

Small Employers in Chicago Must Ban the Box, Too

Labor & Employment Law Update

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Effective January 1, 2015, employers that have fewer than 15 employees and either maintain a business facility within Chicago's city limits or are subject to any of the license requirements of Title 4 of the Chicago Municipal Code (or both), are prohibited from pre-screening applicants for employment based on criminal history. Essentially, Chicago has taken the Illinois Job Opportunities for Qualified Applicants Act (otherwise known as the Illinois Ban-the-Box law), and applied it to the employers doing business in Chicago who are too small to be covered by the statewide law.

Chicago's Ban-the-Box ordinance states:

Employers that are not subject to the Illinois Job Opportunities for Qualified Applicants Act, including the City of Chicago and its sister agencies, may not inquire about or into, consider, or require disclosure of an applicant's criminal record or criminal history until after the applicant has been determined qualified for the relevant position and notified that he has been selected for an interview, or, if there is no interview, until after a conditional offer of employment is extended to the applicant.

The same three carve-outs in the Illinois Act are also present in the Chicago ordinance: (1) federal and state law exclusions based on certain crimes; (2) standard fidelity bond-related disqualifications; and (3) positions subject to the licensure requirements of the Emergency Medical Services Systems Act. Chicago's Ban-the-Box also does not prevent an employer from providing written notice of specific offenses that will disqualify an applicant from employment.

Additionally, the Chicago ordinance prohibits the city and its sister agencies, which include the Chicago Public Schools and Chicago Park District, among others, from automatically disqualifying an applicant based on criminal convictions discovered after the applicant is interviewed or given a conditional job offer. The ordinance also provides nine factors that the city and its agencies are to consider when making an employment decision based on an applicant's criminal past.

But perhaps the ordinance's most significant provision is that any employer with a facility in Chicago or subject to the city's Title 4 license requirements that uses an applicant's criminal past as a complete or partial basis for rejecting the

applicant must communicate that fact to the applicant when telling him or her of the rejection. In light of the EEOC's current enforcement strategy for employment decisions based on criminal records, an employer's admission that it based an employment decision on an applicant's criminal record could expose the employer to a substantial risk of legal liability.

Complaints of alleged violations of Chicago's Ban-the-Box ordinance can be made to the Chicago Commission on Human Relations, and the penalties for violations may include fines of \$100 to \$1,000, and "license discipline" for city licensees.

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