



H.B. 56 would prohibit criminal history disclosure on public employment applications

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On December 9, 2015, the Ohio General Assembly passed “ban the box” legislation, which, if signed by the governor, will prohibit public employers from asking about an applicant’s criminal history on employment applications. H.B. 56 applies to state agencies and political subdivisions of the state, including cities, counties, villages, townships and school districts. The governor has been on the record about second chances for employment and is expected to sign the bill. The measure would take effect 90 days later.

This legislation is part of a national movement to remove criminal background questions from employment applications and offer fresh starts to persons whose criminal histories might be a barrier to employment. It is not a prohibition on checking background information once the applicant moves on in the process; the public employer may inquire about an applicant’s criminal history during an interview or conduct other background-checking procedures in which the employer normally engages. H.B. 56 also does not prohibit public employers from including a statement on an employment application notifying applicants of state or federal laws that disqualify applicants with a particular criminal history from employment for specific positions.

In cases where there are no applicable laws prohibiting employment due to a conviction, public employers should be mindful of how they use criminal background information in making employment decisions. This area has been under much scrutiny by the federal Equal Employment Opportunity Commission (EEOC) for several years. Using the EEOC’s published guidance, reliance on information identified in criminal history records should be job-related and consistent with business necessity. Employers should consider the nature and gravity of the offense or conduct; the time that has passed since the offense, conduct and/or completion of the sentence; and the nature of the job held or sought.

H.B. 56 also makes minor revisions to civil service laws, now stating that a classified employee convicted of a felony while in the classified service will become unclassified. Previously, a classified employee could become unclassified due to any felony conviction, including those that occurred prior to employment.

Public employers should be aware that these changes may necessitate changes to their policies or procedures.

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