

‘Clean slate’ law helps ex-cons, adds employer responsibilities



Pennsylvania governor Tom Wolf has signed a “clean slate” bill designed to help people convicted of nonviolent crimes obtain gainful employment. Under the new law, Pennsylvania courts will automatically seal nonviolent convictions after 10 years, as long as the person has no other convictions and is not facing ongoing prosecution.

The move follows last year’s “ban the box” executive order, which bars most state government offices from asking job applicants about prior convictions or arrests. That policy has exceptions for positions that specifically require clean records, such as law enforcement positions.

Cooperation and coordination

The clean slate bill was the result of bipartisan cooperation between the Republican-controlled legislature and the Democratic governor. The bill’s prime sponsor, Rep. Sheryl Delozier (R-Cumberland), told reporters, “I think it’s just a step in the right direction to take a look at the fact that people make mistakes. You shouldn’t be barred from a good job and barred from an apartment” because of a past conviction for a nonviolent offense.

The signing sets in motion an 18-month process during which courts will develop procedures to automatically seal the records of nonviolent offenders who meet the law’s requirements. The devil will be in the details. Courts will have to coordinate communications with other states and jurisdictions to verify eligibility.

Under the previous system, individuals had to apply to have their convictions sealed, providing courts such details as prior addresses. Now courts will have to develop methods that collect the information automatically.

Law’s effects on employers

Unlike last year’s executive order banning the box, the new law will affect private-sector as well as public employers. While private employers can still ask about prior convictions, there will be no way to verify nonviolent convictions over 10 years old.

For positions where the employee has fiduciary responsibilities, employers face a dilemma. More thorough background checks may be in order for those jobs. The checks will rely more on arrest records, public records such as newspaper reports of convictions, and other information that courts cannot seal.

Employers that still uncover old nonviolent crimes will have to determine whether and how those old convictions may affect the applicant's ability to perform the job.

Employers that use this enhanced investigation should follow the same procedures for each applicant. Inconsistent investigation procedures could trigger charges of discrimination.

The bright side

In most cases, a person who has not had a conviction of any kind in 10 years probably learned some life lessons in the interim. Most people benefitting from the clean slate law will probably be honest, reliable employees.

If the law works the way its proponents say it will, employers should have a larger pool of applicants, a valuable assist in a tight labor market.

Drug testing

Many nonviolent offenses sealed under the new law may be drug offenses. Nothing in the legislation requires employers to tolerate illegal drug use on the job.

For jobs with mandatory drug testing or for employers with drug-free workplace policies, the clean slate law requires no change to existing procedures. In fact, drug testing serves as an additional layer of security to ensure workers are staying out of trouble.

Local ban-the-box ordinances

Several Pennsylvania cities, including Philadelphia and York, have local ordinances barring employers from asking applicants about prior arrests or convictions.

Most of these ordinances follow the general rules in the governor's "ban the box" guidelines. Employers operating under ban-the-box legislation may not ask about:

- Arrests not leading to a conviction
- Annulled, expunged or pardoned convictions
- Convictions for summary offenses
- Convictions that do not relate to an applicant's suitability for employment.

Each ban-the-box ordinance has exceptions for certain positions and employers must understand which positions those are. Consult your attorney to understand the laws you must comply with. That conversation is vital given the lack of uniformity across Pennsylvania.

Develop a plan

While everyone shares the goal of providing gainful employment to those with criminal records, employers have to be aware of possible negligent hiring lawsuits.

Employers need to develop protocols for each job they offer. Depending on the interaction with vulnerable populations (such as children and the elderly), employers may need to dig deeper to ensure the applicant has no violent criminal background. Jobs like these often are exempted from ban-the-box requirements.

Jobs with fiduciary responsibilities may call for more focus on the applicant's overall trustworthiness. References from previous employers or people who know the applicant well may supplement a formal investigation during the hiring process.

For each position, the employers should know what questions may be asked and when in the process employers can inquire about criminal convictions. Once you have a draft plan, run it past your attorney to ensure it does all it should.