

Employment Practices Liability

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The State of Connecticut “Bans the Box”

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Executive Summary: Effective January 1, 2017, Connecticut becomes the latest state to join the “Ban the Box” movement. Pursuant to Public Act No. 16-83, “An Act Concerning Fair Chance Employment,” and Conn. Gen. Stat. § 31-51i, as of January 1, 2017, it is illegal for private and public sector employers with one or more employees to request information about an applicant’s prior arrests, criminal charges or convictions on an initial employment application.

The New Law in Practice: Traditionally, on employment applications, employers include a “check box” that asks if an applicant has a prior criminal record. The international “Ban the Box” movement, which is supported by various civil rights movements and advocacy groups and has gained national support over the past decade, seeks to remove the stigma of prior criminal convictions, which may have a disparate impact on minority candidates. The goal is to provide a “fair chance” for employment for those with a criminal record by making it illegal to inquire about a criminal background on an employment application. Employers conducting business in Connecticut should start planning now to comply with this new law.

Connecticut’s “Ban the Box” law applies to all employers, including the state and any of its political subdivisions, with one or more employees. The law is silent on whether it applies to the screening of independent contractors. This is in contrast to other state statutes that specifically apply “Ban the Box” legislation to independent contractors. Also, in contrast to some other “Ban the Box” laws, Connecticut’s law only prohibits this inquiry on the employment application itself.

The law provides for two exceptions: (1) when the employer is required by state or federal law to inquire about prior arrests, criminal charges or convictions for the position in question; and (2) when the position requires a security, fidelity or equivalent bond. Where one of these exceptions is met, the application must contain “clear and conspicuous language” providing “notice” that the applicant is not required to disclose the existence of any arrest, criminal charge or conviction which has been erased or is subject to erasure under various Connecticut statutes, including certain juvenile offenses and those for which the applicant has successfully completed Accelerated Rehabilitation. An employee or prospective employee may file a complaint with the Labor Commissioner alleging an employer’s violation of this statute.

Because Connecticut’s “Ban the Box” legislation only pertains to the application, after the application is submitted an employer may inquire into an applicant’s criminal history at any time without violating this law. However, it is generally considered a best practice to make such inquiries only after a conditional offer has been extended. Moreover, an employer must ensure compliance with all other federal and state laws when conducting a background check and/or rejecting an applicant based on a criminal record or conviction. The grounds for disqualifying an applicant based on a criminal conviction should be applied equally to all applicants to avoid discrimination claims and ensure compliance with all anti-discrimination laws. A blanket exclusion of any applicant who has been convicted of any crime is largely discouraged if it would create a disparate impact on a class of applicants. Moreover, when considering whether to disqualify an applicant for having a criminal background, an employer should generally consider the nature and gravity of the offense(s) (i.e. violent vs. non-violent), the time that has passed since the conviction and/or completion of the sentence; and the nature of the job held or sought. In most circumstances, employers will be able to justify their decision to disqualify an applicant based on a prior criminal conviction when the conduct that was the basis of that conviction is related to the position, or if the conduct was particularly egregious.

Bottom Line: Prior to January 1, 2017, Connecticut employers should review their employment applications and make necessary revisions to remove any inquiry into an applicant’s prior arrests, criminal charges or convictions. If an inquiry is to be made into an applicant’s criminal history after an application is submitted, the most effective policy is to delay the inquiry until after a conditional offer of employment is extended. It is recommended that employers operating in Connecticut draft and implement a Fair Chance Policy to formalize their compliance with the new law prior to January 1, 2017.

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