

PUBLICATION

New Baltimore City Law Limits Employee Criminal Record Checks: How Health Care Employers Are Affected [Ober|Kaler]

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"Ban the Box" laws are being passed in cities all across the United States. Ober|Kaler's Employment Group looks at the version passed by the Baltimore City Council and outlines what employers doing business in Baltimore need to know.

Effective August 13, 2014, certain employers in Baltimore City will be restricted from asking applicants and employees about particular criminal history. The new law, passed by the City Council as a bill titled "Ban the Box" – Fair Criminal-Record Screening Practices, applies to employers with 10 or more full-time equivalent employees in Baltimore City, as well as applicants of those employers being considered for employment in Baltimore City. The law also differentiates between two types of criminal history – arrest records and conviction records.

Consequently, prior to August 13, 2014, if you are an employer with 10 or more employees in Baltimore City, it is imperative that you remove from your application any inquiry about criminal history and also train hiring staff for compliance with this new law.

Regarding arrest records, under this new law, covered employers are prohibited from asking or requiring applicants and current employees to disclose any arrest or criminal accusation that (1) is not pending and (2) has not resulted in a conviction. Likewise, if the covered employer learns of an arrest of or a criminal accusation against that person, the employer is prohibited from taking any adverse action based on that knowledge.

With regard to conviction records, covered employers are prohibited from asking or requiring from applicants the following until after a conditional offer of employment is extended; (1) asking an applicant about their criminal record, (2) requiring an applicant to disclose his or her criminal record or (3) conducting a criminal record check on an applicant. A criminal record, as distinguished from an arrest record, is defined as conviction arising from a verdict or plea of guilty or nolo contendere, including a sentence of incarceration or fine and a suspended sentence. Once a conditional offer of employment is extended, criminal record history is no longer restricted under this Baltimore City law. However, the Equal Employment Opportunity Commission, which enforces Title VII, the federal law prohibiting discrimination on the basis of race, among other characteristics, states that applicant/employee convictions should only be considered by employers when the convictions are "job related and consistent with business necessity." In other words, employers should do targeted screening according to the nature of the specific job, and take into consideration the nature of the crime, as well as the time elapsed since the conviction.

Employers expressly authorized by another law to inquire about arrest records or convictions are exempted from this new Baltimore City law. For example, employees of certain types of child care facilities can and must still screen their employees as required by Maryland law.

For violations, employees can file a complaint with the Baltimore Community Relations Commission. The Commission may award any or all of the following remedies: back pay for lost wages caused by the violation, reinstatement to employment, compensatory damages and/or attorneys' fees. Employers are prohibited from

retaliating or discriminating against any person who makes a complaint. Finally, violators of this law can be charged with a misdemeanor and be subject to a fine of up to \$500 and/or imprisonment for up to 90 days for each offense.

This law is one of many passed recently in jurisdictions across the country. The purpose of the law is to prevent unfair, blanket elimination of employees and applicants with criminal histories from employment consideration.