

City of Portland Bans the Box and More

The City of Portland, Oregon has passed an ordinance (No. 187459) to ban the box, and more, effective July 1, 2016. The City's ordinance is more restrictive and places more demands on employers than does the State's ban-the-box legislation which goes into effect on January 1, 2016.

Portland's new law applies to any person or entity that, directly or through an agent, employs another for a position that is performed a majority of the time within the City of Portland, and who employs six or more individuals. Under the ordinance, "employ" means to engage or use the personal service of another person on a full-time, part-time, temporary, or seasonal basis, with or without pay, where the employer reserves the right to control the means by which the service is performed. **This appears to cover many individual contractors, but it specifically does not apply nonemployee volunteers.**

The ordinance makes it unlawful for employers to:

- Access an applicant's criminal history prior to making a conditional offer of employment;
- Exclude an applicant from consideration solely because of an applicant's criminal history unless the employer determines in good faith that a specific offense or conduct is job related for the position and consistent with business necessity; and
- Use or consider (even after hiring): (a) an arrest not leading to a conviction, except where a crime is unresolved or charges are pending against an applicant, (b) convictions that have been judicially voided or expunged, and (c) charges that have been resolved through the completion of a diversion or deferral of judgment program.

In order to determine whether an applicant's criminal history is job related, employers are required to conduct an individualized assessment of:

- The nature and gravity of the criminal offense;
- The time that has elapsed since the criminal offense took place; and
- The nature of the employment held or sought.

An employer may rescind an offer of employment if, after the individual assessment is conducted, it determines that a specific offense or conduct is job related and consistent with business necessity. Employers are then required to notify the applicant in writing of its decision to rescind the job offer and identify the relevant criminal convictions on which the decision is based.

There are only a few exceptions to the new law. The law does not apply to nonemployee volunteers, law enforcement and criminal justice employees, or if federal, state, or local law requires the consideration of an applicant's criminal history.

However, there are certain positions for which an employer may consider an applicant's criminal history at any point in the hiring process and use the City Criminal History Matrix to screen applicants (Oregon Admin. Rule § 407-007-0275). Positions covered by this exemption include those: (a) that involve direct access to or the provision of services to children, the elderly, persons with disabilities or mental illness, or individuals with alcohol or drug dependence, or substance abuse disorders; (b) with heightened public safety concerns or a business necessity; and (c) designed by the employer as part of a federal, state, or local government program designed to encourage the employment of those with criminal histories. Although criminal history may be obtained and considered for these positions, all other provisions of the new ordinance will apply to employers.

The Oregon Bureau of Labor and Industries will enforce the ordinance, and may impose a civil penalty of up to \$1,000 for each violation.

What This Means to You

- **The City of Portland has made it illegal for employers to (a) access an applicant's criminal history prior to making a conditional offer of employment; or (b) exclude an applicant from consideration solely because of an applicant's criminal history unless it is job related and consistent with business necessity.**
- **Employers will be required to conduct an individual assessment if criminal history is considered and provide written notice to an applicant if a job offer is rescinded.**
- **You should determine whether you have employees the City of Portland.**
- **If you do, review your employment application, the timing of your background checks, and how you make decisions with your lawyer.**

Go here to review the City of Portland's Ordinance No. 187459: <http://efiles.portlandoregon.gov/Record/8291281/>

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