



THE LAST 60 DAYS OF ACTION IN EMPLOYMENT LAW
Part IV – Ban-the-Box, Criminal Expungement, and Marijuana Laws

July 30, 2019

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The courts and legislatures have been busy over the last two months. Thus, this installment of our 60-day newsletter is broken down by subject-matter. This fourth part deals with changes in ban-the-box, criminal expungement, and marijuana laws.

Colorado

On May 28, 2019, Colorado enacted a ban-the-box law prohibiting private employers from inquiring about criminal history on an initial employment application. The law will be effective on September 1, 2019. See Colo. Rev. Stat. § 8-2-130.

Illinois

On June 25, 2019, Illinois legalized the recreational use of marijuana and instituted a system to tax and regulate it for adults 21 and over. See 2019 Ill. HB 1438. The Illinois Right to Privacy in the Workplace Act prohibits employers from refusing to hire, disciplining, or terminating an employee for the use of lawful products off-premises during non-work and non-call hours. “Lawful products” will include marijuana as of January 2020.

Iowa

Effective July 1, 2019, Iowa enacted a law that limits an employer’s liability for

negligent hiring of an employee, agent, or independent contractor if the claim is based solely on the fact that the individual was convicted of a public offense. See Iowa Code § 671A.2.

Kentucky

Effective June 27, 2019, an employer’s right to condition employment on a background check or other report – a common employment practice – is now codified in law. See Ky. Rev. Stat. Ann. § 336.700(D).

New Mexico

Effective June 14, 2019, New Mexico enacted a ban-the-box law that prohibits private employers from inquiring about an applicant’s arrest or conviction history in a written or electronic employment application. Employers may take an applicant’s conviction into consideration “after review of the applicant’s application and upon discussion of employment with the applicant.” See 2019 Bill Text S.B. 96, § 2.

New Mexico amended the Lynn and Erin Compassionate Use Act to allow the medical use of marijuana. See Rubin, Fortunato & Harbison P.C. Client Alert, May 2019, THE

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Always consult an attorney with specific legal issues.

LAST 60 DAYS OF ACTION IN EMPLOYMENT LAW.¹

New York

On May 10, 2019, New York City amended its Human Rights Law. Effective May 10, 2020, employers are prohibited from conducting pre-employment drug testing for marijuana and THC. See NYC Administrative Code 8-107.

Utah

Effective May 14, 2019, a job applicant can now answer questions related to an expunged criminal record as though the action underlying the record never occurred. See Utah Code Ann. §§ 34-52-301.

Vermont

Effective July 1, 2019, Vermont prohibits employers from inquiring about applicants' expunged or sealed criminal records and permits applicants to respond that no criminal record exists if such an inquiry is made. See Vt. Stat. Ann. tit. 13 § 7607.

Tricia thanks Jomana Abdallah, the Firm's Summer Associate, for her assistance with this newsletter.

¹ <https://www.rubinfortunato.com/article/the-last-60-days-of-action-in-employment-law/>.

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