

Legal Updates

The Mayor of Philadelphia, Pennsylvania signed a law recently which would prohibit an employer from inquiring about an applicant's criminal convictions until after the individual has his first interview. The law becomes effective July 17, 2011 within the city limits of Philadelphia. The passage of this law follows other similar bills passed in other states and cities across the country.

The ordinance applies to firms employing ten or more persons within the Philadelphia city limits making it an "unlawful discriminatory practice" for a company "to make any inquiry regarding or to require any person to disclose or reveal any criminal convictions during the application process." The ordinance defines the application process as the time between an applicant's inquiry about employment and the organization's acceptance of the individual's application. This would outlaw any questions on the application form relating to the applicant's criminal convictions.

The ordinance categorically states the ordinance "should not be construed to require an employer to hire someone with a criminal record, nor to limit an [employer's] ability to choose the most qualified and appropriate applicant for the employment opportunity at hand." Clearly, this is an ordinance designed to remove the conviction box from the application, however, if the applicant voluntarily discloses a criminal conviction during the "application process" the potential employer may discuss the convictions.

If the applicant fails to disclose a criminal conviction the company could not terminate the applicant for falsification of the application form unless he was subsequently asked about criminal convictions during later interviews. This might require the company to use supplemental forms to obtain written confirmation from the applicant either confirming or denying a criminal conviction.

The ordinance supplements Pennsylvania state law which prohibits an employer from denying employment on the basis of arrests and/or convictions, unless the nature of the crime is related to the position being applied for.

A number of other cities and states have passed similar legislation relating to questioning applicants about their convictions and arrests. Connecticut, Hawaii, Massachusetts, Minnesota, and New Mexico have all enacted similar legislation, along with more than 25 municipalities, including Chicago, Baltimore, and Seattle. This type of legislation is an attempt to obtain employment for convicted offenders and reduce their recidivism rates. Chicago has a fast food store called Felony Franks which hires only convicted felons. Much of the current legislation limits the law to public employers and vendors and contractors doing business with the public sector.

The Ordinance continues a growing trend of "ban the box" legislation that has been enacted in states as well as local municipalities. "Ban the box" legislation is thought to reduce the obstacles to obtaining employment for individuals with a criminal record by allowing applicants to demonstrate their skills and qualifications prior to revealing criminal histories.

Philadelphia is the first city to pass a law that covers private employers of 10 employees or more in addition to public employers. However, in other respects, the Ordinance is somewhat modest as compared to other "ban the box" laws. For example:

- In Hawaii and Massachusetts, private and public employers are not allowed to consider felony convictions that are more than 10 years old. Massachusetts employers are additionally not allowed to consider misdemeanor convictions that are more than five years old.
- Hawaii and the cities of Chicago, Hartford, and Cincinnati allow an employer to inquire as to an individual's criminal record only after a conditional offer of employment has been extended.
- The cities of Chicago, San Francisco, and Boston require a public employer denying employment on the basis of a conviction to justify the denial based on factors suggested by the EEOC, including the nature and gravity of the offense, the time that has passed since the conviction, and the connection of the nature of

the crime to the nature of the position sought by the applicant.