

State Rules Register Alert

August 30 2016

Portland, Oregon: Ban-the-Box

Portland has joined other cities in passing their own ordinance restricting the consideration of a criminal record. These restrictions go beyond the restrictions already in place per the Oregon ban-the-box state law.

When can a criminal record be considered? This is permitted only after a conditional job offer. Employers cannot inquire about or access criminal record information prior to this time.

What cannot be considered by an employer?

1. Arrests not resulting in a conviction. However pending charges and charged not "resolved" may be considered. Unresolved charges are not defined but could refer to charges that are dismissed with the possibility of being refiled. Sometimes charges are dropped due to missing witnesses, etc. and the case is dismissed to avoid "speedy trial" violations. This is just an educated guess.
2. Expunged and "voided" convictions. Voided charges are not defined. Voided could refer to cases reversed on appeal or set aside for some reason, again an educated guess.
3. Deferred adjudications, except for crimes of physical harm or attempted physical harm to another person. So crimes of murder, manslaughter, rape, assaults of all types, and the like, may be considered. This is interesting because the FCRA would likely prohibit reporting such cases that are older than 7 years. Note: when the 7 year clock begins for non-convictions is uncertain at this time. Is it from when the case was originally filed or when it was dismissed?

Individual assessment is required, but it only entails the 3 classic considerations - seriousness of the offense, how long ago it occurred and its relationship to the job. **However, the employer must send a notice to the applicant** that he/she did not get the job due to the criminal record and provide a copy of the record(s) in question that resulted in the decision not to hire. The Mayor's office has stated that the employer can simply "highlight" the relevant record or records when dealing with multiple records. No explanation or justification is required in the notice, e.g.:

Dear Applicant,

We did not hire you based upon the enclosed criminal record that we received.

Sincerely,
Employer

This is in addition to the FCRA notice of adverse action.

What employers are exempt?

- Those with fewer than 6 employees. For over 6 at least one employee must perform a majority of their time within Portland.
- Federal government.
- State government.

- Political subdivisions of the State of Oregon, but Portland city employment is covered.
- Law enforcement agencies.
- The criminal justice system.
- When a law/regulation requires the employer to consider an applicant's criminal history.

There is an additional exemption for volunteers.

Enforcement: by administrative action - no private right to sue is included.

Law was effective July 1, 2016.

And there is more to follow:

The City is to create its own hiring matrix that will match certain disqualifying offenses for particular jobs. This will not be an exclusive list. Rather it appears to be an attempt to provide relief to employers regarding certain offenders. This is unique at this time with Ban the Box laws. The process is quite involved; so it likely will be sometime before the first matrix model is available.