

ALERTS**New Criminal Code Changes To Affect Indiana Employers On July 1, 2013**

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Today's employers are constantly adapting to new rules and regulations implemented at the federal, state and local level. Sometimes the changes that require employer attention can come from unusual places – like revisions to a state's criminal code. Last month, Indiana Gov. Mike Pence signed legislation modifying Indiana criminal code. That legislation, House Enrolled Act No. 1482 (HEA 1482), includes some provisions that have prudent Indiana employers reviewing their employment practices and application materials.

This new Indiana law, which goes into effect on July 1, 2013, relates mostly to conditions and procedures for the sealing or expunging of certain criminal records after a prescribed period of time. However, HEA 1482 also includes language making it unlawful to, among other things, refuse to employ or otherwise discriminate against a person because of a conviction or arrest record that has been expunged or sealed.

With respect to employment applications, HEA 1482 provides further that any inquiry about an applicant's previous criminal record may be "only in terms that exclude expunged convictions or arrests, such as: 'Have you ever been arrested or convicted of a crime that has not been expunged by a court?'" A violation of the statute's anti-discrimination provision is defined as a Class C infraction (comparable to a traffic violation), but HEA 1482 also suggests that a contempt proceeding and/or an injunction against the violator may be warranted. To avoid such consequences, it will be important for Indiana employers to assess whether their application materials and employment practices (including, for example, the interview questions that they utilize) are compliant with the new law.

For employers outside of Indiana, HEA 1482 is significant in at least two respects. First, it highlights the continuing trend of attention being paid to the issue of criminal backgrounds and their impact on employment opportunity. Second, it drives home the importance of working with counsel who can help an employer stay on top of the latest developments in the jurisdictions applicable to them. As the example of HEA 1482 demonstrates, the next change impacting employers in your jurisdiction might come from a place you would not normally think to look. Experienced labor and employment counsel can help you see it coming, even when change comes out of left field.

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