

Major Changes in Background Checks, Equal Pay Reporting for Illinois Employers

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On March 23, 2021, Illinois Governor J.B. Pritzker signed into law Senate Bill (SB) 1480, amending the Illinois Human Rights Act and Illinois Equal Pay Act. SB 1480 greatly limits use of criminal background checks in employment decisions and requires employers to obtain an “equal pay certificate” or face enormous penalties. Together, the provisions pose risks of substantial liability for any business that employs individuals within Illinois.

SB 1480 and Criminal Background Checks in Hiring

SB 1480 amends the Illinois Human Rights Act to make it a state civil rights violation for employers to use an individual’s criminal conviction record in any employment decision, unless one of two exceptions applies: (1) there is a “substantial relationship” between the offense and the individual’s employment; or (2) hiring or continuing to employ the individual would pose an “unreasonable risk” to property or the safety of others. Notably, this ban applies even if there is no showing of a discriminatory impact.

For an offense to have a “substantial relationship” with the individual’s employment, the job position must offer “the opportunity for the same or a similar offense to occur” or contain “circumstances leading to the conduct for which the person was convicted” that will recur in the position. Before making an adverse decision, employers must consider six mitigating factors: (1) the length of time since the conviction; (2) the number of convictions on the individual’s record; (3) the nature and severity of the conviction and its relationship to safety and security of others; (4) the facts or circumstances surrounding the conviction; (5) the age of the individual at the time of conviction; and (6) evidence of rehabilitation efforts.

Before making an adverse decision, the employer must engage in an “interactive assessment” with the individual by providing written notice of the company’s preliminary decision and the basis for its conclusion that the conviction is substantially related or poses a risk of harm. The employer must give the individual at least five business days to respond and consider information submitted by the individual before making a final decision. Once a final decision has been made, the employer must provide a second notice to the employee explaining the basis for the decision, advising of any internal appeal procedures, and giving notice of the individual’s right to file a charge of discrimination with the Illinois Department of Human Rights.

Companies with employees in Illinois should look at how they use criminal background checks in employment decisions to ensure compliance with SB 1480. Penalties under the Illinois Human Rights Act are significant, including uncapped compensatory damages, back pay, front pay, reinstatement, attorneys’ fees and costs, and punitive damages. Before conducting criminal background checks or disqualifying an individual from employment based on their criminal record, Illinois employers should consult with counsel.

SB 1480 and Equal Pay Reporting

SB 1480 also amends the Illinois Equal Pay Act to require that businesses with over 100 employees in Illinois obtain an “equal pay registration certificate” from the Illinois Department of Labor before March 24, 2023, and then recertify every two years thereafter. To obtain a certificate, an employer must provide gross compensation information for all of

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the demographic groupings on its EEO-1 report and provide a full payroll run showing all compensation to all individuals employed in Illinois (grouped by gender, race, and ethnicity) in the year prior to application. The data must demonstrate that there is no pattern of relative underpayment by gender or race or explain with nondiscriminatory factors any pattern appearing in the data.

Conducting business in Illinois without a certification can lead to penalties of up to 1% of the company's gross revenue for the year in which the violation occurs. Other than the individualized compensation data, the reports submitted by employers to obtain certification will be available to the public, providing a fertile ground for plaintiff-side attorneys to troll for potential cases.

SB 1480 contains several other reporting requirements, gives the Illinois Department of Labor broad investigatory and enforcement powers, and prohibits retaliation against employees who object to or report equal pay concerns.

Over the next three years, before they must apply for an equal pay registration certificate, Illinois employers should analyze their payroll records, ensure they are in compliance with the Illinois Equal Pay Act and non-discrimination laws, and make any needed changes to their policies and procedures.

If you have any questions, please feel free to contact the authors or your Miller Canfield attorney.