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Waterloo, Iowa's "Ban the Box" Ordinance: What Waterloo Employers Need to Know

Legal Update

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In October 2019, Waterloo became the first Iowa city to adopt a "Ban the Box" ordinance, following in the footsteps of more than 150 cities across the country adopting similar ordinances. This ordinance is scheduled to go into effect on July 1, 2020. "Ban the Box" is a nationwide movement aimed at giving people with criminal records a second chance by removing criminal records from consideration in the hiring process. The Waterloo ordinance applies to Waterloo employers—including the city of Waterloo—with 15 or more employees. Employers are forbidden from:

- Asking applicants about convictions, arrests or pending criminal charges until after there has been a conditional offer of employment;
- Deciding whether to hire the applicant solely based on the applicant's arrest record, pending criminal charges, or expunged or nullified criminal records; and
- Declining to hire an applicant after making a conditional offer of employment based on an applicant's arrest record without a legitimate business reason.

An employer who uses an applicant's criminal history in one of these ways could be subject to a fine, payable to the applicant; however, the ordinance does not create a private right of action.

Waterloo employers can still consider an applicant's criminal record (after extending a conditional offer of employment) if the employer has a legitimate business reason, based on the criminal record, to not employ an applicant. The ordinance gives some examples of legitimate business reasons. For instance, if the position would be working with children and the applicant has a sexual abuse charge, the employer may have a legitimate business interest in not hiring the applicant based on the applicant's criminal record. With that being said, not every case is cut and dry. The ordinance requires a balancing of many factors, from the nature of the employment to whether the applicant can demonstrate rehabilitation. Employers who believe that an applicant's criminal record would make them unfit for employment should review the factors listed in the ordinance to determine whether, given the circumstances, there is a legitimate business reason to decline to hire based on a criminal record. Finally, Waterloo employers who do consider an applicant's criminal record when declining to hire should fully document the justifications for the decision. In a

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close case, it may be wise to talk to an attorney.

Steps to prepare for July 1, 2020:

- Review and revise application and hiring procedures to make sure they do not ask job candidates about their criminal backgrounds.
- Train hiring managers about the new ordinance.
- Evaluate your business. Are there specific criminal convictions that would put your company at risk?
- If you have questions or concerns about how the new ordinance will impact your hiring process, contact an attorney.