

EMPLOYMENT SERVICES ALERT

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Ohio General Assembly Enacts Ban-the-Box For All Ohio Public Employers

By Karen Adinolfi, Partner

On December 23, 2015, Ohio Governor John Kasich signed into law House Bill 56, known as the Ohio Fair Hiring Act. Continuing the trend of “ban-the-box” across the United States, as well as the implementation of such a provision for Ohio state employees, the Ohio Fair Hiring Act prohibits all public employers from inquiring about an applicant’s criminal background on an employment application or related form. Specifically, newly enacted Section 9.73 of the Ohio Revised Code reads, in pertinent part that:

(B) No public employer shall include on any form for application for employment with the public employer any question concerning the criminal background of the applicant. *R.C. 9.73(B)*

However, to the extent that any provision of Ohio or federal law disqualifies an individual with a particular criminal history from employment in a particular position, the Act does not prohibit a public employer from including on any application a statement notifying applicants of that provision. *R.C. 9.73(C)*.

There is also nothing in the Act that prevents an employer from conducting background checks or inquiring as to an applicant’s criminal background later in the interview process, but those inquiries would then be governed by the Equal Employment Opportunity Commission’s (EEOC) guidance on the use of arrest and conviction records in the hiring process.

The bill also makes some minor changes to Ohio Revised Code Chapter 124 with respect to the effect of a felony conviction on one’s classified or unclassified civil service rights.

Prior to the Act’s effective date of **March 23, 2016**, public employers must change all employment applications, whether paper or electronic, as well as any other forms that accompany the employment application to remove any inquiry or reference to criminal convictions or background. Those public employers that have positions requiring the absence of certain criminal convictions should consider placing a statement as to those requirements on the application to avoid the futility of application from individuals with such convictions. Note that this statement may only contain convictions deemed disqualifying for a particular position by Ohio and/or federal law; the employer’s own preferences may not be included. Public employers should implement internal procedures as to the conducting and consideration of background checks and train the appropriate personnel on those procedures. However, to the extent that a public employer conducts background checks and inquires into criminal background later in the process, those activities should be continued, keeping in mind guidance from the EEOC as to how convictions may be used in the decision-making process.

Please do not hesitate to contact any of the following Roetzel attorneys should you have any questions regarding this topic.

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