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Labor and Employment Alert: Vermont Bans The Box On Criminal Records

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Effective July 2017, Vermont joined the growing list of state and local jurisdictions to “ban-the-box” and limit employer access to a prospective employee’s criminal record. Eight other states (Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, Oregon and Rhode Island) have removed criminal history questions from job applications for private employers.

Vermont’s law generally prohibits an employer from requesting “criminal history record information” on initial employment application forms. “Criminal history record information” includes an individual’s arrests, convictions, or sentences. An employer is permitted to inquire about an applicant’s criminal history record during an interview or once applicant has been deemed otherwise qualified for the position. An employer who inquires about an applicant’s criminal history record information must afford the applicant an opportunity to explain the information and the circumstances regarding any convictions and post-conviction rehabilitation.

Additionally, an employer may inquire about criminal convictions on an initial application if the applicant is applying for a position for which federal or state law creates a mandatory or presumptive disqualification based on a conviction for one or more types of criminal offenses or an obligation not to employ an individual who has been convicted of one or more types of criminal offenses. The questions on the application form must be limited to the types of criminal offenses creating that disqualification or obligation not to hire. An employer is permitted to inquire about criminal convictions even if that federal or State law also permits the employer to obtain a waiver that otherwise would allow the employer to employ such an individual. The employer does not have to provide the applicant an opportunity to explain his or her convictions and rehabilitation if the applicant is ineligible for the position under federal or state law.

Employers with operations in Vermont should review their hiring policies, practices and applications to ensure they comport with the new law’s requirements. An employer who violates the law’s provisions

faces a civil penalty of up to \$100.00 for each violation. Contact your Vorys lawyer if you have questions about pre-employment inquiries and hiring practices.

