

# One Minute Memo®



## Illinois Joins Other States Restricting Employer Use Of Criminal Background Checks

By Condon McGlothlen, Pamela Q. Devata and Kevin A. Fritz

Governor Quinn on Saturday signed the Job Opportunities for Qualified Applicants Act (“JOQAA”), which will prohibit private employers from asking about job applicants’ criminal conviction histories before the interview phase of the hiring process (and if there is no interview, before a conditional offer of employment is made). The law is intended to encourage those with criminal histories to apply for jobs without fear of being immediately disqualified – and to discourage employers from rejecting those individuals for hire before their qualifications are fully considered. Proponents of the bill point to a pattern of disqualification that purportedly prevents qualified individuals from rebuilding their lives after an incidence of crime. Illinois already had similar protections for state employees that took effect in October 2013.

While the JOQAA bars employers and employment agencies from inquiring about criminal records until after applicants are deemed qualified for positions, employers still retain the ultimate ability to hire preferred job candidates. Additionally, certain positions are exempt from the new requirements. Examples include positions as to which federal or Illinois law prohibits hiring individuals with a criminal conviction, as well as positions for which applicants must be licensed under the Emergency Medical Services Systems Act. But for most Illinois employers, disqualifying candidates before a job interview based on their criminal record will soon be prohibited by law. The JOQAA will surely increase the number of applicants making it to the interview stage. Whether it goes beyond that to achieve the policy objectives intended by proponents remains to be seen.

Illinois now joins increasingly numerous jurisdictions that restrict employers’ use of criminal background checks in hiring. More specifically, in restricting employers’ use of criminal history, Illinois joins Hawaii, Massachusetts, Minnesota, and Rhode Island, plus numerous municipalities including Baltimore, Philadelphia, Seattle, Buffalo, Newark, San Francisco and Louisville. The new law also generally aligns Illinois with the EEOC’s Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions.

### January 1, 2015 Effective Date

The JOQAA takes effect January 1, 2015. Employers will doubtless have questions between now and then. Among other things, those with employees outside Illinois will need to reconcile the new Illinois mandates with those of other jurisdictions.

### Best Practices

Employers should review their application and hiring processes to ensure that they comply with this new law.

*Condon McGlothlen* is a partner in Seyfarth’s Chicago office, *Pamela Q. Devata* is a partner in Seyfarth’s Chicago office and *Kevin A. Fritz* is an associate in the firm’s Chicago office. If you would like further information, please contact your Seyfarth attorney with whom you work, or Condon McGlothlen at [cmcglathlen@seyfarth.com](mailto:cmcglathlen@seyfarth.com), Pamela Q. Devata at [pdevata@seyfarth.com](mailto:pdevata@seyfarth.com) or Kevin A Fritz at [kfritz@seyfarth.com](mailto:kfritz@seyfarth.com).

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