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CLIENT ALERT: Maine's New Criminal Background Check Law
October 15, 2021

The Maine Legislature recently passed a new law restricting employers from asking job applicants about their criminal backgrounds. This statute becomes effective on October 18, 2021.

Here's What You No Longer Can Do

Under the new law, employers cannot:

1. Request "criminal history record information" from job applicants on an initial employment application form;
2. Include a statement on an initial employment application or in a job advertisement that a person with a criminal history may not apply or will not be considered for a position; or
3. Otherwise specify that, before determining an applicant's suitability for a position, a person with a criminal history may not apply or will not be considered for a position.

Note: "criminal history record information" includes, but is not limited to, warrants, summonses, arrests, formal criminal charges, indictments, criminal dispositions, criminal pleas, and sentencing information.

The Exceptions

There are several exceptions to these requirements:

1. Employers who are subject to federal or state laws that prohibit them from hiring individuals with criminal histories are generally exempt.
2. If federal or state law disqualifies an individual for the position based on a conviction or particular type of criminal offense, the employer may state such information on the application form or job posting, or make a limited inquiry on the application form.

Here's What You May Do

Employers may inquire about an applicant's criminal history information during an interview or once the employer has determined the individual is a good fit for the position. In the event the employee discloses criminal history information, the employer must give them an opportunity to "explain the information and the circumstances regarding any convictions, including post-conviction rehabilitation."

Many of you may have already removed criminal inquiries from your job applications, but if you still have them, you must remove these inquiries. You will need to decide how to handle interviews, and we recommend a consistent approach, namely ask everyone or no one. Finally, train your managers that they need to allow the applicant the change to explain any conviction that they disclose.