

Publications

Labor and Employment Alert: New Ban-The-Box Laws Take Effect in June

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CLIENT ALERT | 3.2.2018

Currently, nine states, the District of Columbia, and 15 local jurisdictions have adopted ban-the-box laws that generally prohibit private employers from initially inquiring into an applicant's criminal history. Effective June 2018, Kansas City, Missouri, and Spokane, Washington, will become the latest cities to have ban-the-box laws for private employers.

Kansas City

Beginning June 9, 2018, employers with six or more employees in the city are prohibited from basing a hiring or promotional decision on an applicant's criminal history unless the employer can demonstrate that its decision was based on all available information. This includes considering the frequency, recentness, and severity of a criminal record and whether the criminal record was reasonably related to the duties and responsibilities of the position. Employers may inquire into an applicant's criminal history only after determining that the applicant is otherwise qualified for the position and is interviewed for the position. "Criminal history" means a record of a conviction or a plea of guilty or no contest; records of arrests not followed by a valid conviction; convictions which have been annulled or expunged; pleas of guilty without conviction; convictions for which a person received a suspended sentence; and misdemeanor convictions where no jail sentence can be imposed.

The ordinance does not apply to employers who are prohibited by law from considering applicants with criminal records. An employer that violates the ordinance could lose its business license for up to 30 days on the first expense, permanently lose its business license if more than three violations occur within five years, be fined up to \$500, and/or imprisoned for up to 180 days.

Spokane

Effective June 14, 2018, all private employers in Spokane are generally prohibited from:

1. Advertising employment openings in a way that excludes people with arrest or conviction records from applying, such as using advertisements which state "no felons," "no criminal background," or which otherwise convey similar messages. However, employers may advertise the requirement for a criminal history inquiry and/or background check during or after the interview process as long as it does not state that an arrest or conviction record will automatically preclude the applicant from consideration.
2. Including questions in an employment application, inquiring about, receiving information through a criminal history background check, or otherwise obtaining information about an applicant's arrest or conviction record before an in-person, telephonic, or video interview or received a conditional offer of employment.
3. Using, distributing, or disseminating an applicant's or employee's arrest or conviction record, unless permitted by law.
4. Disqualifying an applicant before an in-person, telephonic, or video interview solely because of an arrest or conviction unless the conviction is related to significant duties of the job or disqualification is otherwise allowed.
5. Rejecting or disqualifying an applicant for not disclosing a criminal record before initially determining he or she is otherwise qualified for the position.

"Arrest or conviction record" means any record or information about a citation or arrest for criminal conduct, including records relating to probable cause to arrest, and includes any record about a criminal or juvenile case filed with any court, whether the case resulted in a finding of guilt, has been vacated, or overturned on appeal.

An employer may inquire into or obtain information about an applicant's criminal conviction or arrest record, and may consider information received during or after an in-person, telephonic, or video interview, or after a conditional offer of employment. The employer may use such information in a hiring decision. An employer may decline to hire an applicant with a criminal record and may terminate an employee with a criminal record.

The ordinance does not apply to employers hiring an employee who will have unsupervised access to children under the age of 18 or certain vulnerable adults or persons, or to employers who are expressly permitted or required under any federal or Washington state law to inquire into or consider arrest or conviction records. The ordinance does not protect criminal conduct or require an employer to provide accommodations or job modifications in order to facilitate the employment or continued employment of an applicant with an arrest or conviction record or who is facing pending criminal charges.

A violation of the ordinance may result in a fine of \$261. Penalties will not be assessed until January 1, 2019.

Conclusion

Employers operating in Kansas City or Spokane should review their policies and practices to ensure they comport with the ordinances' requirements. In addition, employers should be aware of ban-the-box laws in the jurisdictions in which they do business. Contact your Vorys lawyer if you have questions about pre-employment inquiries.