

Labor and Employment Alert

June 5, 2014

Illinois Enacting Criminal Background Screening Bill

Illinois is on the verge of enacting a law that will prohibit criminal background screening and inquiries, including criminal conviction inquiries of the applicant, until the applicant is selected for an interview or unless a conditional offer of employment is made.

On May 29, during the final days of the Illinois legislative session, the Legislature passed a measure that would ban most Illinois employers from inquiring into an applicant's criminal history until the interview phase of the hiring process. The bill, titled The Job Opportunities for Qualified Applicants Act (H.B. 5701), prohibits employers or employment agencies from inquiring about or considering the criminal background of an applicant until after the applicant has been determined qualified for the position and selected for an interview. If the employer does not conduct interviews, inquiries into an applicant's criminal background must follow a conditional offer of employment.

The bill exempts from its coverage employers who employ individuals licensed under the Emergency Medical Services (EMS) Systems Act; employers subject to state or federal laws requiring exclusion of applicants with certain criminal convictions; and employers who require a standard fidelity bond where an applicant's criminal conviction would disqualify the individual for such a bond. The Illinois Department of Labor is tasked with enforcement of the Act and may impose civil penalties for repeated violations. Governor Quinn is expected to sign the bill into law this year and the law will take effect on January 1, 2015.

The Illinois bill is consistent with EEOC's enforcement guidance, which recommends that before employers exclude job applicants due to criminal histories, they undertake a "targeted screen" that considers at least the nature of the crime, the time elapsed, and the nature of the job, and then conduct an "individualized assessment" of those identified by the screen to determine whether exclusion from consideration is job related and consistent with business necessity for the job in question. See EEOC Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, *as amended*, No. 915.002 (April 25, 2012). Unlike Illinois' approach, the State of Texas has challenged the EEOC's enforcement guidance, seeking a declaratory judgment that its longstanding blanket ban on hiring felons does not violate Title VII. See *State of Texas v EEOC, et al.*, No. 5:13-cv-00255 (N.D. Texas 2014).

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