

Health Law Alert: Minnesota's New Ban the Box Law Takes Effect January 1st

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Beginning January 1, 2014, most Minnesota employers will no longer be able to ask applicants about their criminal histories on job applications. The new "Ban the Box" law prohibits public and private employers from asking applicants about criminal histories until after an applicant has been selected for an interview or, if the employer's hiring process does not include job interviews, upon a conditional offer of employment. An exception to the law applies to employers who are statutorily obligated to conduct background checks or otherwise take into consideration a potential employee's criminal history during the hiring process.

At first blush, the exception to the law appears to exempt employers like many health care providers, who are required to conduct background studies with the Minnesota Department of Human Services (MDHR). The Minnesota Department of Human Rights, the agency responsible for enforcing the new law, appears to take a contrary position. The Department's FAQs section of its web site states:

What if I'm obligated to conduct background checks, how does this new law impact me?

If you are obligated to screen employees' criminal records due to working with vulnerable populations or some other legal requirement you are still allowed to obtain necessary criminal background information. The change in statute does not preclude an employer from asking about an applicant's criminal history, ***it merely changes the timing of when that request can be made***, including for occupations with legal requirements about criminal records.

Read literally, the MDHR's guidance seems to indicate that even those employers who are obligated by statute to conduct background checks may not request the information on the application. Although this appears contrary to the language in the statute, until the Department provides clearer guidance employers may wish to consider alternative means of discouraging applicants from applying who cannot work in the position because of their criminal history. For example, rather than requesting the applicant to disclose whether he or she has a criminal history, it may suffice simply to notify applicants that the position for which they are applying is subject to a background study, and that the employer is not permitted to hire employees who are disqualified from working because of their past criminal history.



If you have any questions on this health law alert, please contact Carl Crosby Lehmann.

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