

Final 6/6/2013

An individual seeking employment with the State of Illinois must complete the CMS100 application in order to request a qualifying grade for a position. This position is typically a “generic” one that may apply to several different agencies, each with different conditions where a previous conviction may not have an adverse effect. The Human Rights Workgroup of the Inventorying Employment Restrictions Task Force met to examine what, if any, impact conviction related questions on the State employment application have on human rights in Illinois.

We began by reviewing the Illinois Human Rights Act, specifically 775 ILCS 5/2-103, which addresses arrest records. The Committee also examined the EEOC’s guidelines on Consideration of Arrest and Conviction Records in Employment Decisions.

Among the many protections of the Illinois Human Rights Act is the protection against discrimination based on race. As it relates to arrests and convictions, the Illinois Human Rights Act forbids employers from inquiring into or using the fact of an arrest or criminal history record information ordered expunged, sealed or impounded.

Because African Americans and Hispanics are incarcerated at rates disproportionate to their numbers in the general population, we agree with the EEOC in determining that blanket restrictions based on criminal history create a disparate impact on employment.

Currently, agencies consider applicants based on statutes and rules that are sometimes over 40 years old. The Equal Employment Opportunity Commission (EEOC) promulgated guidance on how to consider an individual’s criminal history in a way that does not risk violating Title VII of the Civil Rights Act of 1964. Some clear themes that flow from that guidance are that: 1) Applicants should be given individualized consideration for opportunities; 2) Applicants’ records should also be considered through the lens of “business necessity” -which weighs the applicants’ record, the amount of time that has passed since the offenses took place, and the relatedness of the offenses to their fitness or ability to perform the job’s duties against the need for employers to have a safe work environment for all; and 3) Entities should really reconsider whether lifetime bans to opportunities comport with the business necessity test noted above.

It is our recommendation that the State of Illinois should go further than what is currently in the Illinois Human Rights Act, and adopt the EEOC recommendation that “employers not ask about convictions on job applications and that if and when they make such inquiries, the inquiries be limited to convictions for which exclusion would be job related for the position in question and consistent with business necessity.” Therefore, we recommend the removal of question 9(b) from the current CMS100 application.

We also recommend that Illinois ensure all its agencies are in compliance with the EEOC’s guidance to showcase how Illinois values respect the civil rights of its residents. This could be done by modifying the existing employment and licensure application review processes to ensure that all of the above themes from the EEOC’s guidance are taken into account. An example of such a process is attached in Appendix 1. The process ensures that applicant’s rehabilitation is taken into account. It also ensures that Illinois specific remedies like Certificates of Good Conduct and Certificates of Relief from Disabilities are properly considered in the review process.

APPENDIX 1

HELPING ILLINOIS HIRE AND LICENSE THE BEST CANDIDATES FOR THE JOB

Purpose. This document is intended to ensure that public agencies and private employers properly consider persons previously convicted of one or more criminal offenses for employment and licenses.

Definitions. For the purposes of this document, the following terms shall have the following meanings:

- A. "Public agency" means the state or any local subdivision thereof, or any state or local department, agency, board or commission.
- B. "Public employer" means any person or entity which employs one or more persons.
- C. "Direct relationship" means that the nature of criminal conduct for which the person was convicted has a direct bearing on his or her fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license, opportunity, or job in question.
- D. "License" means any certificate, license, permit or grant of permission required by the laws of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession.
- E. "Employment" means any occupation, vocation or employment, or any form of vocational or educational training.

Applicability. The provisions of this document shall apply to any application by any person for a license or employment at any public employer, or who is currently employed or in possession of a license, who has previously been convicted of one or more criminal offenses in this state or in any other jurisdiction, and to any license or employment held by any person whose conviction of one or more criminal offenses in this state or in any other jurisdiction preceded such employment or granting of a license, except where a mandatory forfeiture, disability or bar to employment is imposed by law, and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct. Nothing in this article shall be construed to affect any right an employer may have with respect to an intentional misrepresentation in connection with an application for employment made by a prospective employee or previously made by a current employee.

Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited. No application for any license or employment, and no employment or license held by an individual, to which the provisions of this article are applicable, shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless, after careful consideration, the employer or licensing agency determines that:

- A. there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; and,
- B. the issuance or continuation of the license or the granting or continuation of the employment would involve a substantial risk to property or to the safety or welfare of specific individuals or the general public.

Factors to be considered concerning a previous criminal conviction.

A. In making a determination, the public agency or employer shall consider the following factors:

- (1) The public policy of this state to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (2) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.
- (3) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his or her fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license, job, or opportunity in question.
- (4) Any evidence demonstrating the ability of the applicant or employee to perform the responsibilities of the license, job, or opportunity in question.
- (5) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (6) The age of the person at the time of occurrence of the criminal offense or offenses.
- (7) The seriousness of the offense or offenses.
- (8) The circumstances surrounding the offense or offenses.
- (9) Any information produced by the person, or produced on their behalf, in regard to his or her rehabilitation and good conduct.
- (10) The legitimate interest of the public agency or employer in protecting property, and the safety and welfare of specific individuals or the general public.

B. In making a determination, the public agency or employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

DATE: June 17, 2013
TO: Inventorying Employment Restrictions Task Force
FROM: State Hiring Assessment Workgroup
SUBJECT: State Hiring Assessment Recommendations

After thorough review of the state's employment application, guidelines, and policies regarding criminal backgrounds, we recommend the following actions be taken.

1. CMS Bureau of Personnel shall modify the Application for State Employment in positions under the Personnel Code, also known as the "CMS 100", to remove any inquiry into the applicant's criminal history.

Agencies that do not use the "CMS 100" shall remove any inquiry into the applicant's criminal history on employment applications.

2. CMS Bureau of Personnel shall modify the Application for State Employment to include an email contact section on the Application.
3. Each agency, board and commission shall adhere to a statewide policy that will permit criminal background checks to be requested and considered only after the point at which a candidate's qualifications for a specific position are being considered (i.e. education, work history, licensure). Once agencies have received a criminal background check, it is incumbent upon the agency to consider whether there is a nexus between the position to be filled and the candidate's criminal history.
4. All State Agencies, boards, and commissions should establish and document processes for evaluating criminal record information. When the agency, board or commission is assessing whether to hire a candidate with a prior criminal history, the agency shall consider the following factors including but not limited to:
 - Nature and gravity of the offense
 - Time that has elapsed since the conviction
 - Nature of the job sought

At the conclusion of the nexus review, a hiring agency shall only exclude a candidate where it determined that exclusion is job related and consistent with business necessity.

5. Each agency, board and commission shall adopt the revised or Authorization for Release form that requests an applicant's permission to obtain information relating to the applicant's criminal history.

6. Each agency, board, and commission may use a criminal records self-disclosure form as a part of its hiring process. An agency, board, and commission shall adhere to a statewide policy that permits the disclosure form to be requested and considered only after the point at which a candidate's qualifications for a specific position are being considered (i.e. education, work history, licensure).
7. Train all agency human resources department staff and hiring managers on the new state policy on hiring people with criminal records.
8. Task the Re- entry resource center with the responsibility with the responsibility of maintaining a statutory bars database.

Request for Review if Disqualified for Criminal Conviction(s)

If an applicant is excluded from employment consideration as a result of past criminal conviction(s), the applicant will be provided a copy of their criminal background check and an opportunity to seek review of this determination.

To ensure efficient consideration, the review process must allow applicants to request review of the determination ~~and~~ respond by providing relevant information that may impact the agencies determination going forward. Any additional information shall be subject to nexus review