

CHICAGO AMENDS ORDINANCES PROVIDING GREATER EMPLOYEE PROTECTIONS FOR BODILY AUTONOMY AND CRIMINAL HISTORIES

Insights
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The City of Chicago recently amended two existing ordinances to provide greater protections for employees in the areas of bodily autonomy and criminal conviction histories. Both the Bodily Autonomy for All Ordinance and the amendments to Chicago's "Ban the Box" Ordinance are now in effect, so Chicago employers should immediately review their hiring and employment practices and make any necessary changes to comply with the new requirements. What should you do to get in line with these significant changes?

Bodily Autonomy for All Ordinance

The Bodily Autonomy for All Ordinance prohibits employers from:

- discriminating or retaliating against an applicant or worker for their, their family members' (or anyone living with the applicant or worker) decisions regarding reproductive or gender-affirming care;
- accessing information about such decisions without the applicant's or worker's informed consent, which must be voluntary and in writing (and is subject to its own antidiscrimination and antiretaliation protections); and
- requiring an applicant or worker to waive their or their family members' right to make their own decision regarding reproductive or gender-affirming care.

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While *some* employers are exempt from this Ordinance, employers must be careful before wading into any waters concerning individuals' reproductive care or gender-affirming care.

"Ban the Box" Rule

Chicago has also expanded its protections for those with criminal conviction histories to bring the city more in line with [the 2021 changes to the Illinois Human Rights Act](#) regarding the same subject. The changes impose significant new assessment and notice requirements on Chicago employers, and you need to be aware as to how these changes affect your business practices.

First, Chicago employers are now strictly prohibited from inquiring or using an *arrest* record as a basis for an employment decision.

Second, however, employers may inquire or use a *conviction* record only if (1) there is a "substantial relationship" between one or more criminal offense(s) and the job sought or held or (2) the employer believes that the individual poses an unreasonable risk to property or the welfare of individuals or the general public. In determining whether a "substantial relationship" exists, employers must consider:

- The length of time since conviction
- The number of convictions that appear on the conviction record
- The nature and severity of the conviction and its relationship to the safety and security of others
- The facts or circumstances surrounding the conviction
- The age of the employee at the time of the conviction
- Evidence of rehabilitation efforts

If an employer decides that an applicant's or employee's conviction record may result in adverse action, the employer must provide written pre-and-post-adverse action notices and provide the individual at least five days to respond with evidence challenging the accuracy of the conviction record or evidence of rehabilitation.

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If the employer still wants to terminate the individual's employment, refuse to hire them, or engage in another adverse employment action after receiving the evidence from the individual, the employer must provide written notice of:

- the employer's decision;
- the reasoning for the decision;
- any procedures to challenge the decision; and
- state that the individual has a right to file a complaint with the Chicago Commission on Human Relations.

Importantly, these are in addition to the requirements imposed by the Illinois Human Rights Act, so employers will need to be mindful of those requirements as well.

What Should Employers Do Next?

You should review the Ordinances with counsel to ensure a full understanding of all the additional requirements they impose, including the foregoing recommendations and any workplace postings that the city may require. You should also review both your hiring and employment policies and practices to ensure they comply with the recent amendments.

In particular, Chicago employers may consider adding "choices relating to reproductive health care or gender-affirming care" to their Equal Employment Opportunity and Anti-Discrimination, Harassment, and Retaliation policies and trainings. As to individuals with conviction histories, you should also ensure your pre-adverse action notices and final adverse action notices comply with the City's new requirements.

Conclusion

If you have questions regarding either of these Chicago Ordinances or potential changes you may need to make to your policies and procedures, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our Chicago office](#). We will continue to monitor all labor and employment issues affecting employers, so make sure you are subscribed to the [Fisher Phillips' Insight System](#) to gather the most up-to-date information.

