

**LIMITATION ON THE USE OF
CONVICTION RECORDS IN EMPLOYMENT DECISIONS**

TO: ICRMT Members
FROM: Jane May, O'Halloran Kosoff Geitner & Cook LLC
RE: Public Act 101-0656
DATE: March 30, 2021

On March 23, 2021, Governor Pritzker signed Public Act 101-0656 into law. The new law amends the Illinois Human Rights Act and limits an employer's ability to use a criminal conviction as a basis to take adverse action against an applicant or employee. The law does permit an employer to consider an applicant or employee's conviction record if "otherwise authorized by law." It also permits an employer to take adverse action on the basis of the criminal record if there is a substantial relationship between the criminal offense and the employment position or if employing the individual would involve an unreasonable risk to property or safety. A "substantial relationship" exists if employment would provide the opportunity for the individual to commit a similar offense. The law directs employers to consider a number of factors in making this determination including (1) the length of time since the conviction; (2) the number of convictions; (3) the nature and severity of the offense and whether it impacts safety; (4) the underlying circumstances; (5) the individual's age at the time of the offense; and (6) evidence of rehabilitation.

If after considering all of the factors, the employer determines that the conviction may be disqualifying, the employer must notify the individual in writing and allow at least 5 business days for the individual to respond. The employer must consider the individual's response before making a final decision. If the employer then decides to take adverse action, it must again send written notice to the individual indicating that the conviction was the basis for the final decision. The notice must also explain the employer's reasoning, any existing methods to challenge the decision, and the right to file a charge with the Illinois Department of Human Rights (IDHR).

While the law does place restrictions on an employer's use of conviction records, it does not prohibit employers from taking adverse action so long as the conviction is actually disqualifying and the employer has complied with the enumerated procedures. For example, if an individual has a recent theft conviction and is applying for a position which involves handling cash, the employer might determine that the conviction is disqualifying because employing the individual could pose an unreasonable risk to property. Similarly, an individual with multiple DUI convictions might be disqualified

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from a driving position because employing the individual could pose an unreasonable risk to public safety. In contrast, an individual with a 20-year old battery conviction would likely not be disqualified from employment given the length of time that has passed, assuming that the individual appeared to have been rehabilitated. In each case the employer should ensure that it has considered all of the factors set forth in the law before making any final determination, and in situations where it is considering disqualification, it must be sure to comply with the notice requirements.

The procedures set forth in Public Act 101-0656 do not apply in cases where an employer takes adverse action against an applicant or employee for reasons unrelated to a criminal conviction.

The full text of the law can be found [here](#). IDHR has published Frequently Asked Questions on Public Act 101-0656 which can be found [here](#).

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