June 16, 2016

Connecticut Enacts Modified "Ban the Box" Law

Gov. Dannel P. Malloy has signed into law Public Act No. 16-83, titled "An Act Concerning Fair Chance Employment" (the Act).

The Act is a modified "Ban the Box" law. It applies to all employers in both the public and private sectors and is effective January 1, 2017. The Act prohibits employers from inquiring about a prospective employee's prior arrests, criminal charges or convictions on an *initial* employment application, unless (1) the employer is required to do so by an applicable state or federal law, or (2) a security or fidelity bond or an equivalent bond is required for the position for which the prospective employee is seeking employment.

A version of the Act that was initially proposed sought to prohibit employers from, among other things, inquiring about a prospective employee's criminal history until the employer made a conditional offer of employment to the applicant. The Act does not go quite this far and prohibits employers only from inquiring about a prospective employee's criminal history in an *initial* employment application. Nothing prohibits employers from asking about an applicant's criminal history (subject to certain restrictions discussed below) during a subsequent interview or by sending supplemental application materials after an initial screening. Additionally, the Act does not provide a private right of action. Rather, the only recourse for a prospective employee who is aggrieved by the Act is to file a complaint with the Labor Commissioner.

Although the Act technically repeals Section 31-51i of the Connecticut General Statutes, many of the requirements contained in that statute survive in the Act. Employers still may not require an employee or prospective employee to disclose a prior arrest, criminal charge or conviction if the records of such arrest, charge or conviction have been erased. Additionally, any employment application form permissible under the Act that contains any question concerning the criminal history of the applicant must contain a notice, *in clear and conspicuous language*, that the applicant is not required to disclose the existence of any arrest, criminal charge or conviction, the records of which have been erased or are subject to erasure under various Connecticut regulations.

Although, at this point, compliance with the Act is not onerous, it may not be the end of what is to come. The Act also establishes a "fair chance employment task force" charged with studying issues, including, but not limited to, the employment opportunities available to individuals with criminal histories. Under the Act, the task force is required to submit a report on its findings and offer recommendations on further administrative or legislative action on or before January 1, 2017. It must submit a second report, addressing the same issues, on or before January 1, 2018.

What Should Employers Do?

Employers should review their employment applications and make any necessary revisions to comply with the new law prior to its effective date of January 1, 2017. Employers should also stay tuned for developments following the release of further recommendations and proposals from the task force.

Authors



Daniel L. Schwartz
Partner

Stamford, CT | (203) 977-7536

New York, NY | (212) 297-5800

dlschwartz@daypitney.com



James M. Leva
Partner

Parsippany, NJ | (973) 966-8416

Stamford, CT | (973) 966-8416

jleva@daypitney.com