

AUSTIN BUSINESS JOURNAL

5 things employers should know about Austin's 'ban the box' hiring ordinance

Though the city of Austin adopted its fair chance hiring ordinance related to hiring employees who may have a criminal history, also known as "ban the box," in March, some employers are no doubt still grappling with how to handle it.

The city has indicated that the purpose of the new law is to reduce recidivism among individuals with criminal histories and increase reintegration of qualified applicants with such histories back into the workforce. These five tips may help employers comply with the new law:

- **Covered employers:** Determine if you are an employer covered by the law. All private employers that employ 15 or more employees whose primary work location is in the city of Austin for 20 or more weeks in the current or preceding calendar year are covered by the law. The term "employer" includes an agency working on behalf of an employer. Note that there are specific provisions in the law relating to staffing agencies. Those agencies should review the law for its application to their businesses.

- **Prohibited conduct:** Identify what type of conduct is prohibited. Prohibited conduct applies to an initial job applicant as well as an applicant for a promotion. An employer may not include questions about criminal history on their job applications and may not publish information about a job that states or implies that a person's criminal history automatically disqualifies the person from consideration for a job. An employer may not ask a job



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applicant about their criminal history until after the employer makes a conditional job offer and may not refuse to consider hiring an applicant because the applicant did not provide criminal history information before they received a conditional job offer. An employer may not take adverse action against a job applicant unless the employer has conducted an individualized assessment of the applicant's criminal history and may refuse to hire an applicant based upon that assessment. An employer may not take adverse action against a person because the

person reported a violation of the law or because the person participated in an administrative proceeding related to the law.

- **Administration/investigation of complaints:** The city's Equal Employment Opportunity/Fair Housing Office enforces the new law, so get to know the employees in that office in case issues arise. The office is required to educate employers and residents on the fair chance hiring law and is responsible for receiving and investigating complaints. The office may also issue subpoenas of records and testimony relevant to their investigation and may assess penalties for violations of the law.

- **Penalties for violation:** You should review and understand the penalties for noncompliance with the law. An employer found in violation of the law may be fined a civil penalty of up to \$500. An employer accused of violating the law will be given notice of the alleged violation and will have up to 10 days to cease violations of the law. The city may issue a warning for a first-time violation, if the employer attends a training session about compliance with the law. It is a Class C misdemeanor for an employer to fail to comply with a subpoena issued for records or testimony related to an alleged violation of the law.

- **Effective dates:** Though the ordinance became effective on April 4, 2016, the city will allow a one-year grace period and will not enforce penalties in the law until after April 4, 2017. Employers who violate the law during the grace period will receive a written warning.