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Ban the Box, But Do Your Due Diligence: New Legislation Relating to Employment Applications Goes Into Effect January 1, 2017

Connecticut recently joined other states with its passage of “ban the box” legislation which expressly limits the types of questions that can be asked of applicants on initial employment applications. Many states and municipalities across the country have adopted similar laws and policies in an effort to assist otherwise qualified prospective employees in their pursuit of productive careers. This recent legislation concerning an employer’s ability to inquire about an applicant’s criminal record history is applicable to independent schools and comes at a time when independent schools are increasingly pressured to ensure student safety by properly vetting employment applicants.

Additional recent legislation in Connecticut binding only upon public school entities now requires a more robust vetting process for employment applicants. Although these new background check requirements do not apply to independent schools, they do provide guidance to all employers to consider as you review and improve hiring practices to assure that you are hiring appropriate and qualified employees.

Ban the Box

Earlier this year, Governor Dannel P. Malloy signed into law Public Act 16-83, An Act Concerning Fair Chance Employment. The new law will affect nearly all employers in the State of Connecticut and prohibits them from inquiring about a prospective employee’s arrests, criminal charges, and convictions in an initial employment application. This “ban the box” legislation will be effective on January 1, 2017.

The new law defines an “employer” as any person engaged in business who has one or more employees. Thus, it applies equally to both public and private sector employers, and will apply to independent schools operating in Connecticut.

The requirements of the law are simple but broadly applicable. As of January 1st, employers will no longer be permitted to ask about an applicant’s criminal history on an initial employment application. The law does not apply if another state or federal law explicitly requires the employer to make such an inquiry on the initial employment application or if a security or fidelity bond is required for the position. Neither of these exceptions will generally apply to independent schools and therefore all non-public schools must take step to ensure they are complying with the new law.

School Employee Background Checks

The new “ban the box” law does not eliminate the need for schools to conduct appropriate and thorough background checks of potential employees to ensure student and community safety. In fact, earlier this year, Governor Malloy signed into law a separate piece of legislation binding upon public schools which provides, from a practical standpoint, a thorough means for schools to examine the backgrounds of employment applicants. The new requirements, which appear at Conn. Gen. Stat. § 10-222c, significantly revised the requirements for public schools, including charter and magnet schools, with regard to employment background checks.

Although this law concerning background checks is not binding upon independent schools, the processes and inquiries enumerated in the statute outline reasonable steps for an employer to follow in checking into an applicant’s history. Specifically, under this new law, applicants must:

- Provide contact information for current and previous employers if the applicant was, as part of the employment, in contact with children;
- Provide a written authorization consenting to disclosure of information and records by those employers as well as by the Connecticut State Department of Education, and releasing those employers and the Department of Education from liability;
- Provide a written statement including the following:
 - o whether the applicant has been the subject of an abuse, neglect, or sexual misconduct investigation by any employer, state agency, or municipal police department (unless the investigation resulted in a finding that the allegations were unsubstantiated);
 - o whether the applicant was ever disciplined, asked to resign from employment, or separated from employment while allegations of abuse, neglect, or sexual misconduct were ongoing or substantiated, or a conviction occurred;
 - o whether the applicant has ever had a professional or occupational license or certificate revoked, suspended, or has otherwise surrendered such a license while an allegation of abuse or neglect was pending or under investigation or due to a substantiated allegation of abuse, neglect, or sexual misconduct.

The public school is required to contact the listed employers to request the dates of employment and verify the applicant’s statements. Current and past employers are required to abide by these requests within five business days. The public school is also required to contact the state Department of Education to inquire about substantiated or pending



investigations with the Department of Children and Families or other criminal convictions. Independent schools may wish to consider these lines of inquiry and adopt similar practices as part of ongoing efforts to ensure campus safety and student wellbeing.

Important Takeaways for Independent Schools

- As of January 1, 2017, initial employment applications may no longer inquire about an applicant's criminal history.
- Independent schools should be cognizant of the hiring requirements for public schools in Connecticut and consider what steps are being taken to similarly ensure thorough background checks of their own prospective employees following initial application.
- Employment applications, as well as any employment background check policies and procedures, should be reviewed and revised as necessary.

Questions or Assistance

If you have any questions about this new legislation or related employment issues, please feel free to contact Julie Fay at (860) 251-5009 or jfay@goodwin.com or Laura Fisher at (860) 251-5613 or lfisher@goodwin.com.

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