

One Minute Memo®



The State of Indiana Bans Political Subdivisions From Enacting “Ban the Box” Restrictions

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Seyfarth Synopsis: Indiana [Senate Bill 312](#) (the “Bill”) provides, among other things, that a political subdivision of the state, including a municipality, may not prohibit an employer from obtaining or using criminal history information during the hiring process to the extent permitted by federal or state law, rules or regulations.

The Indiana General Assembly recently passed the Bill, which it says was designed to create uniformity within its borders by prohibiting political subdivisions (e.g., counties, municipalities and townships) from adopting “ban the box” ordinances that restrict employers from inquiring into the criminal histories of applicants. The only Indiana municipality that currently has ban the box restrictions for private employers is Indianapolis/Marion County. The Indianapolis ordinance, passed in 2014, applies to certain private employees that provide services to the city, as well as public employees, and requires criminal history inquiries to either be made after an applicant is selected for an interview or, if no interview will be conducted, after a conditional offer of employment is tendered. That law has now been preempted by SB 312.

The new Indiana state law also seeks to protect employers by providing that criminal history information concerning a current or former employee may not be introduced against the employer in a civil action based upon the employee or former employee’s conduct if the criminal history information does not have a direct relationship to the underlying facts of the complaint, the criminal records have been sealed, the criminal conviction has been reversed, vacated or expunged, the individual has received a pardon, or the arrest/charge did not result in a criminal conviction.

In response to concerns raised by employee rights groups, at the time he signed SB 312, Indiana Governor Eric Holcomb also announced he would sign an executive order banning the box for Indiana state jobs, removing questions about prior arrest and criminal history from job applications for public sector positions.

Employer Outlook

Senate Bill 312 will take effect on July 1, 2017. Thereafter, private employers in Indianapolis that provide services to the City of Indianapolis will no longer be required to wait until an interview is conducted or a conditional offer of employment is made to make inquiries regarding criminal history.

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