Ellenoff Grossman & Schole LLP

CLIENT ALERT

NEW YORK CITY ENACTS "BAN THE BOX" LAW

On June 29, 2015, New York City Mayor Bill DeBlasio signed into law the Fair Chance Act ("Act"), which amends the New York City Administrative Code to restrict when employers may inquire about an applicant's criminal history and imposes significant obligations on employers who intend to take action based on such information. In enacting this law, New York City joins a growing number of states and cities which "ban the box" – referring to the box on an employment application regarding criminal history – including Hawaii, Illinois, Massachusetts, Minnesota, New Jersey and Rhode Island, and Philadelphia, PA, Newark, NJ, Buffalo, NY, Seattle, WA, San Francisco, CA, Baltimore, MD, Rochester, NY and Chicago, IL.

Beginning on October 27, 2015 private employers with four (4) or more employees may not ask about an applicant's arrest *or* conviction record in any manner – whether on the employment application, by conducting background check, via a public records search or orally – until after the employer has determined the applicant to be otherwise qualified for the position and extends a conditional offer of employment. Once a conditional offer of employment is extended, a criminal background check may be performed. Accordingly, the Act does not require employers to hire people with criminal backgrounds or prohibit employers from running background checks, but rather prevents employers from considering an applicant's criminal history until they are ready to hire the applicant.

After inquiring about the applicant's pending arrest or criminal conviction record, but before taking any adverse action against the applicant based on the results of the inquiry (such as deciding not to hire the applicant), the employer must:

1. Provide the applicant with a "written copy of the inquiry," in a form prescribed by the City's Commission on Human Rights (which has not yet been issued);
2. Perform the analysis required by Article 23-A of the New York Correction Law, which mandates that employers evaluate and weigh eight (8) factors, balancing factors which support a decision to hire against factors which support a decision to reject an applicant rather than summarily denying the applicant simply because he or she has a criminal record of any kind.
3. Provide the applicant with a copy of its 23-A analysis, which includes supporting documents and an explanation of the employer's decision to take an adverse employment action; and
4. Allow the applicant at least three (3) business days to respond to the written analysis and hold the position open during this time. Once this time period has passed, if the employer does not receive a response, the employer may hire another candidate.

In sum, employers with operations in New York City must remove any inquiry related to criminal history from their applications in advance of October 27, 2015, and ensure that applicants are not asked about their criminal record during the interview process. Additionally, employers must follow the prescribed procedures once a criminal background check or other inquiry into an applicant's criminal history has been completed.

If you have questions or would like additional information, please contact Amanda M. Fugazy (afugazy@egsllp.com), Paul P. Rooney (prooney@egsllp.com), Valerie J. Bluth (vbluth@egsllp.com) or the primary EGS attorney with whom you work.

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