



ALERTS

Illinois Employers Subject To New Restrictions Involving Criminal Convictions, New EEO And Equal Pay Reporting

April 2, 2021

Highlights

Senate Bill 1480 amends the Illinois Human Rights Act, the Illinois Equal Pay Act, and the Illinois Business Corporation Act

Illinois employers are now prohibited from making employment decisions based on an individual's conviction record, unless one of three exceptions applies

Illinois employers also must comply with new reporting and certification requirements relating to EEO and equal pay data

A new Illinois law prohibits employers from making employment decisions based on an individual's criminal conviction record. A major component of the new law, signed by Illinois Gov. J.B. Pritzker on March 23, 2021, and effective immediately, imposes significant restrictions on employers' ability to consider criminal convictions in making hiring and other employment decisions; it also requires employers to comply with new reporting and certification obligations.

Senate Bill 1480 (SB 1480) amended the Illinois Human Rights Act, the Illinois Equal Pay Act, and the Illinois Business Corporation Act.

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RELATED PRACTICE AREAS

Illinois employers should promptly review their relevant data, documents, policies, and procedures to ensure compliance with all of these new requirements, and train hiring personnel on the new restrictions regarding consideration of criminal convictions. When doing so, employers are strongly encouraged to review the Illinois Department of Human Rights' [FAQ document](#) regarding the conviction record restrictions.

Consideration of Criminal Convictions

While the Illinois Human Rights Act has long prohibited adverse employment actions based on an individual's arrest record, the amendments in SB 1480 go a step further by prohibiting adverse action based on an individual's conviction record. Employers may not take adverse action based on a conviction, unless the employer: 1) is prohibited by federal or state law from employing someone with certain criminal convictions, such as for many healthcare workers; 2) determines that the conviction is substantially related to the individual's job; or 3) concludes that employing the individual would pose an unreasonable risk to the safety or welfare of employees or the general public.

The law defines "substantial relationship" as situations where the job in question creates an opportunity for the individual to commit the same or a similar offense again, and where "the circumstances leading to the conduct for which the individual was convicted will recur in the employment position." In assessing whether a substantial relationship exists, employers must consider the following mitigating factors:

- The length of the time since the conviction
- The number of convictions that appear on the conviction record
- The nature and severity of the conviction and its relationship to the safety and security of others
- The facts or circumstances surrounding the conviction
- The age of the individual at the time of the conviction
- Evidence of rehabilitation efforts

If an employer determines that a conviction disqualifies an individual from employment, the employer must engage in an interactive assessment and notification process, much of which is similar to the adverse action process under the federal Fair Credit Reporting Act. Specifically, the employer must provide the individual written notice of its preliminary decision and the reasoning behind it, a copy of the conviction report, and information regarding the individual's right to respond and provide mitigating information before the employer's decision becomes final. The individual must be given five business days to respond to the notice before the employer makes a final decision. If the individual disagrees

with the employer's assessment and decision, he or she has the right to file a Charge of Discrimination with the Illinois Department of Human Rights.

Equal Pay Certification

In addition to the conviction record restrictions, SB 1480 requires employers to obtain before March 2024 an "equal pay registration certificate" to certify various facts relating to equal pay. Those certifications include, for example, that the employer is in compliance with federal and state EEO and equal pay laws; average compensation for minorities and females is not consistently below average compensation for others; and how often wages and benefits are evaluated to ensure continued legal compliance.

Employers also must indicate the method they use for setting compensation and benefits, e.g., a market pricing approach or an internal analysis.

EEO Reporting

SB 1480 also requires employers that file an EEO-1 report each year with the federal Equal Employment Opportunity Commission (i.e., those with 100 or more employees or federal contractors with 50 or more employees) to provide substantially similar employee demographics information to the state of Illinois, in a not-yet-available format approved by the Illinois Secretary of State. The reported data will be posted on the Secretary of State's website.

The logical question for employers is whether the data will be published in a manner that discloses company names. For now, this remains an open question, because specifics on publication have not yet been finalized, and the Secretary of State has not issued any guidance.

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