



Alerts

New San Francisco Law Limits Employer Background Checks

April 22, 2014

Employment Practices Alert

Employers with locations in San Francisco should be aware of a new law enacted by the city that will limit the use of criminal background in vetting employees and applicants. The following summarizes the new law and what employers must do to comply.

What is the New Law?

In short, the ordinance bars employers from asking about criminal background histories or conducting a background check until the entity determines that the applicant meets the requirements for the position. This means that only after the first live interview may employers ask about or obtain an applicant's conviction history. Employers may never ask applicants or employees about arrests not leading to a conviction; participation in or completion of a diversion or a deferral of judgment program; dismissed or expunged convictions; juvenile convictions or adjudications; convictions more than seven years old; or offenses other than a felony or misdemeanor.

What if we Learn About a Conviction?

Once a past conviction is disclosed, employers must conduct an individualized assessment, considering whether the position offers the opportunity for the same or a similar offense to occur, how old the conviction is, and any mitigating factors. Before taking an adverse action against an applicant or employee based on criminal history, the employer must provide the employee or applicant with their criminal history report, notice of the prospective adverse action, and the specific basis for the action. The employee or applicant then has the right to offer evidence concerning the inaccuracy of their conviction, of rehabilitation, and other mitigating factors. If the employer decides to proceed with the adverse action, it must provide final notice of the action.

Does this Law Apply to Us?

When the Ordinance goes into effect on August 13, 2014, it will cover all employees who perform work in the City and County of San Francisco, whose employers are located or doing business in the City, and whose employers have 20 or more employees (regardless of the employees' locations).

What Are the Notice Requirements?

Service Areas

Labor & Employment



The Fair Chance Ordinance also has a posting requirement that requires employers to post a notice from the San Francisco's Office of Labor Standards Enforcement (OLSE) that details applicant and employee rights under the Ordinance. A copy of the notice must also be given to applicants and employees prior to conducting a criminal background check.

What Are the Penalties?

Employers who violate the Ordinance will be subject to certain penalties. The first violation during the first year that the Ordinance is in effect will result in a warning. Second violations will carry a \$50 administrative penalty for each employee/applicant. Each subsequent violation is a \$100 administrative penalty per employee. Additionally, the employee/applicant may seek reinstatement, back pay, payment of benefits or salary unlawfully withheld, \$50 liquidated damages per employee, and injunctive relief.

Who Can Help?

Hinshaw employment attorneys can advise employers on the new ordinance and help draft notices and policies to comply with the new law.

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.