Ban the Box" Law Covers Private Employers

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Governor Quinn has signed the Job Opportunities for Qualified Applicants Act (the "Act"), which takes effect January 1, 2015 and prevents private employers from asking an applicant about his or her criminal history on the initial job application. In "banning the box" for private employment, Illinois joins only a handful of states (Hawaii, Massachusetts, Minnesota, and Rhode Island) and cities (Philadelphia (PA), Newark (NJ), Buffalo (NY), Seattle (WA), San Francisco (CA), Baltimore (MD), and Rochester (NY)). This alert highlights key provisions of the Act.

Key Provisions

The Act covers any applicant pursuing employment with a private employer that employs 15 or more employees in the current or preceding calendar year.[1] Employers may not inquire into, consider, or require disclosure of an applicant's criminal record or history until after the applicant has been (i) deemed qualified for the position, and (ii) notified that he has been selected for an interview. If the employer does not conduct an interview, it must wait until after making a conditional offer of employment.

The law carves out the following exceptions:

- where federal or state law requires the employer to exclude applicants with certain convictions;
- for convictions that would disqualify an applicant from obtaining a required standard fidelity (or equivalent) bond; or
- where the employer employs individuals licensed under the Emergency Medical Services (EMS) Systems Act.

Enforcement and Remedy

The Illinois Department of Labor ("IDOL") is tasked with investigating compliance with the Act, and may assess the following penalties for noncompliance:

for a first violation, a written warning affording the employer 30 days to remedy;

- for a second violation or a failure to remedy the first violation within 30 days' notice, a civil penalty of no more than $500;
- for a third violation or failure to remedy the first violation within 60 days' notice, an additional civil penalty of up to $1,500; and
- for subsequent violations, or if the first violation is not remedied within 90 days' notice, an additional penalty of $1,500 for every 30 days thereafter the employer fails to comply with the law.

The IDOL also may recover penalties in a civil action before a state circuit court or in an adjudicative proceeding.

Takeaway

Unless otherwise exempted, Illinois employers shouldremove any inquiries from their initial job applications concerning an applicant's criminal history, and should wait to commence a criminal background check until a time permitted under the Act. When asking about or otherwise considering criminal history in hiring and personnel decisions, employers should remember to:

- ensure that hiring guidelines regarding employment of individuals with criminal records are consistent with federal, state, and local law;
- conduct individualized assessments of candidates when possible;
- train managers on the appropriate use of criminal history in hiring, promotion, and separation; and
- adhere to Fair Credit Reporting Act and other state and local requirements before conducting background checks and before taking adverse actions against applicants or employees based on criminal history.

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If you have any questions or concerns regarding the Act, please contact the lawyers at Proskauer.

[1] The Act also applies to the agents of employers and employment agencies.

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