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Labor and Employment Alert: Philadelphia Makes it Even Harder for Employers to Conduct Criminal Background Checks

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As originally enacted in 2012, Philadelphia's ban-the-box law applied to employers with at least 10 employees within the city. The law allowed employers to conduct criminal background checks on applicants after the first interview and employers could review an applicant's entire criminal history. The law did not provide applicants with a private cause of action against an employer who failed to comply with the background check requirements.

Effective March 14, 2016, however, Philadelphia's ban-the-box law will expand to encompass any employer with at least one employee in the city and will severely prescribe how and when the employer conducts a criminal background check.

First, an employer will be permitted to conduct a criminal background check only after the applicant has been given a "conditional offer of employment." When conducting the background check, the employer can only look back seven years.

Second, a conditional offer of employment can only be withdrawn as a result of a criminal conviction if the employer determines that the applicant's conviction record would "reasonably lead an employer to conclude that the applicant would pose an unacceptable risk in the position applied for," or that the applicant failed to meet the job's legal or physical requirements.

Third, employers are prohibited from having policies that automatically bar those with criminal convictions, or specific criminal convictions, from employment. Instead, employers must conduct an individualized assessment to determine whether the applicant's criminal background presents an unacceptable risk based on a number of factors: the nature of the offense, how old the offense is, the applicant's employment history and period of incarceration, the job being sought, ant character or employment references, and evidence of rehabilitation since the conviction. An applicant may be rejected where his or her criminal record includes a conviction for an offense that bears a "relationship to the employment sought" and "exclusion of the applicant is compelled

by business necessity.”

Fourth, the law now requires that an employer who rejects an applicant because of a conviction notify the applicant in writing and provide a copy of the criminal background check. The applicant then has 10 days in which to offer an explanation or proof that the background check is inaccurate.

Finally, the ban-the-box law will be administered by the Philadelphia Commission on Human Relations, and the commission can award compensatory damages and punitive damages (capped at \$2,000) for violations. Additionally, applicants will now have a private right of action if they believe they have been discriminated against based on their criminal convictions.

Contact your Vorys lawyer if you have questions about complying with Philadelphia's expanded background check law or other ban-the-box laws.