

Illinois Moves To Ban Criminal Background Questions From Job Applications

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Private employers in Illinois with 15 or more employees will have to revamp their job applications to remove questions about criminal background history and postpone such inquiries to the job interview or conditional job offer stage of the hiring process under legislation that is expected to be signed into law by the governor. The so-called “ban the box” measure, titled the [Job Opportunities for Qualified Applicants Act](#) will take effect January 1, 2015, if, as expected, Governor Pat Quinn approves it. The governor already previously banned criminal background questions from most State of Illinois government job applications in October 2013 by an [administrative order](#). Employers will still be able to conduct criminal background checks in accordance with applicable law, but job applicants will not have to reveal criminal history such as felony convictions unless they reach the job interview stage, or, if no interviews are conducted, after they receive a conditional job offer. The rationale, according to sponsors and supporters of the legislation, is to try to level the playing field for individuals whose criminal background may be hindering their job search. Once in effect, the law will allow individuals the opportunity to explain the circumstances of any criminal convictions rather than being screened out before a job interview. Employers that are subject to a federal or state law that requires exclusion of applicants with certain criminal convictions will be exempt from the law. The pre-screening section of the legislation does not prohibit employers from notifying applicants in writing of the specific criminal offenses that will disqualify an applicant from employment in a particular position due to federal or state law or the employer’s policy. The legislation, which also covers employment agencies, provides that the Illinois Department of Labor will provide enforcement with potential fines for failure to comply. The legislation does not contain a private right of action by individuals. Illinois will become the fifth state to “ban the box” from job applications for private employment, according to media reports. Employers should remain vigilant in compliance with applicable laws as they relate to the hiring process, including the existing Illinois Human Rights Act provision that prohibits adverse job actions based on the fact of an arrest and the Fair Credit Reporting Act. Moreover, the U.S. Equal Employment Opportunity Commission continues to keep a watchful eye on employers’ use of criminal background information in the hiring process with the view that criminal background checks must be job-related and consistent with business necessity.

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