

D.C. Rejects Prohibiting Discrimination Based on Arrest

By Jessica Summers

In a move supported by many local business leaders, the District of Columbia City Council on December 4, 2012, rejected a bill to amend the D.C. Human Rights Act to prohibit discrimination in employment, housing and education based on arrest and conviction records. Among other things, the bill (available here), would have prohibited employers from considering an applicant or employee's arrest or conviction record unless it was directly relevant to the job sought. In rejecting this bill, the council approved a more moderate measure that will encourage employers to hire individuals with criminal records and provide certain ex-offenders with certificates of good standing (available here).

The question of whether to include protections under state or local discrimination laws for individuals with arrest or conviction records has become an increasingly common issue for state and local governments around the country. At least fourteen states have laws which address employment discrimination on the basis of arrest and/or conviction records.

As was discussed extensively in the September 11, 2012 Webinar put on by our Employment Law Group (available for free viewing here), the Equal Employment Opportunity Commission (EEOC) has become increasingly concerned with and active on the issue of how employers use conviction records in making personnel decisions. Over a series of policy documents, the EEOC has strongly advised employers against using a blanket practice of asking about convictions in employment applications. Instead, it encourages individualized inquiries depending on the business necessity for each specific position. Unlike the D.C. bill, the EEOC has specifically distinguished between arrest and conviction records and has stated that arrest records alone may not be used to deny employment.

Although the D.C. bill failed, local employers should be cautious not to overuse conviction records in making employment decisions. With the increased attention being given to this issue by the EEOC, employers would be well advised to avoid any consideration of arrest records and to carefully assess whether the consideration of conviction records is appropriate for the position in question.