# ILLINOIS JOINS FOUR OTHER STATES IN "BANNING THE BOX"

**By: Kimberly A. Ross**

The newly enacted Job Opportunities for Qualified Applicants Act makes it illegal for a private employer (or employment agency) to inquire about or into, consider, or require disclosure of a criminal record or criminal history of an applicant until the applicant has been determined qualified for the position and notified that he or she has been selected for an interview by the employer (or if there is not an interview, until after a conditional offer of employment is made). The stated purpose of the Act is to give Illinois employers access to the "broadest pool of qualified applicants possible" and to ensure that all qualified applicants are properly considered for employment and are not pre-screened or denied an employment opportunity unnecessarily or unjustly. The law goes into effect on January 1, 2015, at which time Illinois will join only Hawaii, Massachusetts, Minnesota, and Rhode Island (and a few cities such as Philadelphia, Seattle, San Francisco, Newark, Buffalo and Baltimore) in "banning the box," referring to the box found on many form employment applications regarding prior convictions.

An "Employer" is defined as any person or private entity that has 15 or more employees in the current or preceding calendar year. There are a few limited certain exemptions from this Act, such as when the employer is required to exclude applicants with certain criminal convictions due to state or federal law.

Illinois law does not specifically prohibit making employment decisions based on convictions; it now only regulates when the inquiry can be made. (Making adverse employment decisions based on arrests or expunged criminal records is prohibited under the Illinois Human Rights Act, unless the employer is able to make the decision based on the underlying conduct that led to the arrest.) Illinois (and all other) employers must still look to the EEOC's Enforcement Guidance entitled, "Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964," for other considerations prior to making an employment decision based on a criminal conviction. The EEOC Enforcement Guidance contains some "best practices" for employers, which include developing a narrowly tailored written policy for screening of criminal conduct that considers the nature of the offense, the time that has passed since the offense, and the nature of the job. The Guidance also requires elimination of policies that unilaterally exclude people based on any criminal record.

The Act will be enforced by the Illinois Department of Labor, which can issue warnings and fines of increasing amounts for continued non-compliance or additional violations. It does not appear that individuals have an independent cause of action, and what constitutes a "remedy" remains to be seen.

Although the Act does not go into effect until January 1, 2015, Illinois employers should not wait to begin implementing changes to their applications and application process. They should remove from their job applications all inquiries into criminal background

(unless one of the exemptions apply). Only after an applicant has been selected for an interview can the employer inquire into criminal background. Further, the Illinois Criminal Identification Act requires the inquiry to contain specific language informing the applicant that he or she is not obligated to disclose sealed or expunged records of conviction or arrest. 20 ILCS 2630/12.

Employers in all states must also fully comply with specific requirements under the Fair Credit Reporting Act with regard to running background checks. Employers must carefully scrutinize their use of criminal history information in employment decisions and should consult with counsel for further information and assistance.