Labor and Employment Alert: New Ohio Legislation Seeks to Expand Employee Job Protections

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As the 131st Ohio General Assembly continues to get underway, Senate Democrats recently introduced three bills regulating employers' use of consumer credit reports, criminal histories and social media accounts.

Senate Bill 65 (Sen. Charleta Tavares) would prohibit the use of credit ratings or consumer credit history in making decisions regarding a person's employment. The bill would forbid an employer from using a credit report in "any manner directly or indirectly related to employment." This would specifically include hiring and firing decisions as well as decisions about the terms, conditions and privileges of employment. A violation would be an unlawful discriminatory practice. Not only would this bill prevent an employer from using credit reports for entry-level positions (where such a report is probably unwarranted), it would prevent an employer from using a credit report for CFO, treasurer, or controller positions (where credit history is arguably job-related). Similar legislation has been enacted in at least seven states (California, Connecticut, Hawaii, Illinois, Maryland, Oregon, and Washington).

Senator Tavares, along with Senator Cecil Thomas, also introduced Senate Bill 70 to restrict employers' access to applicants and employees private electronic accounts (essentially e-mail and social media). With two narrow exceptions, employers would be prohibited from asking applicants or employees for access to their private electronic accounts and from taking adverse or retaliatory action for failing to provide that access. Employers would still be permitted to monitor and access their own accounts that employees or applicants use, as well as to continue to monitor certain securities accounts. Otherwise, a violation would be an unlawful discriminatory practice. Notably, Ohio's law contains no exception for workplace investigations like investigating the misappropriation of trade secrets, violations of the law, or violations of workplace policies where the investigation arises because of information on an employee's personal account. About 18 states already have similar laws (including Louisiana, New Hampshire, Oklahoma, Rhode Island, Tennessee, and Wisconsin), and, in 2015, legislation restricting such access has been introduced in more than 21 states.

Finally, Senator Sandra Williams introduced Senate Bill 79, which prohibits employers from including on an employment application any question concerning whether an applicant has been convicted of or pleaded guilty to a felony. An employer would be permitted to complete a criminal records check as part of the application process "if otherwise permitted by law." This is similar to other "Ban the Box" laws that have been enacted in other jurisdictions (currently in about 66 cities and counties and 13 states).

Each of these bills impose blanket prohibitions that gloss over the issues employers face when confronted with hiring the right people and managing their workforce. And the bills highlight the challenges multi-state employers face in complying with widely varying state and local laws. Ban-the-box laws may contain additional notice requirements to applicants and limits on the type of criminal record that an employer can consider. Ohio's Senate Bill 70 restricting employer access to social media passwords would make a violation an act of discrimination; other states' laws provide different enforcement mechanisms.

Of course, it's too early in the legislative season to tell how – or if – these bills will advance, and we will keep you apprised as these bills make their way through the legislative process. Contact your Vorys lawyer if you have questions about this legislation or about similar laws in other jurisdictions that may impact your business.