

## Illinois to Limit How Employers Can Use Criminal Checks in Hiring

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August 4, 2014

A new Illinois law that takes effect next year will affect how employers in the state handle job candidates' criminal records in the hiring process. The law prohibits employers from inquiring about a job candidate's criminal convictions until after the candidate has been determined to be qualified and called for an interview or conditionally offered the job.

The intent of the new legislation is to stop employers from screening out applicants with criminal histories at the first stage in the process. While employers aren't prohibited from considering a candidate's criminal history in making a hiring decision, the law will create a record of when criminal history has influenced the decision not to hire a candidate, which will in turn provide statistics that could be used in a disparate impact type claim.

The new law takes effect on January 1, 2015.

### When can an employer first consider criminal history?

The statutory language isn't entirely clear when the first inquiry into criminal history may be made. It prohibits inquiry "until the applicant has been determined qualified for the position and notified that the applicant has been selected for an interview ... or if there is not an interview, until after a conditional offer of employment is made ...". The Act is not clear what happens if the interview is designed to determine whether the candidate is qualified, as opposed to a situation in which only candidates already deemed to be qualified are interviewed.

### Will this lead to more lawsuits? How will this be enforced?

Since the law won't prohibit using a candidate's criminal record as a factor against hiring him, it also doesn't create a private right of action by a disappointed applicant. But, it does allow for enforcement through civil fines that can be sought by the Illinois Department of Labor. In the case of a first violation, the Department may issue a written warning. For a second violation or a first violation that goes un-remedied for 30 days after a warning, a fine of \$500 can be imposed. For a third violation or a first violation that is not remedied within 60 days, the department can impose fines of up to \$1,500. For additional violations or 30-day periods in which a prior violation remains un-remedied, additional fines of \$1,500 may be imposed.

Also, the law doesn't define how "violation" will be applied. For example, is each separately filed application that contains an impermissible question a separate violation, or will the employer's maintenance of an application that asks about criminal convictions be a single violation. Resolution of that question will be important to evaluate the level of risk.

The Department of Labor is authorized to issue regulations regarding the Act, which may clear up some of these ambiguities. In the meantime, employers should start revising their application forms to eliminate any questions regarding past criminal history, and provide training to those who deal with applicants in the period before they are deemed "qualified" regarding the limitation on any questions.

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