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Illinois and Chicago “Ban-the-Box” Laws Now In Effect

New state and local laws that impact the private sector hiring process took effect on January 1. Both the Illinois and Chicago laws restrict employers’ ability to inquire about a job applicant’s criminal background, but they have important differences. While the state law “bans the box” only for employers with fifteen or more employees, the Chicago ordinance applies to employers in the city regardless of size. The ordinance also requires employers to inform applicants if their criminal history caused or influenced the decision not to hire. Employers will want to revisit their hiring protocols — and their application process in particular — to ensure compliance with the new requirements.

Background

Employers generally use information from job applications to select candidates for further consideration or to eliminate them from consideration altogether. Job applications often ask whether the applicant has ever been convicted of a crime, with instructions to check off a box if the applicant has a criminal record. A growing number of states and cities have adopted so-called “ban-the-box” laws that generally prohibit employers from asking about an individual’s criminal history on job applications. Since Hawaii became the first state to remove conviction questions from job applications in 1998, more than a dozen states have adopted ban-the-box laws.



Although ban-the-box laws do not prevent employers from considering an individual’s criminal history, they do impact the applicant screening process by delaying initial employer inquiries until later in the hiring process. However, the information an employer may consider and when criminal background inquiries may be made varies among states and localities that have adopted ban-the-box laws. Some defer inquiries about criminal convictions until the application has been submitted or an initial interview has occurred, while others bar them until after a conditional offer of employment has been made. (See our [October 8, 2014 FYI In-Depth](#).)

Illinois' Ban-the-Box Law

In 2013, Illinois Governor Pat Quinn directed state agencies to ban the box, effective immediately. [Administrative Order 1](#) amended state employment applications to remove any questions about an applicant's criminal history and prohibited state agencies, boards, and commissions under the governor's jurisdiction from asking job applicants about their criminal history before beginning to evaluate the individual's knowledge, skills, and abilities.

On July 19, 2014, Governor Quinn signed into law the Job Opportunities for Qualified Applicants Act ([HB 5701](#)), banning the box for private employers effective January 1, 2015. With certain limited exceptions, the law prohibits employers with 15 or more employees and employment agencies from inquiring into, considering, or requiring disclosure of a job applicant's criminal record until the employer has selected the applicant for an interview or, if there are no interviews, until after a conditional offer of employment has been made.

The Illinois Human Rights Act, enforced by the Illinois Department of Human Rights, already prohibits employers from inquiring into arrest records or into expunged or sealed criminal conviction records, or basing employment decisions on such records. The new law expands these employment nondiscrimination protections by generally prohibiting employers from pre-screening applicants on the basis of criminal history, but provides three important exceptions. The limitation does not apply for positions where:

- Federal or state law prohibits employers from hiring applicants with certain criminal convictions
- Conviction of one or more specified crimes would disqualify an applicant from obtaining a required standard fidelity (or equivalent) bond
- The employer employs individuals licensed under the Emergency Medical Services (EMS) Systems Act

Employer Pre-Screening

Illinois generally limits when employers can ask for and use criminal history, but provides certain limited exceptions.

The Illinois Department of Labor will enforce the new law, which does not provide job applicants a private right to sue for violations. Employers will have a 30-day remedy period for the first violation before statutory penalties are triggered. The law provides for the following penalties after the remedial period ends: \$500 for a second violation or for a first violation that is not remedied within 30 days; \$1,500 for a third violation or for a first violation that is not remedied within 60 days; and an additional \$1,500 for each subsequent violation or for every 30 days thereafter that the employer is not in compliance.

Chicago's Ordinance

On January 1, the City of Chicago amended its Human Rights Ordinance to provide new employment discrimination protections based on a job applicant's criminal history. The amendment effectively expands the coverage of the state's ban-the-box law to private employers with fewer than 15 employees that are licensed in Chicago and/or maintain a facility within the city and to a number of city agencies. Public employers subject to the amended ordinance include the City of Chicago and its sister agencies (the Chicago Public Schools, Chicago Park District, Chicago Transit Authority, City Colleges of Chicago, Chicago Housing Authority, and Public Building Commission).

Under the new ordinance, covered employers may still conduct criminal background checks on prospective employees before making a hiring decision. However, employers cannot inquire about, consider, or require an

applicant to disclose his or her criminal record before the applicant has been deemed qualified for the relevant position and has been notified that he or she has been selected for an interview. If no interview for the position is required, employers are prohibited from taking any such actions until after a conditional offer of employment is made. Like the state law, the ordinance recognizes disqualifying convictions, and allows employers to provide advance notice to applicants, in three circumstances: (1) if the conviction would be an automatic disqualifier under state or federal law; (2) if the position requires bonding and the applicant could not be bonded because of the conviction; and (3) if the position requires a license under the EMS Systems Act.

Hiring Decisions

Even though the ordinance does not prohibit employers from basing a decision on an applicant's criminal history, other laws may affect how much weight can be given to that history.

Standing alone, discovery of an applicant's criminal conviction(s) after the individual has been interviewed or a conditional offer of employment has been made does not automatically disqualify the applicant from public employment. Rather, a hiring decision by the city or one of its sister agencies must take into account a variety of factors including, among other things, the nature of the offense(s) and sentencing, the number and date of the convictions, and the applicant's age when convicted. However, any employer — whether public or private — that bases a decision not to hire an applicant, in whole or part, on the applicant's criminal history is required to notify the applicant that his or her criminal record affected the employment decision.

The ordinance, which will be enforced by Chicago's Commission on Human Relations, provides for a fine of no less than \$100 nor more than \$1,000 for each offense, and every day that a violation continues will constitute a separate offense. Any city licensee that violates the ordinance may also be subject to having its license suspended or revoked.

In Closing

Ban-the-box laws do not prohibit employers from screening job applicants or imposing job-related requirements in their candidate evaluation and selection processes, but they generally curb the employer's ability to consider an applicant's criminal background at the initial stages of the hiring process. Employers will want to take stock of their current hiring processes — and their employment applications in particular — as a growing patchwork of these laws pose new compliance challenges and will likely increase scrutiny of hiring practices.

Authors

Nancy Vary, JD

Abe Dubin, JD

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