



A GUIDE FOR PUBLIC HUMAN RESOURCE PROFESSIONALS

Minn. Stat. 364.021

Public Employment Consideration of Public Records – “Ban the Box”

On August 1, 2009, Minnesota will become the first state to require all non-exempted public employers to wait until someone has been selected for an interview before inquiring about criminal records. In essence, this legislation prohibits non-exempted employers from placing a question (check “box”) regarding an applicant’s criminal history on the initial employment application or otherwise asking about criminal history at the time of application.

Minn. Stat. 364.021 is based on Minnesota state policy (found in Minn. Stat. 364.01), which aims to encourage and contribute to the rehabilitation of criminal offenders by assisting them in their efforts to secure meaningful employment as a step towards the resumption of the responsibilities of citizenship.

Employment Affected/Exempted

- "Public employment" includes all employment with the state of Minnesota, its agencies, or political subdivisions (Counties and Cities).
- The Department of Corrections and positions with a statutory background check requirement are exempted from 364.01.
- Law enforcement agencies, fire protection agencies, Department of Human Services licensed positions, and some other positions are exempted by 364.09.
- The new law will affect roughly 200,000 positions throughout the State.

Key Points of Minn. Stat. 364.021

- Non-exempted employers may not ask about criminal history until after the applicant has been selected for an interview, exempt employers are free to implement the same policy.
- Public employers may inquire about an applicant’s criminal history at the time of interview or at any later point in the hiring process, but are restricted by other sections of Chapter 364 (see below).
- Public employers are not prohibited from notifying applicants that an individual with a particular criminal history may be disqualified from a particular position based on the law or the employer’s policy, as allowed by other sections of Chapter 364 (see below).
- Does not apply to private employers.

Important Information to know about Chapter 364

- Prohibits public employers from considering non-conviction records and expunged records.
- Prohibits public employers from not hiring someone based on their criminal record if the conviction does not directly relate to the position.
- Requires public employers to consider evidence of rehabilitation.
- Requires public employers who reject an applicant solely or in part because of the applicant's criminal record to follow specific notification requirements.
- Violation of the rights contained in Chapter 364 constitute a violation of a person's civil rights.

Other Points to Keep in Mind

- If you are hiring for a sensitive position that is not exempted from the requirements of Minn. Stat. 364.021 but restricts employment of people with certain types of criminal records, you should provide notice of these restrictions in your application materials or otherwise warn applicants of the eligibility requirements. This will save both you and the applicant time. Be sure your policy and notice complies with all the requirements of Chapter 364.
- This legislation was intended to eliminate discrimination and confusion based only upon the initial application, provide employers with a more qualified and diverse applicant pool, and make Minnesota communities safer by providing ex-offenders with more employment opportunities.

The Statute

[364.021] PUBLIC EMPLOYMENT; CONSIDERATION OF CRIMINAL RECORDS.

(a) A public employer may not inquire into or consider the criminal record or criminal history of an applicant for public employment until the applicant has been selected for an interview by the employer.

(b) This section does not apply to the Department of Corrections or to public employers who have a statutory duty to conduct a criminal history background check or otherwise take into consideration a potential employee's criminal history during the hiring process.

(c) This section does not prohibit a public employer from notifying applicants that law or the employer's policy will disqualify an individual with a particular criminal history background from employment in particular positions.

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