

Illinois' Job Opportunities for Qualified Applicants Act: Get Ready to Adjust Your Hiring Activities

by F. Scott Fishman

A FREEBORN & PETERS CLIENT ALERT

ABOUT THIS CLIENT ALERT:

On January 1, 2015, the Illinois Job Opportunities for Qualified Applicants Act goes into effect. Employers can no longer ask if people have a criminal record before inviting them for an interview or offering them a position.

The purpose is to prevent past mistakes from automatically screening out qualified people for employment—particularly those who have turned their lives around.

Companies that violate the Act will be subject to penalties from the Department of Labor and would be open to civil lawsuits.

When it comes to getting a job, sometimes honesty has not felt like the best policy. Each year, hundreds of thousands of Illinoisans were denied employment. That happened because they checked the “yes” box next to the question “Have you ever been convicted of a crime?”



This has been a common screening device:

- 92% of employers conduct criminal background checks on applicants¹
- 65% of employers will not hire an individual with even one criminal conviction of any kind²

Effective January 1, 2015, that's going to change. This is when the Job Opportunities for Qualified Applicants Act (HB5701, Public Act 98-0774), which was passed in July, goes into effect.

¹ Society for Human Resources Management, *Background Checking: Conducting Criminal Background Checks*, slide 3, <http://slidesha.re/ShdDrr> (data gathered after surveying hundreds of the nation's largest employers).

² Joan Petersilia, U.S. Department of Justice, *When Prisoners Return to the Community: Political, Economic, and Social Consequences*, Sentencing & Corrections: Issues for the 21st Century, 3, <http://1.usa.gov/PILqFH>.



What the Act Does

The Act says an employer can't ask or require job applicants to disclose a criminal record or criminal history before these two instances: 1) they are selected for a job interview, or 2) they receive a conditional offer of employment.

What happens when potential employers discover someone has a past conviction? They are required to consider three factors. First, the nature and gravity of a candidate's conviction record. Second, the amount of time since this occurred. Third, whether the conviction had direct bearing on the person's fitness for a position.

This Act benefits qualified applicants who have made past mistakes in these ways:

- Rewards them for turning their lives around, working hard, and getting the education and training they need to be competitive in the job market
- Helps them avoid the indignity and hopelessness that comes with being rejected by employer after employer without getting a chance to present their qualifications and skills

Companies that violate the Act may be sued in civil court and could face penalties imposed by the Department of Labor.

What the Act Won't Do

Upon first exposure to this Act, you may have some concerns. There are two important items that this legislation does *not* require of you. First, you *won't* be forced to hire people who are unqualified for a position for other reasons. Second, the Act does *not* apply to positions where laws preclude applicants with certain convictions.

Do the Right Thing

There was broad support for the Act from the business, legal, not-for-profit and religious communities. (This includes Freeborn & Peters, because the legislation is consistent with our vision, purpose and values).

We want you to be aware of this new regulation. Make any necessary changes in your hiring policies and practices before it becomes the law.

If you need assistance, we can review your hiring practices, including your employment application process.

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Scott conducts interviews and background investigations for Freeborn's Fraud and Internal Investigations Team. Then he turns this information into "actionable intelligence" to give attorneys a clear picture of the people in their cases. As a former law enforcement professional, Scott has nearly 30 years of experience in criminal investigations, legal considerations and risk assessment strategies.

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