

State Rules Register Alert

July 22, 2013

Rhode Island - New Ban the Box Law

On July 16th, 2013, S357 was signed into law by the Governor of Rhode Island. The bill is a "ban the box" measure and is effective January 1, 2014.

As with all "ban the box" legislation, to date, this Act is a requirement upon employers designating when the employer can inquire into the criminal past of the applicant. This law follows existing Rhode Island restrictions limiting inquiries by employers to convictions only. The law is to be found at §28-5-6 et. seq. of the state's laws once placed in the state code. Those are the employment discrimination provisions for Rhode Island.

The law provides:

All employers may inquire about "convictions" at the first job interview or thereafter. Convictions are defined as a: "finding of guilt after a criminal trial, any plea of guilty, or nolo contendere to a criminal charge." So, can an employer act upon a deferred adjudication that resulted in an eventual dismissal because the consumer did "plead guilty" to the charge? It is evident that those drafting this and similar laws are unfamiliar with criminal procedure. One would assume that they did not intend the consideration of such pleas of guilty because Rhode Island employers are only to be concerned with convictions.

There are exceptions for some employers:

1. Where federal or state laws/regulations create disqualifications based upon conviction of certain crimes. [Consider financial institutions where convictions for dishonesty create a disqualification.] The application may ask for information on these types of convictions the employer must consider but no others.
2. If the position requires a "standard fidelity bond" (not defined) that disqualifies coverage if certain convictions have occurred, then the application can inquire about these types of convictions but no others.

If you are trying to keep track of the "ban the box" states or other restrictions, remember that the State Rules Register has a restriction matrix for each of the various state restrictions. In this area, you can check on restrictions: "after conditional job offer" and "at/after interview" and those states with such restrictions will come up in a list. If you go to the individual state listings they have the restriction details by clicking on "more information".

These laws are intended to allow those with a criminal record to at least get to the interview stage of

the employment process. Employers have no additional restrictions, as the law does not prohibit the employer from considering past convictions. The employer obviously is to follow the EEOC guidance by connecting the criminal conduct to the specific job being filled.

Best Regards,

Larry Henry