

KCMO Adopts Ban the Box Ordinance

By John Vering The Kansas City, Missouri (KCMO) City Council recently passed an ordinance imposing restrictions on when most private employers having six or more employees can inquire about an applicant's criminal record and limiting the ability of those employers to refuse to hire individuals based on their criminal records. This ordinance also affects landlords in KCMO. It provides that it is an unlawful discriminatory housing practice "[t]o refuse to negotiate for the rental of a dwelling based on an individual's criminal history, unless the landlord can demonstrate that the rental decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and whether individuals with certain convictions are banned from living in the dwelling due to local, state and federal law or regulation. Individuals negotiating for the rental of a dwelling are encouraged to not automatically ban applicants with a criminal record." Read on for some of the key provisions needed to come into compliance with this new ordinance by the **effective date of June 9, 2018.** **Frequently Asked Questions:**

1. Who is subject to this new ordinance? Any person (including but not limited to an individual, corporation, partnership, trustee, fiduciary or other organization but not a local, state or federal governmental entity) that employs six or more employees. The Kansas City Human Relations Commission takes the position that an employer may in some circumstances be subject to this ordinance even if it has less than six employees working in KCMO as long as it has more than six total employees at all of its locations.

2. What actions does the ordinance prohibit? Except for positions where employers are required to exclude applicants with certain criminal convictions from employment due to local, state or federal law or regulation, it is unlawful: a. For an employer to base a hiring or promotional decision on an applicant's criminal history or sentence related thereto, unless the employer can demonstrate that the employment-related decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and that the record was reasonably related to the duties and responsibilities of the position. b. For an employer to inquire about an applicant's criminal history until after it has been determined that the individual is otherwise qualified for the position, and only after the applicant has been interviewed for the position. Such inquiry may be made of all applicants who are within the final selection pool of candidates from which a job will be filled.

3. How does the ordinance define "criminal history"? The ordinance defines "criminal history" broadly to mean "a record of a conviction, or a plea of guilty or no contest, to a violation of a federal or state criminal statute or municipal ordinance; records of arrests not followed by a valid conviction; convictions which have been, pursuant to law, annulled or expunged; pleas of guilty without conviction; convictions for which a person received a suspended impositions of sentence; and misdemeanor convictions where no jail sentence can be imposed."

4. Can I still inquire about criminal histories of job applicants? Yes; however, the timing of the criminal history inquiries and any criminal background checks that you or a background check agency performs must be postponed until it has been determined that the applicant is otherwise

qualified for the position, the applicant has been interviewed for the position and the applicant is in the final pool of candidates from which the job will be filled.

5. Can I still refuse to hire an applicant based on his/her criminal history? Yes, but you need to be able to demonstrate that the decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and that the record was reasonably related to the duties and responsibilities of the position. We highly recommend that the business reasons for the decision be documented in case a possible claim of violating the ordinance is made.

6. What do I need to do to comply with this new ordinance?

a. We encourage you to contact legal counsel and have your job application and hiring procedures reviewed along with any standard interview questions to make sure that inquiries do not violate the new ordinance either procedurally by making the inquiries too soon or substantively by failing to consider all the factors required by the new ordinance. (See 2a above). b. Coordinate with any background checking organization you use to insure compliance with the new ordinance. c. If you are a landlord and do not want to rent to an individual based on that individual's criminal history, you need to be prepared to justify such refusal to rent based on all information available including consideration of the frequency, recentness and severity of a criminal record and whether individuals with certain convictions are banned from living in the dwelling due to local, state and federal law or regulation. This may require that you modify your rental/lease application form and/or interview questions asked of potential tenants.

This article is general in nature and does not constitute legal advice. Readers with legal questions should consult the author John Vering, any other shareholders in the Employment Law Group at the firm including Rachel Baker, John Neyens, Brenda Hamilton, Shannon Johnson, or Mark Opara or your regular contact at Seigfreid Bingham at 816-421-4460.