Updates

The city of Chicago published an amended ban-the-box ordinance on April 24, 2023, that further restricts employers' use of criminal records for job-screening purposes. Effective immediately, the city's new ordinance requires employers with a Chicago business operating license or who maintain a facility in Chicago to provide new pre- and post-adverse action notices and engage in individualized assessments when using criminal history for employment screening. Although Illinois' existing Job Opportunities for Qualified Applicants Act (JOQAA) largely mirrors the amendment, the Chicago ordinance also applies to employers with fewer than 15 employees and includes steeper penalties for violations. Chicago employers of all sizes will need to be aware of these changes.

New Requirements Under the Ordinance

The new amendment imposes three new requirements on Chicago employers.

First, the amendment requires that employers provide individuals subject to an adverse employment action based on criminal history with a "pre-adverse action notice" and, afterward, a "final adverse action notice." An adverse employment action can involve any employment action with materially adverse consequences for a worker or potential hire, including, for instance, failure to hire, firing, failure to promote, a reduction in pay, or demotion. Because the federal Fair Credit Reporting Act (FCRA) requires such pre- and post-adverse employment action notices when using third-party vendors to screen for criminal history, many employers will already have some familiarity with this two-step process.

Second, Chicago now requires specific content to be added to pre-adverse action and final adverse action notices. Chicago employers are now required to: (1) provide, in both pre-adverse action and final adverse action notices, the employer's specific reasoning for the adverse action; and (2) include information in the final adverse action notice that explains that the individual has the right to file a charge with the Chicago Commission on Human Relations (CCHR).

Third, the amendment shifts the criminal history screening assessment process from a general assessment to an individualized one. When basing an adverse employment action on an individual's criminal history, there must now be: (1) a "substantial relationship" between any discovered criminal offense and the position sought or held; or (2) a belief on the part of the employer—based specifically on the individual's criminal offense(s)—that the individual poses an unreasonable risk to the property or safety of other employees, customers, or members of the general public. This "individualized assessment" further requires employers to consider several mitigating factors, including:

- The length of time since the conviction.
- The number of convictions that appear on the conviction record.
- The nature and severity of the conviction and its relationship to the safety and security of others.
- The facts or circumstances surrounding the conviction.
- The age of the employee at the time of the conviction.
- The evidence of rehabilitation efforts.

Needless to say, the "individualized assessment" under the ordinance is a more demanding inquiry than previous generalized screening procedures.

Considerations for Employers

Large Illinois employers, multistate employers, and employers that already comply with the FCRA will already meet the majority of these new requirements. However, even these employers will need to update their final adverse action notices to include language stating that Chicago employees have a right to file a charge with the CCHR.

Additionally, all Chicago employers should remember that failure to comply with the requirements under the new amendment may result in fines from the Chicago Commission on Human Relations and charges of discrimination. Chicago employers should review their criminal history screening procedures, along with the procedures of third parties enlisted for such purposes, to ensure compliance with these new requirements.

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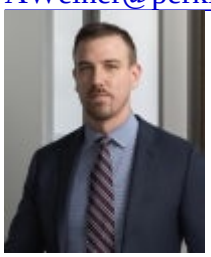

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