

Employer Use of Criminal Records of Applicants Limited in U.S. Virgin Islands

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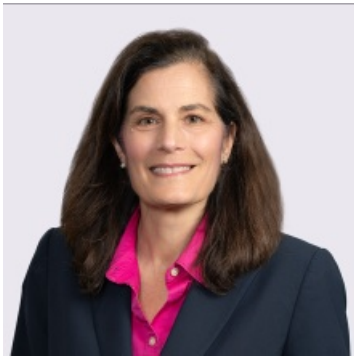
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All public and private employers in the U.S. Virgin Islands, regardless of size, are barred from asking applicants to disclose information on an arrest that did not result in a conviction or in which the conviction was dismissed or sealed.

Act No. 8134, which amends Title 24 of the Virgin Islands Code Chapter 17, broadly prohibits employers from asking applicants, whether orally or in written form, to disclose information of (1) an arrest or detention that did *not* lead to a conviction, (2) “a referral to, or participation in, any pretrial or post trial diversion program,” or (3) “a conviction that has been judicially dismissed or ordered sealed pursuant to law.”

Employers are also prohibited from seeking such criminal record information through any other means, regardless of the source.

Additionally, the criminal background information may not be used as a factor in determining any condition of employment, including “hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment.” For purposes of the law, a conviction means a plea, verdict, or finding of guilt, “regardless of whether sentence is imposed by the court.”

Permitted Inquiries

An employer, however, may ask about an arrest for which the applicant has been released on bail or is out on his or her own recognizance.

Likewise, employers at a qualified “health facility,” as defined by applicable law (19 V.I.C. § 221(1)), may inquire of applicants seeking certain positions with regular access to patients, drugs, or medication about arrests for violations of laws.

Exceptions to Bar

Like the carve-outs in similar laws across the United States, Act No. 8134 does not apply where:

1. State or federal law requires the applicant to be rejected based on his or her criminal background;
2. “[T]he employment requires a satisfactory criminal background as an established bona fide occupational position or a group employees”;
3. “[A] standard fidelity or equivalent bond is required and a conviction of one or more specified criminal offenses would disqualify the applicant from obtaining such a bond”; or
4. “[T]he employment is within a facility that provides programs, services, or direct care to minors or vulnerable adults including the educational system or child care.”

Similarly, the law does not apply to applicants for employment by, or current

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Related Services

Background Checks

Workplace Training

employees of, criminal justice agencies.

Special Restrictions on Use of Information by Criminal Justice Agencies

Act No. 8134 also includes specific prohibitions on the dissemination and use of criminal background information by local law enforcement agencies. It is unlawful for an employee of a criminal justice agency with access to criminal record information maintained by a local criminal justice agency to “knowingly disclose, with intent to affect a person’s employment, any information contained therein” pertaining to an arrest or detention or proceeding not resulting in a conviction to any person not authorized by law.

Furthermore, the statute makes it unlawful “for any other person authorized by law to receive criminal offender record information” that is maintained by local law enforcement to knowingly disclose criminal record information. However, it does not bar the disclosure of such information if “authorized for release to a government agency employing a peace officer.”

Penalties and Remedies

Violations can lead to both civil and criminal penalties. Aggrieved applicants may recover either \$200 or actual damages, whichever is greater, plus costs and reasonable attorneys’ fees.

Employers found to be in violation of the law also may face a criminal fine of up to \$500, six months’ imprisonment, or both. Moreover, the statute expressly states that its penalties “are in addition to and not in derogation of” remedies available to aggrieved applicants or employees “under any other law.”

Implications

Act No. 8134 imposes a new set of obligations on employers in the U.S. Virgin Islands that potentially apply before, during, and after the application process. Indeed, the statute expressly applies to the most significant employment decisions, including “hiring, promotion, and termination.” Employers should consider reviewing and updating existing procedures on applications and background checks, including training those involved in hiring, promotion, and termination decisions.

If you have any questions, please contact the Jackson Lewis attorney with whom you regularly work.

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