

City Council Of Philadelphia Considers Restrictions On Employers' Ability To Inquire About Criminal Records Of Job Applicants

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On February 17, 2011, Philadelphia City Council Member Donna Reed Miller introduced a bill which would amend the Philadelphia law "Regulation of Businesses, Trades and Professions", by adding a chapter entitled, "Fair Criminal Record Screening Standards." If enacted, this bill would outline procedures for all Philadelphia employers, both private and public, in the timing and conducting of criminal background checks on potential employees during the initial interview or primary application process.

The proposed bill (bill number 110110) differs from existing Pennsylvania law on the use of criminal history information for potential employees and U.S. Equal Employment Opportunity Commission Guidance in several ways. Perhaps the most significant change to employment procedures if the bill were to be enacted would be the prohibition on employers from making "any inquiry about the criminal record of an applicant" until after a conditional offer of employment is made. This provision presumably would prohibit employers from asking about prior criminal convictions on employment applications, which many employers currently ask as a check box question. This "ban the box" legislation has been proposed in several other cities and states across the country (typically only applying to public employers), with the notable exception of Massachusetts, where the new "ban the box" law will apply to private employers.

Among the other provisions in the proposed Philadelphia bill:

- Employers may not conduct criminal records checks on applicants or current employees unless the criminal records check is required by law or where the employer has made a good faith determination that the relevant position is of such sensitivity that a criminal records check is warranted;
- The criminal records check may be conducted through the Pennsylvania State Police or other private background check company, but not through criminal court records;
- Employers may not consider arrest information or charges that do not result in convictions;
- Employers may only conduct a criminal records check after a conditional offer of employment is extended;
- If an employer refuses/rescinds/revokes an offer on the basis of the criminal records information, the employer must notify the applicant/employee of the potential adverse action, provide a photocopy of the criminal record report and detail the specific part of the criminal record that is a concern;
- The employer must provide the applicant/employee with five (5) business days to respond to the report to rebut its accuracy and/or relevance before taking final action;

- Employers may not deny employment simply because an applicant/employee previously was convicted of a criminal offense unless there is a direct relationship between one of more of the criminal convictions and the individual's suitability for the specific job sought, or employing the individual would involve an unreasonable risk to the property or to the safety or welfare of specific individuals or the general public; and finally,
- The proposed bill would create a private right of action and allow for back pay, reinstatement, compensatory and punitive damages and reasonable attorney's fees/costs.

Supporters of this bill claim that employers often exclude formerly convicted persons from a fair review of their qualifications even when convictions would have no bearing on their ability to perform the tasks required by the job sought.

A number of bills regarding criminal background checks during the application process have been proposed several

times in the past, in some cases by Councilwoman Miller and as recently as September 2010. At one point, the Philadelphia Bar Association passed a resolution supporting the bill. At present time this bill is being held in committee and no vote on the measure has been scheduled.

We will continue to monitor and inform clients on the progress of this bill. If you would like to discuss any aspect of this decision and how it may impact your business or organization, please contact Edward Hazzouri, co-chair of Cozen O'Connor Public Strategies, at 215.665.2013 or ehazzouri@cozen.com.

For questions about conducting background checks and the employment process generally, please contact Carrie B. Rosen of Cozen O'Connor's Labor and Employment Group, at 215.665.6919 or crosen@cozen.com.