

Change in Law!

Criminal Background Checks

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Archived newsletters of the Personnel Peeks publication can be found on the MCHRMA site.

The 2009 Legislature enacted Minnesota Statutes, Section 364.021 effective August 1, 2009 to prohibit public employers from inquiring into or considering the criminal record or history of an applicant until the applicant has been selected for an interview by the employer. There are exceptions for positions for which employers have a statutory duty to consider criminal history or conduct a criminal background check when hiring, such as law enforcement. This law has the practical effect of precluding employers from asking about criminal history on an application for most positions. Employers will need to revise their application forms currently being used. Public employers may notify the applicant on the application that criminal history may or will be considered if a policy exists prohibiting an individual with a certain background from occupying a particular position. Because an employer may only inquire about an applicant's criminal history once he/she is selected for an interview, consider requesting interviewees to arrive early for the interview to complete a questionnaire on criminal background or include the questionnaire in a letter advising of interview day and time. **This is to let the applicant know that the following info may be discussed at the interview:**

Whether the applicant has ever been convicted of a crime

Name under which the person was convicted, date and jurisdiction

Time, nature and number of convictions

Facts surrounding each offense

Employment history before and after the conviction if not already provided on the application

Section 11 of Chapter 59 of the 2009 Session Laws which will be coded Minnesota Statutes 364.02 is outlined below:

- (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.*

The Criminal Rehabilitation Act prohibits public employers from disqualifying applicants from consideration for a position on the basis of a past conviction unless the crime(s) are directly related to the position for which the applicant is applying.

Also, EEOC Guidelines state that a criminal conviction may not be an absolute bar to employment unless the employment policy is justified by a business necessity. Therefore, employers may want to consider how the conviction(s) would impact the applicant's ability to perform the written duties of the job. If a public employer is hiring for a position that mandates the criminal background check, then the employer should consider putting the information in the job vacancy advertisement. The ad should include language indicating, for example, "criminal background checks will be completed on all interviewees."

On the following page is a sample snapshot of a revised employment application provided by Ann Goering and Scott Anderson of Ratwik, Rozak & Maloney, P.A. which takes into consideration the changes as outlined in Minnesota Statutes, Section 364.021. Please be sure to review your organization's employment applications and make appropriate revisions to ensure compliance with the statutory changes as of August 1, 2009.

VIII. REFERENCES:

These should be people in a position to discuss your qualifications for the position you seek. Include especially managers, directors, or heads of departments under whom you have worked. Indicate any who are related you. The County reserves the right to contact all prior employers, educational institutions or institutions where you have volunteered in addition to references listed below.

Name of Reference: _____

Address: _____

Phone Number: _____ Title: _____

Name of Reference: _____

Address: _____

Phone Number: _____ Title: _____

Name of Reference: _____

Address: _____

Phone Number: _____ Title: _____

IX. CRIMINAL BACKGROUND INFORMATION

The County will request information regarding criminal history in the event that you become a finalist for the position which you are applying. For certain positions, criminal background information will be requested during the application stage. Further, the County may conduct a criminal background check on individuals upon making a contingent job offer. Please refer to the job description for this position to determine if such a check will be conducted. If the job description states that a criminal check will be conducted, no offer of employment shall become final until receipt of the results of the criminal background check from the BCA or other agency, the content of which is acceptable to the County, and formal approval by the appointing authority.

X. VETERAN STATUS

Are you an honorably discharged veteran of the armed forces of the United States or are you otherwise eligible to claim Veteran's Preference Points? Yes _____ No _____

Do you wish to claim Veteran's Preference Points? Yes _____ No _____

If you are a disabled veteran and wish to claim additional points, please check here. _____

*Application snapshot courtesy of Ann Goering and Scott Anderson; Attorneys; Ratwik, Rosak & Maloney

Section 364.021 amends Minnesota's Criminal Rehabilitation Act, first adopted in 1974. The legislature declared that it was the policy of Minnesota to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of responsibilities of citizenship. The opportunity to secure employment or to pursue, practice or engage in a meaningful and profitable trade, occupation, vocation, profession or business is essential to rehabilitation and the resumption of the responsibilities of citizenship.

The statute does not apply to all positions and it is advisable to check with your county attorney or employment law attorney to determine whether the position being filled is exempt from this Act.

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