



## NEW LAW CURBS CRIMINAL BACKGROUND INQUIRIES BY EMPLOYERS

July 28, 2014 | Alert

Employers commonly inquire regarding a criminal background history on prospective job applicants, a practice that will see increased restrictions in Illinois when the Job Opportunities for Qualified Applicants Act (the “Act”) takes effect on January 1, 2015. The Act prohibits employment agencies or private employers with 15 or more employees from asking a job applicant about, or requiring a job applicant to disclose, his or her criminal record or history on an initial job application. Instead, under the Act any criminal history inquiry cannot occur until after “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 to the applicant... .”

The goal of the Act is to ensure that qualified applicants with criminal histories are “properly considered” for employment opportunities. By signing the law, Illinois became the fifth state to “ban the box” on initial applications. These state laws conform to the EEOC’s previously issued guidance for employers that warns against using criminal records to make employment decisions in a manner that disparately treats or disparately impacts applicants. Instead, the EEOC recommends employers make individualized assessments of candidates, and ensure any exclusion due to prior criminal conduct is consistent with the employer’s business necessities.

The Act does provide three limited exceptions: (1) for employers who are required to exclude applicants with certain convictions due to federal or state law; (2) where the applicant’s criminal conviction would disqualify the applicant from obtaining a required standard fidelity (or equivalent) bond; and (3) where the employer employs individuals licensed under the Emergency Medical Services Systems Act. The Illinois Department of Labor is tasked with investigating alleged violations of the Act, and

### RELATED PROFESSIONALS

Alexander D. Marks

### RELATED PRACTICE & INDUSTRIES

Labor and Employment



employers may be liable for civil penalties ranging from written warnings to monetary fines for violations.

The Act's practical application is that non-exempt employers should wait to inquire regarding criminal background history and/or run a criminal background check on job applicants until the above-described conditions are met. Employers should also regularly review their hiring guidelines and processes to make sure they comply with all applicable state and federal laws.

Alex Marks is a partner in the Firm's litigation practice group and is the chair of the Firm's Employment Law practice. Alex can be reached at 312/840-7022 or [amarks@burkelaw.com](mailto:amarks@burkelaw.com).