

LEGAL ALERT

New Philadelphia Law Restricts Criminal Records Inquiry On Employment Applications

On April 13, 2011, Philadelphia Mayor Michael A. Nutter signed the Fair Criminal Screening Standards Ordinance, which will change both the application and screening processes for entities with employees working in Philadelphia. This ordinance will become effective on July 12, 2011.

The new law establishes limits and requirements for the screening of criminal records by certain Philadelphia employers, and will likely change both the application and screening processes of many employers. This law generally prohibits unfair discrimination against persons previously arrested or convicted of one or more criminal offenses which are not then pending against the person. The City of Philadelphia passed this law in the hopes that it will help qualified ex-criminal offenders obtain access to employment opportunities, reduce recidivism, increase public safety and stabilize city neighborhoods.

General Requirements of the Screening Standards

The new law will preclude city agencies and private employers employing ten or more persons within the City of Philadelphia from the following actions when seeking to fill a job:

- making any inquiry regarding criminal convictions before and during the application process and initial interview process, or from requiring that applicants disclose such information;¹ or
- inquiring about an individual's arrests that did not result in convictions, unless such inquiry is required or permitted by another law.

It is expected that employers will be able to ask about criminal convictions and conduct a criminal background check once the initial interview is conducted. Employers are required to abide by the following standards when making a criminal background inquiry:

- determine an applicant's initial qualification for a position **prior** to conducting a criminal record check;
- consider the bearing, if any, that the criminal offenses for which a person was previously convicted will have on his or her fitness or ability to perform one or more of the duties and responsibilities of the position in question, as well as



the elapsed time between the offenses and the potential employment, and the seriousness of the offenses;

- notify the applicant of any potential adverse employment action resulting from a criminal check, including specifying the part of the record check concerning the city or the county agency; and
- provide the applicant or the current employee an opportunity to present information rebutting the accuracy or relevance of the criminal record report, and to claim violation of this law.

Advice To Employers

Employers who will be subject to the requirements of this law should review their employment applications used for employees in Philadelphia, as well as in cities with similar laws, to ensure that applications provided to applicants prior to or during initial interviews do not include questions about criminal convictions.

You should also begin the process of educating your hiring managers, human resources and recruiting professionals, including professionals located outside Philadelphia who recruit for, and supervise, jobs that will be filled in Philadelphia, regarding this new law to ensure that the recruiting and interviewing processes comports with it.

For more information visit our website at www.laborlawyers.com or contact any attorney in the Philadelphia office of Fisher & Phillips at 610.230.2150.

¹ Since employers often ask the applicant to check a box on the employment application indicating if he or she was ever convicted of a crime, this and similar laws that have already been passed in cities such as Atlanta, Chicago and Boston are often called "Ban the Box" laws.

This Legal Alert provides an overview of a specific city ordinance. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.