



Staying compliant with employment laws, and avoiding disputes and litigation, is a constant challenge to business owners and managers.

No matter is too small to discuss with a lawyer. The phrase an “ounce of prevention is worth a pound of cure” applies directly to employment legal issues.

If you have questions about any employment matters, call **Bret Rappaport**, who for more than three decades has worked with clients on employment law matters at 847-597-2151.

CRIMINAL BACKGROUND CHECKS - USE EXTREME CAUTION

IN ILLINOIS, IT IS ILLEGAL TO USE A CONVICTION RECORD IN EMPLOYMENT DECISIONS UNLESS:

(1) there is a *substantial relationship* between the nature of the crime and the requirements of the job; or

(2) the granting or continuation of employment would involve an unreasonable risk to property or to the safety of others.

A "substantial relationship" is defined as “consideration of whether the employment position offers the opportunity for the same or a similar offense to occur and whether the circumstances leading to the conduct for which the person was convicted will recur in the employment position.” Beyond that, in deciding to use a conviction record, the employer must consider: (1) the length of time since the conviction; (2) the number of convictions that appear on the conviction record; (3) the nature and severity of the conviction and its relationship to the safety and security of others; (4) the facts or circumstances surrounding the conviction; (5) the age of the employee at the time of the conviction; and (6) evidence of rehabilitation efforts.

THE EMPLOYER MUST NOTIFY APPLICANT & GIVE THEM A CHANCE TO EXPLAIN.

If you find that the conviction record merits an adverse employment decision, then the employer must enter an “interactive assessment” and notify the employee of this preliminary decision in writing. The notification is very specific and should be drafted by a lawyer. Then the applicant has 10 days to respond in writing before the employer can make a final decision. And to come to that final decision, the “employer shall consider information submitted by the employee before making a final decision.”

FINAL DECISION AND NOTICE.

If an employer makes a final decision to disqualify or take adverse action solely or in part because of the applicant/employee's conviction record, the employer must send another notice with specific elements. This should also be written by a lawyer.

Failure to follow these steps can result in a lawsuit with damages ranging from a cease-and-desist order to actual and punitive damages, and attorney's fees.