

Management Alert



Spokane City Council Approves “Ban-the-Box” Ordinance for Private Sector Employers

By Jennifer L. Mora and Pamela Q. Devata

Seyfarth Synopsis: The Spokane City Council recently approved a “ban-the-box” ordinance, which, if it becomes law, will prohibit employers from requesting and considering criminal history until after an interview. The Mayor has until December 14, 2017 to veto or sign the ordinance.

On November 27, 2017, the City of Spokane City Council approved a new ordinance that restricts the ability of private sector employers to request and consider conviction records for employment purposes, including a requirement that covered employers “ban the box” asking applicants to self-disclose their criminal history on employment applications and defer requesting and considering any criminal history information, including through a criminal background check, until after an interview or, if no interview, after a conditional offer of employment.

Mayor David Condon has until December 14, 2017 to sign or veto the ordinance. If passed, Spokane employers will have until July 2018 to comply with the new ordinance, although the City will not enforce it until 2019.

Coverage

The ordinance applies to all private employers in the Spokane city limits, but does not apply to the following:

- to any employer hiring an employee who will have unsupervised access to children under the age of 18 or vulnerable adults or persons as defined under state law;
- to employers who are expressly permitted or required under any federal or Washington state law to inquire into, consider, or rely on information about an applicant’s arrest or conviction record for employment purposes;
- to certain law enforcement agencies as defined under state law; or
- where criminal background checks are specifically permitted or required under state or federal law.

The ordinance is broad enough to cover all types of work, including “temporary or seasonal work, contracted work, contingent work and work through the services of a temporary or other employment agency; or any form of vocational or educational training, whether offered with or without pay.” The ordinance arguably only applies to those applying for positions in the Spokane city limits.

What the Ordinance Prohibits

Covered employers may not:

- advertise job openings in a way that excludes people with arrest or conviction records from applying, such as using advertisements which state “no felons” or “no criminal background,” or which otherwise convey similar messages;
- include any question on a job application, inquire orally or in writing, receive information through a criminal history background check, or otherwise obtain information about an applicant’s arrest or conviction record until **after** the applicant has participated in an in-person or video interview or received a conditional offer of employment;
- use, distribute, or disseminate an individual’s arrest or conviction record except as required by law;
- disqualify an individual solely because of a prior arrest or conviction **unless** the conviction is related to significant duties of the job or disqualification is otherwise allowed by this chapter; or
- reject or disqualify an applicant for failure to disclose a criminal record prior to initially determining the applicant is otherwise qualified for the position (“otherwise qualified” means the applicant meets certain criteria for the position as set out in the job advertisement or description without considering the existence or absence of a conviction or arrest record).

The ordinance makes it clear that it is not intended to prohibit an employer from inquiring into or obtaining information about an applicant’s criminal conviction or arrest record or background, and from considering the information regarding such information, after the conclusion of a job interview, and from using such information in any pre-hire decision. The ordinance also states that it is not intended to prohibit an employer from “declining to hire an applicant with a criminal record or from terminating the employment of an employee with a criminal record.” Employers also are not required to provide any accommodations or job modifications in order to facilitate the employment or continued employment of individuals with an arrest or conviction record or who are facing pending criminal charges.

Enforcement and Remedies

A violation of the ordinance is a class one civil infraction in the amount of \$261. The City may double the infraction for any subsequent violations.

Recommendations for Employers

Now more than ever, it is advisable for employers that use criminal history in pre-hire and other employment decisions to take steps to ensure compliance with the ban-the-box laws sweeping the nation. Moreover, given the onslaught of class litigation against employers alleging violations of the Fair Credit Reporting Act, employers should continue to be mindful of their obligations under that federal statute and state fair credit reporting laws when using criminal background reports provided by third-party background screening companies.

If you would like further information, please contact [Jennifer L. Mora](mailto:jmora@seyfarth.com) at jmora@seyfarth.com or [Pamela Q. Devata](mailto:pdevata@seyfarth.com) at pdevata@seyfarth.com.

www.seyfarth.com

Attorney Advertising. This Management Alert is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Seyfarth Shaw LLP Management Alert | December 11, 2017

©2017 Seyfarth Shaw LLP. All rights reserved. “Seyfarth Shaw” refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.