

MAY 2025

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CLEARSTAR®

SCREENING COMPLIANCE UPDATE

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CLEARSTAR OFFERS EEOC GUIDELINES COMPLIANCE ON CRIMINAL BACKGROUND CHECKS, GDPR & SOC TYPE 2 SECURITY CONTROL COMPLIANCE, AND STAFFING COMPLIANCE.

Compliance is one of the most important parts of background screening and involves following the rules and regulations set forth by the Fair Credit Reporting Act (FCRA) and local ordinances.

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This monthly publication is intended to bring to your attention screening industry related articles written by subject matter experts and published online to assist you with establishing and keeping a compliant background screening program.

PLEASE NOTE: Spellings of words in International articles such as those written in the British English format are native to the original author and differ from the spellings of words in the American English format.

EXECUTIVE SUMMARY

May 2025 Screening Compliance Update Executive Summary

The screening compliance landscape witnessed some major changes that have been documented in this month's SCREENING COMPLIANCE UPDATE. Below is an EXECUTIVE SUMMARY of some of the new developments at the FEDERAL, STATE, and INTERNATIONAL levels.

- **FEDERAL DEVELOPMENTS:** On April 23, 2025, President Donald Trump issued an Executive Order entitled "Restoring Equality of Opportunity and Meritocracy" that announced the Administration's intent to "seek to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals."
- **STATE DEVELOPMENTS:** Effective January 1, 2026, Illinois House Bill 3773 (HB 3773) amends the Illinois Human Rights Act (IHRA) to expressly prohibit employers from using artificial intelligence (AI) that "has the effect of subjecting employees to discrimination on the basis of protected classes."
- **INTERNATIONAL DEVELOPMENTS:** When recruiting in Canada, before collecting any personal information, a question must be asked: Is the requested personal information necessary at this stage of the application assessment? The information must not simply be convenient to have; it must be essential.

I hope you find this month's SCREENING COMPLIANCE UPDATE both informative and helpful in keeping up with establishing and maintaining a compliant background screening program.

Nicolas S. Dufour

ClearStar Executive Vice President, General Counsel & Corporate Secretary

Nicolas Dufour serves as EVP, General Counsel, corporate secretary, data privacy officer, and is a member of the executive management team for ClearStar. He is proficient in the FCRA, GLBA, Data Privacy Framework, and GDPR compliance, as well as other data privacy regimes. He is responsible for managing all legal functions to support the evolving needs of a fast-paced and rapidly changing industry. His position includes providing legal guidance and legal management best practices and operating standards related to the background screening industry, federal, state, and local laws and regulations, legal strategic matters, product development, and managing outside counsels. He represents the company in a broad range of corporate and commercial matters, including commercial transactions, M&A, licensing, regulatory compliance, litigation management, and corporate and board governance. He researches and evaluates all aspects of legal risks associated with growth into different markets. He assists the management team in setting goals and objectives in the development, implementation, and marketing of new products and services. He also advises and supports management, Board of Directors, and operating personnel on corporate governance, company policies, and regulatory compliance.

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FEDERAL DEVELOPMENTS

Trump Executive Order Seeks to Eliminate Disparate-Impact Liability

On April 23, 2025, President Donald Trump issued an Executive Order entitled “*Restoring Equality of Opportunity and Meritocracy*.” The Order announces the Administration’s intent to “seek to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals.” The Executive Order directs all federal agencies to “deprioritize” enforcement of statutes and regulations that include disparate-impact liability, instructs all federal agencies to consider ways to repeal or amend regulations that impose disparate-impact liability under Title VII of the Civil Rights Act, and directs the federal government to assess all pending investigations, lawsuits and consent judgments that rely on a disparate-impact theory of liability and take appropriate action.

The Executive Order marks a notable shift in the federal government’s enforcement priorities and efforts with respect to discrimination under the Trump Administration, which will not focus on disparate-impact theories. However, it is unclear how much of an impact, if any, the Executive Order will have on private litigation given that many federal, state and local statutes continue to include disparate-impact liability and that long-standing judicial precedent recognizes disparate-impact as a theory of liability under certain civil rights laws.

Understanding Disparate-Impact Liability

Disparate-impact liability refers to a theory of discrimination in which a facially neutral policy or practice is held to be unlawfully discriminatory because it has a disproportionately negative impact on members of a protected class, subject to certain defenses, such as a showing that the policy or practice is job-related and based on a legitimate “business necessity”. Under this theory, employers, housing providers, lenders, governmental entities, and other actors may be held liable for policies or practices that have discriminatory consequences in practice, even if there is no proof of an intent to discriminate. The US Supreme Court first recognized disparate-impact liability under Title VII of the Civil Rights Act of 1964 in *Griggs v. Duke Power Co.*¹ In *Griggs*, the Supreme Court held that an employer’s practice of requiring prospective employees to pass an arbitrary “intelligence” test—which was neutrally applied, but had no connection to the applicant’s ability to perform the job duties—violated Title VII because it disproportionately disqualified non-white applicants.² Following *Griggs*, Congress amended Title VII in the Civil Rights Act of 1991 to add Section 703(k), which acknowledged that discrimination could be based on “an unlawful employment practice based on disparate impact.” In addition, disparate-impact liability has been incorporated in a multitude of other federal anti-discrimination statutes, including the Age Discrimination in Employment Act (ADEA), the Fair Housing Act (FHA), and the Americans with Disabilities Act (ADA). Several state anti-discrimination laws similarly permit discrimination claims based on disparate impact liability, either as explicitly codified by statute or based on case law applying state law, such as the California Fair Employment and Housing Act (Cal. Gov. Code § 12900 *et seq.*), Washington Law Against Discrimination (Wash. Rev. Code § 49.60.010 *et seq.*), and Delaware Fair Housing Act (Del. Code tit. 6, § 4603).

Policy Against Disparate-Impact Liability Articulated By the Executive Order

President Trump’s Executive Order asserts that disparate-impact liability “is wholly inconsistent with the Constitution” and “imperils the effectiveness of civil rights laws by mandating, rather than proscribing, discrimination.” The Order explains that the “bedrock principle” of the United States that all citizens are treated equally under the law guarantees “equality of opportunity, not equal outcomes.” According to the Executive Order, disparate-impact liability imposes a “near insurmountable presumption of unlawful discrimination . . . where there are any differences in outcomes in certain circumstances among different races, sexes, or similar groups, even if there is no facially discriminatory policy or practice or discriminatory intent involved, and even if everyone has an equal opportunity to succeed.” The Executive Order characterizes disparate-impact liability as “all but requir[ing] individuals and businesses to consider race and engage in racial balancing to avoid potentially crippling legal liability,” and concludes that it “has hindered businesses from making hiring and other employment decisions based on merit and skill, their needs, or the needs of their customers because of the specter that such a process might lead to disparate outcomes, and thus disparate-impact lawsuits.”

The White House issued a “Fact Sheet” summarizing the Order, titled “[Fact Sheet: President Donald J. Trump Signs Landmark Order to Restore Equality of Opportunity and Meritocracy](#).” The Fact Sheet explains that the purpose of the Order is to “restore[] the true promise of the Civil Rights Movement—a system that does not differentiate between

Americans based on race and where success is determined by individual merit, free from discriminatory practices that prioritize group outcomes over personal achievement.”

Revocation of Presidential Approvals of Title VI Regulations

Under Title VI of the Civil Rights Act, federal departments and agencies that award federal funding to any program or activity through grants, loans or contracts are permitted to issue rules, regulations or orders to effectuate the anti-discrimination provisions of Title VI, provided such rules, regulations or orders are approved by the President. 42 U.S.C. § 2000d-1. Section 3 of the Executive Order revokes Presidential approval of a number of such regulations under Title VI:

- 8 C.F.R. 42.104(b)(2)–(3): Prohibiting a recipient of federal funding from utilizing “criteria or methods of administration which have the effect of subjecting individuals to discrimination,” or from selecting “the site or location of facilities” if doing so has the “purpose or effect of excluding individuals from” programs receiving federal funding.
- 28 C.F.R. 42.104(b)(6)(ii): Allowing a recipient of federal funding to take affirmative action in administering the program to “overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.”
- 28 C.F.R. 42.104(c)(2): Requiring recipients of federal funds to “assure equality of opportunity” in employment practices if “discrimination on the ground of race, color, or national origin in such employment practices tends . . . to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination” under the program receiving federal funds.

Deprioritization of Disparate-Impact Laws and Regulations

The Executive Order instructs federal agencies to “deprioritize” enforcement of all anti-discrimination statutes or regulations to the extent they include disparate-impact liability, and specifically references:

- The disparate liability provisions of Title VII of the Civil Rights Act of 1964 (prohibiting employment discrimination) (42 U.S.C. § 2000e-2).
- The above-referenced provisions in the implementing regulations of Title VI that apply to recipients of federal funds: 8 C.F.R. 42.104(b)(2)–(3), 28 C.F.R. 42.104(b)(6)(ii), and 28 C.F.R. 42.104(c)(2).

Review of Pending Matters and Judgments

The Executive Order includes a number of directives to various federal agencies requiring them to review pending investigations, matters and judgments and “take appropriate action” consistent with the policy of the Executive Order with respect thereto—suggesting that existing federal enforcement actions utilizing disparate-impact frameworks will be discontinued. Specifically, the Executive Order provides:

- Within 45 days (i.e., by June 7, 2025), the US Attorney General and the Chair of the Equal Employment Opportunity Commission (EEOC) must “assess all pending investigations, civil suits, or positions taken in ongoing matters under every Federal civil rights law within their respective jurisdiction, including Title VII of the Civil Rights Act of 1964, that rely on a theory of disparate-impact liability” and “take appropriate action” consistent with the policy in the Executive Order.
- Within 45 days (i.e., by June 7, 2025), the heads of various other federal agencies, including the Secretary of Housing and Urban Development, the Chair of the Federal Trade Commission and the Director of the Consumer Financial Protection Bureau, who are responsible for enforcing the Equal Credit Opportunity Act, the Fair Housing Act, and other “laws prohibiting unfair, deceptive, or abusive acts or practices,” must “evaluate all pending proceedings that rely on theories of disparate-impact liability and take appropriate action” consistent with the policy of the Executive Order.
- Within 90 days (i.e., by June 22, 2025), all federal agencies must evaluate existing consent judgments and permanent injunctions that rely on theories of disparate-impact liability and take appropriate action with respect to such matters consistent with the policy of the Executive Order.

Repeal and Amend Federal Regulations and Evaluate Potential Preemption Challenges to State Law

Along the same lines, the Executive Order directs the US Attorney General to initiate action to either repeal or amend the implementing regulations for Title VI to the extent they contemplate disparate-impact liability and, within 30 days (by May 23, 2025), to report to the President:

- All existing “regulations, guidance, rules, or orders” that impose disparate-impact liability “or similar requirements,” and identify the steps agencies must take to amend or repeal them.

- Other laws or decisions, including state laws, that impose disparate-impact liability and “any appropriate measures to address any constitutional or other legal infirmities.”

Finally, the Executive Order calls for the US Attorney General, in coordination with other federal agencies, to determine whether any federal authorities preempt state laws, regulations, policies, or practices that impose disparate-impact liability based on federally protected characteristics, such as race, sex, or age, “or whether such laws, regulations, policies, or practices have constitutional infirmities that warrant Federal action, and shall take appropriate measures consistent with the policy of this order.” It also directs the Attorney General and the EEOC to formulate and issue guidance to employers regarding “appropriate methods to promote equal access to employment regardless of whether an applicant has a college education.” Thus, in coming months, employers should expect to see federal guidance regarding hiring decisions that are based on the applicant’s college education (or lack thereof).

Implications for Employers

The Executive Order reflects the federal government’s ongoing shift in enforcement priorities with respect to the civil rights laws. Within the next few months, federal agencies will likely dismiss, close or narrow pending enforcement actions, litigation, investigations, and consent decrees in matters based on disparate-impact theories of liability. As a result, companies that are subject to such actions, investigations or orders may wish to affirmatively seek such a dismissal or narrowing.

In addition, federal agencies will likely amend or remove guidance and regulations to the extent they implicate disparate-impact liability. For example, as of April 24, the EEOC’s technical assistance document, titled “*Assessing Adverse Impact in Software, Algorithms, and Artificial Intelligence Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964*” (issued on May 18, 2023), has been removed from the EEOC’s website. The removal of such guidance changes the landscape, as the use of artificial intelligence (AI) in the workplace was identified as a focal point of regulatory scrutiny under the Biden Administration, and use of AI is only increasing.

At the same time, it is unclear how much impact the Order will have on discrimination claims from private plaintiffs, as disparate-impact liability remains codified in Title VII and certain other state and local statutes, and individuals are free to bring private lawsuits against their employers without regard to the position of government agencies. Disparate-impact liability has also been upheld by courts for decades as a legitimate theory for establishing discrimination under certain federal, state and local anti-discrimination laws—and the Executive Order does not alter those precedents.

Source: [Lexology - Mayer Brown, LLP- Ruth Zadikany, Carter M. Jensen, Marcia E. Goodman, Gabrielle Levin and Andrew S. Rosenman](#)

STATE, CITY, COUNTY, AND MUNICIPAL DEVELOPMENTS

Washington's Amended Fair Chance Act Will Impose Additional Obligations

Washington State has an existing fair chance law (discussed *here*) but the statute, as amended by *HB 1747*, will impose additional obligations on employers that consider criminal records when vetting job applicants or employees. The amended statute takes effect for most employers in July 2026 and so employers should plan to update their criminal record screening policies and standard forms of notice.¹

Expanded Prohibitions on Covered Employers

The amended statute will make the following actions unlawful:

- Inquiring about criminal records before first extending a conditional job offer.
- Taking a tangible adverse employment action² based on an applicant's or employee's arrest record³ (excluding an adult arrest in which an individual is out on bail or released on their own personal recognizance pending trial) or juvenile conviction record.⁴
- Taking a tangible adverse employment action based on an applicant's or employee's adult conviction record,⁵ unless the employer has a legitimate business reason for taking such action.⁶

Expanded Obligations for Covered Employers

Employers must provide a form of pre-adverse action notice to the applicant or employee before taking a tangible adverse employment action. The notice must inform the applicant or employee of the record on which the employer is relying for purposes of assessing its legitimate business reason. The employer must hold open the position for a minimum of two business days to provide the applicant or employee a reasonable opportunity to correct or explain the record or provide information on the applicant's or employee's rehabilitation, good conduct, work experience, education, and training.

Employers also must provide a form of adverse action notice if they decide to take the tangible adverse employment action. Specifically, employers must provide such individuals with a written decision, including specific documentation as to the employer's reasoning and assessment of each of the relevant statutory factors, including the impact of the conviction on the position or business operations, and the employer's consideration of the applicant's or employee's rehabilitation, good conduct, work experience, education, and training.

Increased Penalties

The amendment increases the amount of the potential penalties for the first, second, and subsequent violations. The amendment also confirms that any penalties must be imposed per aggrieved job applicant or employee, for each violation.

Recommendations

Employers with operations in Washington should evaluate necessary changes in when and how they inquire into criminal history during the hiring process. They should also consider whether to undertake a broader (and privileged) assessment to strengthen their compliance with federal, state, and local employment laws that regulate use of a candidate's criminal history (including in *Seattle*). Suggested action items for employers with employees in Washington and other jurisdictions with fair chance hiring laws are as follows:

- Review and update job applications and related forms for impermissible inquiries regarding criminal records;
- Review and update workplace postings to help ensure all required postings are included;
- Review and update company webpages for necessary additions about fair chance hiring;
- Provide training to recruiters and other personnel involved in posting job openings;
- Provide training to personnel who conduct job interviews and make or influence hiring and staffing decisions to explain permissible inquiries into, and uses of, criminal history;
- Provide training to personnel involved in ordering and adjudicating background reports;
- Review written and electronic communications about the hiring process, including conditional job offer templates and pre-adverse action and adverse action notices; and
- Review the hiring and screening process to help ensure compliance, including the timing of background checks, the distribution of mandatory notices, and the application of mandatory deferral periods.

Source: [Littler - Rod Fliegel and Chad Kaldor](#)

Washington State Clarifies Its Pay Transparency Law

The Equal Pay and Opportunity Act requires employers hiring in Washington state to publish in job postings a wage scale or salary range and a general description of benefits to be offered to hired applicants. The Washington State Legislature recently passed SB 5408 amending this statute to clarify provisions regarding the required substance of the postings and the potential statutory damages for employers, and to allow employers an opportunity to correct any job posting before being subjected to penalties.

Governor Bob Ferguson has until May 20, 2025 to sign or veto the bill. If it is signed, the following changes will go into effect on July 27, 2025.

NEW GRACE PERIOD TO CORRECT JOB POSTINGS

Among the most significant changes, [SB 5408](#) amends the Equal Pay and Opportunity Act (EPOA) to now require potential plaintiffs to notify the employer in writing that its job posting does not comply with EPOA. If an employer corrects the job posting within five business days, then the potential plaintiff cannot seek penalties or damages for the violation.

Under this grace period, the employer must also contact third-party posting entities to correct the job posting. This temporary reprieve gives employers a chance to correct job postings while the pay transparency law is still relatively new to Washington. After July 27, 2027, the grace period will expire.

NO LIABILITY FOR UNAUTHORIZED THIRD-PARTY POSTINGS

SB 5408 clarifies that employers cannot be held liable for unauthorized third-party postings, such as when a third party scrapes and reposts job postings without authorization from the employer.

UPDATED REQUIREMENT FOR FIXED WAGE POSITIONS

For fixed wage positions, SB 5408 clarifies that employers are expressly permitted to disclose the fixed wage amount, rather than a scale or range. This is a helpful clarification for employers in circumstances where an advertised position will pay a fixed amount.

CLARIFICATION OF STATUTORY DAMAGES

The statutory damages provision in the EPOA has also been clarified. Previously, the EPOA allowed job applicants to seek \$5,000 in statutory damages from an employer for each noncompliant job posting. This led to a tidal wave of class action lawsuits seeking significant damages from employers based on violations as minor as a single noncompliant job posting. The original version of the statutory damages provision did not expressly clarify whether \$5,000 was a fixed amount or a maximum penalty.

Now, SB 5408 provides that prevailing plaintiffs may seek statutory damages of “no less than \$100 and no more than \$5,000 per violation[.]” In determining the amount of statutory damages, courts are instructed to consider whether the violation was willful, the amount necessary to deter future violations, the size of the employer, and the purposes of the law.

KEY TAKEAWAYS

Employers should consider taking the following actions:

1. Include designated email addresses in job postings to receive and promptly respond to notices of noncompliant job postings.
2. Identify key contacts at third-party job posting vendors to streamline requests to change job postings quickly.
3. Correct noncompliant job posting within five business days of written notice of noncompliance.

OUTSTANDING QUESTIONS

Definition of “Applicant” Still to Be Decided by the Washington Supreme Court

A key issue in EPOA litigation is who qualifies as a “job applicant.” Does the law allow anyone who clicks “apply” to a noncompliant job posting to sue, even if they do not even want the job and are clicking “apply” only because they want to become a class action plaintiff? Or is the law limited to protecting actual job seekers who might be harmed by investing time in a job application without pay information? This issue is currently pending before the Washington Supreme Court

in *Branson v. Washington Fine Wines and Spirits LLC*. The court held oral argument on February 13, 2025. The answer to this question will be significant for employers who are subject to class action litigation brought by serial plaintiffs.

Source: [Lexology - Mogan Lewis & Bockius LLP- Damn Elder, Tjitske and Claire M Lesikar](#)

Spokane Approves First Ban the Address Ordinance in the Country

In a historic 6-1 vote, Spokane is believed to be the first city in the nation to adopt a “Ban the Address” ordinance on Monday in hopes of getting folks off the streets and into employment.

Similar to a “Ban the Box” policy, which prevents employers from inquiring about an applicant’s criminal record, “Ban the Address” prohibits them from asking about a person’s housing status.

The ordinance states that homelessness is one of the most pressing issues for society, with research pointing to unemployment as one of the primary causes. Service providers argue that Councilmember Paul Dillon’s policy will make a difference, but critics liken it to a symbolic gesture.

“We’re really making history tonight as the first city in the country to pass an ordinance like this,” Dillon said. “This ordinance comes down to dignity, and I’m excited we’re taking the step.”

Councilmember Michael Cathcart called the policy “low-hanging fruit” last month compared to the number of other proposals on the table. He joined Dillon in support on Monday, adding that it “pales in comparison to the millions” of dollars they’ve already spent on addressing the crisis.

Representatives from the Spokane Business Association, Spokane Community Against Racism, Tenants Union of Washington State, and several residents testified in support. Councilmember Jonathan Bingle, among the conservative minority with Cathcart, voted against the measure.

“Idaho’s a stone’s throw away,” Bingle told The Center Square after reserving his comments on Monday. “Adding one more thing to business owners didn’t seem right to me.”

He doesn’t think the ordinance will have much impact. Washington is an at-will state, meaning employers reserve the right to terminate an employee for almost any reason. As higher taxes and safety concerns push businesses to Idaho, he didn’t want to add to the pile, but that’s not all.

Bingle compared the policy to a “camel’s nose in the tent,” an idiom that refers to a seemingly small request or compromise with unintended consequences. Councilmember Lili Navarrete said last month that she [asked](#) Dillon to propose the ordinance after her own stalled last summer.

“I’m just happy that this is finally happening,” Navarrete said Monday.

She tried [pushing](#) what some called the “Homeless Bill of Rights,” which would’ve made housing status a protected class. Many business owners and residents came out [against](#) the measure, arguing that it could make matters worse and protect those breaking the law.

Bingle worries that Monday’s vote opens the door for other aspects of Navarrete’s proposal.

“The fastest way out of homelessness is a job,” Julie Garcia, executive director of Jewels Helping Hands, told The Center Square. “There needs to be options for exiting the hamster wheel of homelessness; this is a very good step in the right direction.”

Garcia said the “Ban the Address” policy opens the door for new workers to diversify the local workforce. She’s confident it will make an impact but cited a need for additional protections.

“I can find no argument against this that outweighs the need,” she said. “If we as a community want to move the needle in homelessness, we need to remove barriers to employment.”

Source: [Everett Post - Original Author: Tim Clouser | The Center Square](#)

Illinois Anti-Discrimination Law to Address AI Goes Into Effect on 1 January 2026

Effective 1 January 2026, Illinois House Bill 3773 (HB 3773) amends the Illinois Human Rights Act, (IHRA) to expressly prohibit employers from using artificial intelligence (AI) that “has the effect of subjecting employees to discrimination on the basis of protected classes.” Specifically, Illinois employers cannot use AI that has a discriminatory effect on employees, “[w]ith respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment.”

Employers are increasingly using AI during the employment life cycle, including resume scanners, chatbots, and AI-powered performance management software. While AI tools can streamline processes and increase data-based decision making, they also carry risks, such as perpetuating bias and discrimination. In light of HB 3773, Illinois employers should be mindful of these risks and carefully select and regularly audit their AI applications to ensure that the applications do not have a discriminatory effect on applicants and employees.

HB 3773 also requires employers to notify employees and applicants when using AI during recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or when the use could affect the terms, privileges, or conditions of employment. To comply with this mandate, Illinois employers must understand how the AI-powered employment tools they are using work and impact employment decisions and explain their use of AI tools to employees and applicants in a way that is easily understandable. Illinois employers should consider working with counsel to prepare these mandatory disclosures now to ensure compliance with HB 3773 by 1 January 2026.

Source: [Lexology - K&L Gates LLP- M. Claire Healy, Kathleen D. Parker and Erinn L. Rigney](#)

Cleveland Adopts Salary History and Transparency Law

On April 28, 2025, the Cleveland, Ohio City Council adopted Ordinance 104-2025, which requires employers with at least 15 employees in Cleveland to include salary ranges in job postings and prohibits inquiring about an applicant’s salary history. The ordinance, which will take effect on October 28, 2025 if Mayor Bibb approves it by May 8, builds on a nationwide trend of state and municipal laws aimed at pay transparency and salary history inquiries.

The ordinance marks a seismic shift for Cleveland employers, which will be prohibited from asking applicants about their current or prior salary, relying solely on an applicant’s salary history to offer employment, or retaliating against an applicant who refuses to disclose salary history. Salary, defined broadly in the ordinance, includes wages, commissions, hourly earnings, other monetary earnings, and benefits. But it excludes objective measures of an applicant’s productivity, such as revenue, sales, and other production measures. The ordinance permits discussing salary expectations with applicants.

The ordinance does not apply to: (1) reliance on salary history as authorized by any federal, state, or local law; (2) applicants for internal transfer or promotion; (3) an applicant’s voluntary and unprompted disclosure of salary history; (4) an employer’s attempt to verify an applicant’s disclosure of non-salary related information; (5) applicants who are rehired if the employer already has the applicant’s past salary history; (6) salaries for positions set by collective bargaining; and (7) governmental employers, other than the City.

Perhaps the most administratively burdensome part of the ordinance requires employers to provide the salary range or scale in job notifications, advertisements, and other formal postings. The ordinance does not define “salary range or scale,” which will certainly leave employers with questions about how to comply with the law.

Complaint Procedure, Investigation, and Enforcement

The ordinance empowers the Fair Employment Wage Board (FEWB) to investigate violations and enforce its provisions. Any person may allege a violation of the new law, and the FEWB may assess civil penalties up to \$1,000, \$2,500, and \$5,000, depending on whether the employer has committed zero, one, or two or more violations in the preceding five years.

But first, the FEWB will attempt to resolve a violation through education, conference, conciliation, and persuasion without imposing a civil penalty.

Practical Considerations

Before the law becomes effective, employers should consider:

- Developing salary ranges/scales for all positions;
- Evaluating template job postings, employment applications, and internal guidance to comply with the ordinance by October 28, 2025;
- For employers already complying with other Ohio municipal pay transparency and salary inquiry laws, ensuring that existing practices comply with new Cleveland requirements;
- Evaluating hiring practices to ensure uniform treatment of all applicants;
- Training managers and employees with human resources and hiring responsibilities to ensure they are not unlawfully inquiring into salary history;
- Developing a remediation plan to quickly address alleged violations of the ordinance to avoid civil penalties; and
- Educating employees on the bounds of inquiries regarding compensation expectations to avoid asking about current and past compensation history.

As the City implements the ordinance, employers with questions should contact employment counsel to evaluate their practices to ensure compliance and avoid steep civil penalties.

Source: [Lexology - Littler Mendelson PC - Trevor J. Hardy and Andrew N. Domozick](#)

Minneapolis City Council Votes to Broaden Employee Protections

On May 1, 2025, the Minneapolis City Council voted to amend anti-discrimination protections within the city's ordinance by adding three protected classes: (1) height and weight; (2) housing status; and (3) justice-impacted status. The ordinance applies to any person or business within the City of Minneapolis who hires or employs any employee, and any person or business, wherever located, who hires or employs any employee whose services are to be partially or wholly performed in the City of Minneapolis.

The new protected classes will prevent employers from using height and weight, housing status, or justice-impacted status as motivating factors for any adverse employment decisions, including decisions covering hiring and firing.

Under the amended ordinance, employees are still allowed to make decisions based upon height and weight if an individual's height or weight prevents them from performing a job's essential functions without a reasonable accommodation, treating height and weight in a similar manner to an employee's physical disability.

Importantly, "justice-impacted status" encompasses an employee or applicant's criminal record or history, including any arrest, charge, conviction, period of incarceration, or past or current probationary status.

Employers may still make adverse decisions reasonably based on the relationship between the underlying conduct of the criminal history or record and the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation, as long as the following factors are considered:

1. Whether the individual was convicted of the offense;
2. The length of time since the alleged offense or conviction;
3. The nature and gravity of the crime(s);
4. The age of the employee at the time the crime(s) was committed;
5. Any evidence of rehabilitation efforts offered in support of the employee; and
6. Any unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

Although the exception does not encompass decisions based on arrests that did not result in a conviction, for pending criminal matters an employer is not prohibited from making an adverse employment decision based on a reasonable consideration of the factors outlined above.

The justice-impacted protections also broadly still allows employers to make decisions based on justice-impacted status “when permitted by, and made in accordance with state or federal law, regulation, rule, or government contract,” including, but not limited to, for positions that involve work with children and positions in law enforcement.

Policy Updates and Ordinance Compliance.

The ordinance amendment goes into effect on August 1, 2025

Source: [Lexology - Taft Stettinius & Hollister LLP - Bethany J. Venegoni and Grant Gibeau](#)

Oregon removes nearly 50K eviction records from background checks

Oregon's state courts have cleared about 47,000 residential eviction records from people's backgrounds, a significant step toward reducing barriers to housing access under a new state law.

The law, [ORS 105.164 \(House Bill 2001, 2023\)](#), requires courts to "set aside" and "seal" past residential evictions that meet specific criteria. These sealed evictions will no longer appear in background checks, legally treated as if they never occurred.

Source: [KGW-TV Portland - Sabinna Pierre](#)

COURT CASES

Supreme Courts Holds “Arrest Record” Encompasses Noncriminal Civil Violations

The Supreme Court of Wisconsin recently provided significant guidance resolving uncertainty about the scope of the Wisconsin Fair Employment Act’s (WFEA) prohibition against discrimination based on an employee’s or applicant’s arrest record. The court held that “arrest record” includes noncriminal offenses, such as municipal theft, reversing the Wisconsin Court of Appeals. As a result, adverse employment actions based on an individual’s arrest record for a civil offense may now form the basis of a claim of unlawful discrimination.

Background

As discussed in our 2024 [article](#) addressing prior developments in this case, the Cota brothers worked on the grounds crew for the Oconomowoc Area School District. They were accused of taking the district’s scrap metal to a scrapyard and not remitting to the district the several thousand dollars they received for the scrap.

After an internal investigation was unable to determine which employees were responsible for the alleged theft, the district contacted the Town of Oconomowoc Police Department. The police ultimately cited the Cotas for theft. Approximately a year later, an assistant city attorney told the district he believed he could obtain convictions and that he also believed the case against the Cotas could be settled. He proposed dismissing the citations against the brothers in exchange for a \$500 “restitution” payment. The district supported the proposal; however, the Cotas did not agree to the deal and were fired the next day. The municipal citations against the Cotas were later dismissed.

In response, the brothers filed a complaint under the WFEA alleging the district unlawfully fired them because of their arrest records. After an evidentiary hearing, an administrative law judge (ALJ) found that the Cotas failed to establish unlawful discrimination by the district. On appeal by the Cotas, the Labor and Industry Review Commission (LIRC) reversed the ALJ’s decision, concluding that the district did discharge the brothers because of their arrest records. The circuit court then affirmed LIRC’s conclusion. The court of appeals [subsequently reversed](#) LIRC, holding that “arrest record” under the WFEA includes only information related to criminal offenses (i.e., not including the municipal offenses the Cotas were cited for). LIRC then petitioned the Wisconsin Supreme Court for review.

Arrest and Conviction Record Discrimination Under the WFEA

Wisconsin is one of a minority of states that prohibit discrimination against employees and applicants because of arrest or conviction records. In sum, the WFEA deems it unlawful for an employer to make employment decisions (including hiring and firing decisions) on the basis of an employee’s arrest or conviction record. Employers risk liability when they, for example, decline to hire an employee due to the contents of a background check or fire an employee when they learn of the employee’s arrest.

Importantly, the WFEA includes an exception—employers may defend an adverse employment decision motivated by arrest or conviction record when a pending arrest or conviction “substantially relates” to the job. In general, an arrest or conviction is “substantially related” to a job when there is some overlap between the circumstances of the job and the circumstances of the offense.

Under the WFEA, an employer may refuse to hire an applicant or suspend an employee based on a *pending* arrest if the offense is substantially related to the position in question. An employer may also take adverse employment action based on an individual’s conviction record, provided there is a substantial relationship between the crime of conviction and the relevant position. Thus, an employer cannot, in most circumstances, fire an employee based on a pending arrest or an arrest that did not lead to a conviction.

The Court’s Reasoning and Its ‘Strange Results’

The Wisconsin Supreme Court concluded that the ordinary meaning of the phrase “any ... other offense” includes violations of both criminal and noncriminal laws. The majority opined that this interpretation of “offense” is consistent with how the word “offense” is used throughout the Wisconsin Statutes. The court’s majority also found that such an interpretation was

consistent with the WFEA’s statutory purpose of “protect[ing] by law the rights of all individuals to obtain gainful employment and to enjoy privileges free from employment discrimination because of ... arrest record ...”

The majority thus found that LIRC correctly concluded that the Oconomowoc Area School District discharged Gregory and Jeffrey Cota because of their arrest records, in violation of the WFEA.

In a concurring decision, Justice Janet Protasiewicz lamented that the court’s decision, while correctly interpreted, makes for a “strange result.” Justice Protasiewicz wrote that, “[a]s a result of today’s decision, the [Oconomowoc Area School] District may not fire employees who it suspects stole from the District. That is no way to treat the victim of an offense.” Justice Protasiewicz added that if the district had fired the brothers when they suspected them of stealing, instead of going to the police (or had fired the brothers before they were cited by the police), they would not have violated the WFEA. Under these circumstances, the decision could not have been motivated by an arrest record that did not yet exist. “Our statutes should not hamstring employers who are victims that way,” Justice Protasiewicz stated. “An employer should be allowed to take employment action when it is the victim of an offense and suspects an employee did it, even when it relies on information from law enforcement.”

Key Takeaways

The 2024 court of appeals decision in this case narrowed the scope of employer obligations under the WFEA’s arrest record provisions. But this relief was short-lived. Employers doing business in Wisconsin are now confronted with the possibility of a wider array of offenses serving as the basis for arrest record discrimination claims.

Employers may want to note that the definition of “arrest record” under the WFEA includes noncriminal offenses—any information indicating an individual has been questioned, apprehended, or charged with any offense, criminal or noncriminal, may fall under the protection of the WFEA. And employers may also want to note that they have limited options when contending with an employee’s “arrest” by law enforcement. Even if the arrest involves conduct substantially related to the employee’s position (such as was the case with the Cotas’ alleged theft), employers risk liability if they discharge rather than suspend the suspected employee prior to conviction.

Under appropriate circumstances, employers may be well-served to discharge suspected employees prior to police action that may create an arrest record. And as lamented by Justice Protasiewicz, this outcome makes little policy sense and is contrary to the purposes of the WFEA.

While beyond the scope of this article, it is important to note that Wisconsin employers may also lawfully discharge an arrested employee based on their own independent investigation, if they can show that their discharge decision was motivated by the underlying conduct itself and not the fact the employee was arrested (the “*Onalaska* defense”). Employers may therefore want to conduct thorough internal investigations and document their findings independently of any arrest records—even if it is not possible or advisable to discharge an employee suspected of criminal wrongdoing prior to police action.

Source: [Ogletree Deakins – Brian M. Radloff and Corey J. Triggs](#)

INTERNATIONAL DEVELOPMENTS

PLEASE NOTE: Spellings of words in International articles such as those written in the British English format are native to the original author and differ from the spellings of words in the American English format.

Recruitment in Canada: Ensuring the Necessity of Personal Information

When recruiting, before collecting any personal information, a question must be asked: is the requested personal information necessary at this stage of the application assessment? The information must not simply be convenient to have; it must be essential. It is therefore likely that the personal information required when submitting an application will differ from that required for the additional checks carried out after the interview with the candidate.

Employers should also keep in mind that even if a candidate provides personal information, it does not mean that they have the right to collect it.

What personal information to request when making job offers, receiving applications and conducting interviews?

In order to determine a candidate's eligibility and to communicate with them, the following information may be required:

- first and last name;
- telephone number
- email address
- mailing address;
- information on academic and professional background, skills and interests.

Only the necessary personal information should be requested. Therefore, the use of a general application form should be avoided. Since job requirements can vary from one position to another, the personal information required may differ depending on the position to be filled. Employers should therefore use an application form that is specific and tailored to the position being advertised.

At the interview stage, the applicant may be asked to provide proof of identity. However, no photocopies should be kept, and no unique identifiers should be noted by the employer.

Additional checks in the recruitment process: what information to request?

The Commission d'accès à l'information recommends that employers wishing to conduct additional checks on a candidate should first make a conditional offer of employment and obtain the candidate's consent, particularly before contacting former employers.

Employer: can we check candidates' social media?

CAI recommends that employers do not check a candidate's social media. Indeed, while users can generally configure the privacy of their accounts, these profiles often contain information that is not necessary for the recruitment process. Consulting a candidate's profiles could constitute an invasion of privacy.

However, if such verification is necessary due to the specific context of the position to be filled, the employer should prioritize professional social media over personal ones, and obtain the candidate's prior consent.

What about the applicant's medical and legal information?

If medical information is requested, it must be necessary and limited to the requirements of the position to be filled. The candidate's consent must also be obtained in advance.

Considering that medical information is sensitive information, the employer must assess whether additional security measures are required for its storage.

In the case of criminal record checks, the candidate's consent must be obtained, even if the criminal record is publicly available. If the employer conducts such a check, they must be able to justify its necessity.

It should be noted that at the hiring stage, additional personal information may be required, such as:

- social insurance number
- bank account details;
- date of birth, which may be required, for example, for the pension plan.

What becomes of the personal information of unsuccessful candidates?

At the end of the recruitment process, the personal information of unsuccessful candidates must be securely destroyed, subject to a statutory retention period. Personal information may also be anonymized for serious and legitimate purposes. Failure to comply with personal information protection obligations exposes the employer to the risk of a complaint being filed with the CAI.

Source: [Stein Monast - Julie Picard, paralegal, and Isabelle Garneau, partner](#)

MISCELLANEOUS DEVELOPMENTS

No "Miscellaneous Developments" for this month.

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