

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

February 3, 2020

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### **Federal**

Congress passed the Fair Chance to Compete for Jobs Act of 2019 on December 17, 2019, as part of the National Defense Authorization Act. The law creates a federal ban-the-box provision (removing from hiring applications the check box that asks if applicants have a criminal record) for federal agencies and federal contractors. The law is effective December 29, 2021. See 116 S. 1790, § 1121.

### **Delaware**

Delaware has expanded its criminal records expungement laws because the General Assembly found that a criminal history that continues indefinitely is a hindrance to a person's present and future ability to obtain employment, obtain an education, or to obtain housing, education, or credit. See 2019 Del. SB 37. The changes, effective December 30, 2019, include:

- All records where the “case is terminated in favor of the accused” are eligible for mandatory expungement.
- Records of one or more violations relating to the same case are eligible for mandatory expungement three years after the date of conviction if the person has no prior or subsequent convictions.

- One or more misdemeanors, or a combination of misdemeanors and violations, relating to the same case are eligible for mandatory expungement five years after conviction, if the person has no prior or subsequent convictions.
- The court may, upon petition, expunge certain records relating to misdemeanor or felony convictions if it finds that “the continued existence and possible dissemination of information relating to the arrest or conviction of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner.”
- All pardoned offenses will be eligible for expungement, and references to manifest injustice were deleted from the statute.

### **Illinois**

The Illinois Cannabis Regulation and Tax Act, which legalizes adult recreational use of marijuana, became effective on January 1, 2020. While employers cannot discipline, terminate, or refuse to hire an employee for the use of marijuana off-premises during non-work and non-call hours, the Act permits employers to adopt reasonable zero-tolerance or drug-free workplace policies, as

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long as the employer applies them in a nondiscriminatory manner. In its original form, the Act included exceptions to employer liability for taking adverse action against an employee for actions based on the employer's good faith belief that an employee used or possessed cannabis while at work or working, or actions based on the employer's good faith belief that an employee was impaired or under the influence of cannabis while at work or working. In December 2019, the Illinois legislature amended the Act to provide for an additional exception to employer liability. Specifically, no cause of action shall arise against an employer for actions taken pursuant to an employer's reasonable workplace drug policy, including but not limited to subjecting an employee or applicant to reasonable drug and alcohol testing, reasonable and nondiscriminatory random drug testing, discipline, termination of employment, or withdrawal of a job offer due to a failure of a drug test. See 410 ILCS 705/10-50(e)(1).

## **Nevada**

Effective January 1, 2020, Nevada prohibits employers from failing or refusing to hire prospective employees because they test positive for cannabis on a drug screening test. See 2019 Nev. AB 132.

## **New Mexico**

The Criminal Record Expungement Act, effective January 1, 2020, permits individuals to petition for certain conviction and arrest records to be expunged. See 2019 Bill Text NM H.B. 370. A prospective employee does not have to disclose the existence of an expunged record to an employer unless required for a position regulated by the Financial Industry Regulatory Authority or the Securities and Exchange Commission. See 2019 Bill Text NM H.B. 370, § 7.

*To discuss any of these changes, contact Patricia Tsipras at 610.408.2029 or [ptsipras@rubinfortunato.com](mailto:ptsipras@rubinfortunato.com)*

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