

State Rules Register Alert

May 9, 2016

Austin Texas: Ban-the-Box

On March 24, 2016, the City of Austin passed Ordinance 20160324-019, a Ban-the-Box law. **While the law was effective on April 4, 2016, the law will not be enforced, beyond warnings, until March 24, 2017.** So there is time for employers to get ready for compliance.

Ban-the-Box laws apply to employers and not directly to CRAs. It is simply a restriction upon employers as to when they can inquire into a criminal record.

The Austin ordinance is in one sense very simple and straightforward: an employer cannot inquire into a criminal record until a conditional job offer has been made. There are also restrictions on job advertising but that does not involve CRAs. It covers companies that regularly have 15 or more employees who work within Austin. On a weekly basis (20 weeks out of the current or preceding calendar year: complicated calculation) thus, the ordinance covers companies that have addresses outside of Austin. It does not cover volunteers. The definition of employment is "work for pay", but also includes vocational, apprenticeship, or educational training programs. We assume at this point, for those programs to be covered the individual must be receiving some compensation. The law does not apply to government employers or where the employer has legally mandated insurance and bonding requirements that disqualify an individual based upon criminal activity. These employers are not affected by this law and evidentially can obtain criminal records at any time. Obviously, CRAs cannot make determinations as to whether this Ordinance applies to your customer, especially those with non-Austin addresses. A CRA can only ask if the end-user is covered by a Ban-the-Box law or ordinance.

The law has some relief for staffing agencies who are common customers for CRAs. It allows a temporary agency to seek criminal information at the time of placing the person in the staffing pool (before any assignment - just accepted for possible placement) and when the agency has "identified a job to which the individual will be employed". This seems to cover the situation where the staffing agency is going to place a consumer at "ABC Company" and that customer requires a background check prior to placement.

The Ordinance contains one serious ambiguity. It defines criminal history as: "criminal history means an arrest, conviction, plea of nolo contendere, or deferred adjudication arising from a felony criminal accusation, or a Class A or a Class B misdemeanor accusation, made under state law, federal law, or federal law of another state of the United States." In Texas there is also a Class C misdemeanor level. No jail time is assigned to such convictions but fines can be levied up to \$500. Does this mean that an employer in Austin cannot consider a Class C misdemeanor? How about driving records? The Ordinance just does not address those questions.

The law requires that employers do an individual assessment using the three traditional factors: nature and gravity of the offense, how long ago it happened, and how the crime applies to the job. If an employer rejects a person for a job or promotion, the employer must state in writing to the person that the criminal history has disqualified them from the job. The Ordinance does not require any specific information being communicated to the consumer, such as identifying the exact criminal conviction or how it relates to the job as does the New York City Ordinance.

This Ordinance is enforced by the [Austin Equal Employment/Fair Housing Office](#) and it is authorized to adopt rules to implement the Ordinance. These rules might answer some of the questions noted above.