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Illinois Restricts Employer Inquiries on Criminal Convictions and Adds Pregnancy Protections

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Criminal Convictions

A new law that takes effect on January 1, 2015—known as the Job Opportunities for Qualified Applicants Act ("Act")—prohibits an Illinois employer with 15 or more employees from inquiring about or considering an applicant's criminal history until the employer has determined that the individual is qualified for the position and has notified the applicant that he or she has been selected for an interview. If there is no interview, inquiries about criminal records cannot occur until after a conditional offer of employment has been made.

The restrictions described above do not apply: (1) if an employer is required by law to exclude applicants with certain criminal convictions, (2) if a bond is required and specific criminal convictions disqualify the applicant from obtaining a bond (in which case the employer can inquire if the applicant has ever been convicted of any of those offenses) and, (3) to those licensed under the Emergency Medical Services ("EMS") Systems Act.

The Illinois Department of Labor is charged with investigating alleged violations of the Act and may bring a civil suit to recover penalties. Those penalties consist of a written warning for a first violation (provided that it is remedied within 30 days), a penalty of up to $500 for a second violation (or if the first violation is not remedied in 30 days). Employers may be fined up to $1,500 for the third violation (or if the first violation is not remedied within 60 days).

This Act supplements existing Illinois law that prohibits employers from inquiring about the fact of an arrest or using criminal history record information that has been ordered expunged, sealed, or impounded in making employment decisions.

Pregnancy Discrimination and Accommodation

The Illinois Legislature has passed an amendment to the Illinois Human Rights Act to prohibit discrimination on the basis of pregnancy, childbirth, or related medical conditions ("Amendment"). The Amendment is awaiting Governor Pat Quinn's signature.

If signed into law, the Amendment would also require employers, upon request of the applicant or employee, to reasonably accommodate any medical condition of an applicant or full-time, part-time, or probationary employee that is due to pregnancy or childbirth. Similar to federal law, undue hardship is a defense to this duty to accommodate.

The employer may request documentation from the employee's health care provider concerning the need for accommodation if the request is job related and consistent with business necessity. However, the employer may require only: (1) the medical justification for the accommodation, (2) a description of the accommodation, (3) the date that the accommodation became advisable, and (4) the probable duration of the need for the accommodation. Similar to disability discrimination law, the employer and employee are required to engage in a timely, good faith, and meaningful exchange to determine an effective reasonable accommodation. The Amendment also makes it unlawful for an employer to require an employee affected by pregnancy, childbirth, or related conditions to accept an accommodation when the employee has not requested it or to require the employee to take leave if another reasonable accommodation can be provided.

Of significance is that the Amendment requires employers to reinstate a pregnant employee who takes leave to her original job or an equivalent position unless doing so would impose an undue hardship. Various examples of reasonable accommodations are identified in the Amendment, including more frequent or longer bathroom or rest breaks, a private space to express breast milk, light duty, a temporary transfer to a less strenuous position, part-time or modified work schedules, reassignment to a vacant position, and a leave of absence.

The Amendment, if signed by Governor Quinn, would become effective January 1, 2015, and apply to all employers in Illinois that have one or more employees.

What Employers Should Do Now

- Unless applicable exceptions apply, effective January 1, 2015, remove questions pertaining to criminal records from employment applications.

- Train managers not to make such inquiries prior to the first interview.

- Continue to refrain from inquiring about the fact of an arrest or using criminal history record information that has been ordered expunged, sealed, or impounded in making employment decisions.

- Await Governor Quinn's signature on the Amendment, which would prohibit discrimination based on pregnancy and require accommodations of medical conditions related to pregnancy or childbirth.

- If the Amendment becomes part of the Illinois Human Rights Act, effective January 1, 2015:

    - Train managers and HR staff as to their non-discrimination and accommodation responsibilities.

    - Review applicable policies and procedures to ensure that they encompass the requirements of the amended law.

We will keep you informed as to the Amendment's status.

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If you have questions about these new laws or any other developments in the labor and employment area in Illinois, please contact:

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