

LEGAL & LEGISLATIVE UPDATES

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Ban the Box Regulations

- ▶ Highlights:
 - Multi-state employment applications:
 - Must either remove criminal history questions or state: “an applicant for a position the physical location of which will be in whole, or substantial part, in New Jersey is instructed not to answer this question.”
 - Regulations make clear that 15 or more employees means ALL employees (in and out of NJ)



Ban the Box Regulations

- ▶ Applies to a candidate for a position with duties to be performed substantially in New Jersey
 - if at the time of the initial application, 50% or more of work hours will be spent in New Jersey
- ▶ Can not conduct a search of public records– includes *an internet search* prior to completing a first interview.
 - ▶ Arguably does not prohibited a general Internet search about an applicant.



Ban the Box Regulations

- ▶ Criminal inquiries include DWI/DUI or motor-vehicle violations because it may include information about formal criminal charges
- ▶ “Interview” means “any live, direct contact by the employer with the applicant, whether in person, by telephone, or video conferencing. . . not the exchange of emails.”
 - Once completed, can pursue criminal history



Ban the Box Regulations

- ▶ Detailed guidance regarding staffing, job placement, temp or referral agencies, employee leasing companies and similar entities.
 - Includes joint employer issues.
- ▶ Practice Pointers:
 - Do NOT forget the applicable EEOC Guidelines!
 - Do NOT forget release/authorization forms!



Handbooks & Agreements (Non-Union)

- ▶ Growing body of case law:
 - At-will provisions of handbook negate “agreements” within it
 - Arbitration provisions
 - Waiver of rights
 - Restrictive covenants (non-disclosure, non-competition, non-solicitation)
- ▶ Make the item part of employment offer beyond agreement to comply with Company policies
- ▶ Require separate agreements



Agreements

- ▶ A few factors to consider/include:
 - Waivers must be clear & unmistakable”
 - Statutory rights (e.g., ADEA, NJLAD, CEPA, etc.)
 - Right to a jury trial
 - Make sure there is meaningful access to the forum for the employee
 - Preserve exceptions for injunctive relief (e.g., breach of non-compete)
 - Include a pre-arbitration “grievance” process
- ▶ Thrust: get it out of a liberal system court/jury
 - CAREFULLY SELECT YOUR ARBITRATION SOURCE!



Legislative

- ▶ New legislature installed – all pending bills need reintroduction:
 - No action taken, will require reintroduction:
 - New Jersey Assembly Bill 4696
 - Extends protections and requires accommodations for breast feeding mothers.
 - Failed 6 times!
 - New Jersey Assembly Bill 4709
 - Prohibits employers from seeking, obtaining, or requiring disclosure of wages and benefits from a prior employer or releasing that information to prospective employers without written authorization.



Paid Sick Leave: Senate Bill A2354

- ▶ Expect reintroduction, passed Senate in December 2015
- ▶ Continue the fight, but consider an alternate attack
 - Senate: 24 Democrats, 16 Republicans
 - Assembly: 47 Democrats, 32 Republicans.
 - Growing trend:
 - NJ Local Level: New Brunswick, Jersey City and Elizabeth added to list



Paid Sick Leave

- ▶ Consider:
 - Limits on use
 - Accrual after 6 months of employment
 - Reporting/"proofs"
 - Limits on accrual or payouts!
 - Systemic abuse issues *and remedies!*
 - Deduct from final pay without W&H violation
 - Preempt the subject: abolish, don't grandfather in, local law on the subject



THANK YOU!

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