

NEW Illinois Law Limiting the Use of Criminal Convictions: How it Impacts Hiring in the Transportation Industry

Article

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With Governor Pritzker's signature to Senate Bill 1480 on March 23, 2021, the Illinois Human Rights Act (IHRA) now prohibits any employer's use or reliance on a criminal conviction to support an adverse employment action outside of certain narrow exceptions. Indeed, the IHRA now provides that unless *otherwise authorized by law*, an employer, when hiring, discharging, or disciplining an employee, may only consider an individual's conviction history if there is a *substantial relationship* between the criminal history and the position sought or held, or if the employer can show that the individual's employment raises an *unreasonable risk* to property, the safety or welfare of specific individuals, or the general public.

Of course, commercial transportation companies already know that the Federal Motor Carrier Safety Administration (FMCSA) requires the Transportation Industry to conduct criminal background checks and obtain driving abstracts/conviction records to qualify drivers during the hiring and retention process. In fact, the Federal Motor Carrier Safety Administration Regulations (FMCSR) set forth rules and regulations for employment applications involving applicants applying to drive commercial motor vehicles. (See 49 C.F.R. § 391.21). Section 391.21 has been adopted in most states (for example, Illinois law recognizes Section 391.21 pursuant to Title 92 of the Illinois Administrative Code). The consideration of specific offenses outlined in the FMCSR concerning the disqualification of drivers (49 C.F.R. § 383.37 and § 383.51) likely qualifies as "otherwise authorized by law" and therefore is not prohibited by the statute.

While qualifying a driver for employment is specifically authorized by the FMCSR, if the use of criminal background history is outside the scope of the FMCSR, then the particular conviction must have a "substantial relationship" to the position, or present an "unreasonable risk" as envisioned by the IHRA. Also, any applicant or employee who does not fall under the FMCSR would be clearly protected by the new limitations. Therefore, the transportation industry cannot ignore the IHRA's new prohibitions and related mandates. Industry employers must become intimately familiar with what is arguably the most restrictive law in the country on the subject.

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Bottom Line: Employers cannot follow a “one size fits all” approach with employment applications, hiring procedures, or employment policies and related practices. Commercial transportation companies throughout the United States, and particularly in Illinois, must review their applications, hiring procedures, and general employment policies for drivers of commercial vehicles to ensure they are complying with the onslaught of local and state mandates. This area of law has always been confusing and complex. Illinois’ new mandates further complicate the issues surrounding criminal convictions therefore, transportation industry employers must be on guard.

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