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Labor and Employment Alert: Employers Must Now Comply With Connecticut's Ban-The-Box Law

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Nationally, 24 states and more than 150 cities and counties have enacted “ban-the-box” or “fair chance” legislation that restricts public employers or government contractors from inquiring into applicants’ criminal histories. In June 2016, Connecticut became one of the nine states (along with Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, Oregon, Rhode Island, and Vermont) to limit inquiries by private employers into an applicant’s criminal history. Connecticut’s law became effective on January 1, 2017.

Under the law, an employer is prohibited from inquiring about an applicant’s prior arrests, criminal charges, or convictions on an initial employment application. This limitation applies to any employer regardless of size unless the employer meets one of the two exceptions: (1) if the employer is required by state or federal law to ask about the applicant’s criminal history; or (2) if a security or fidelity bond or an equivalent bond is required for the position for which the applicant is seeking employment. Connecticut law continues to prohibit inquiries into criminal records that have been erased in accordance with state law. An employee or applicant may file a complaint with the Connecticut Labor Commissioner alleging an employer’s violation of these various provisions. Practically speaking, the ban-the-box law means that an employer can still inquire into an applicant’s criminal background but must wait until later in the hiring process. For example, the employer can ask during the interview process or make an offer of employment contingent upon a criminal background check.

In addition to restricting criminal history inquiries on initial employment applications, employers must continue to comply with an existing Connecticut law that limits employees’ access to applications that actually contain such information. So if an employer is required by state or federal law or by bonding to inquire into criminal history, the portion of the application containing information about the criminal history may only be available to (1) the employer’s personnel department or, if there is no personnel department, to the person in charge of employment, (2) to those involved in the interviewing of the applicant, and (3) to certain broker-dealers or investment advisors,

insured depository institutions, or insurance producers when necessary for their compliance responsibilities under state or federal law.

Employers should review their application materials and hiring processes to ensure that they comply with the new law's requirements. Contact your Vorys lawyer if you have questions about Connecticut's ban-the-box law or about similar laws in locations where your businesses operate.