

Employment Law Updates

Connect 2016

Topics to be Covered

- Ban the Box
- Sick Leave
- Marijuana
- Veterans' Preference

Ban the Box

- It is unlawful to:
 - Ask about arrests/convictions on an employment application

Ban the Box

- It is unlawful to:
 - Refuse to hire a person based solely on an arrest.
 - Unless there is clear evidence of guilt (but get legal advice).

Ban the Box

- It is unlawful to:
 - Have a blanket policy against hiring applicants who have past convictions.

Ban the Box

- What can I do?!
 - Background checks can generally be done before or after a conditional offer.
 - Recommended to wait until after conditional offer.
 - May learn of protective status or activity.

Ban the Box

- What can I do?!
 - Comply with Fair Credit Reporting Act
 - Disclosure and Consent Form
 - If disqualifying information - “Notice of intent to take adverse action” form & wait 3 business days.
 - Send “Notice of adverse action” form if no successful dispute.

Ban the Box

- What can I do?!
 - How should you deal with an applicants criminal history?
 - Disqualification by law
 - Case-by-case analysis
 - Opportunity for explanation

Sick Leave

- 10 or more employees (6 or more Portland) - 40 hours/year paid sick leave
- 9 or fewer employees (5 or fewer Portland) - 40 hours/year unpaid sick leave.

Sick Leave

- Count number of employees regardless of status (full, part-time, temp).
- Prorated - 1 hour/30 hours worked. 1 1/3 hour/40 hours worked.
- Provide quarterly notifications to employee.

Sick Leave

- May “front load”
- May choose the 12 month period
- May carry over up to 40 hours/year.
- May adopt policies:
 - Limit accrual to no more than 80 hours/year
 - Limit use to no more than 40 hours/year

Marijuana

- Still an illegal drug under federal law.
- Still can't come to work impaired.
 - Drug and alcohol policy
- Random testing is permitted for some positions.

Marijuana

- Public employers may not require random (suspicionless) testing of employees or applicants...
- ...unless an important governmental interest outweighs personal privacy interests.
- Stricter than private sector.

Marijuana

- Government interests:
 - Safety
 - Heavy equipment, firearms, care of children
 - Workplace Integrity
 - Very very high standard - like nuclear reactors.
 - Protection of “truly sensitive” information
 - “Classified” information, not sensitive records.

Veterans' Preference

- Requirements

- Grant a preference to Veterans and disabled Veterans when:
 - Hiring or promoting
 - Preference points must be given at each phase of the process
- Notify job applicants that Veterans' preference is available

Veterans' Preference

- Application Process
 - Ask for transferable job skills obtained through military service/training.
 - Ask for experiences related directly or indirectly to the position applied for.

Veterans' Preference

- "Stage or Phase"
 - Any time candidates are eliminated through a competitive process.
 - Scores on initial application and review of qualifications.
 - Scores in interviews.

Veterans' Preference

- Required Interviews
 - Meets minimum qualifications AND has transferable skills.
 - Consult with Oregon Military Dept. and the Dept. of Veterans' Affairs.
 - Don't have to create an interview process to meet this requirement.

Veterans' Preference

- Scored/Point System
 - If using a numerical score:
 - 5 points for veterans
 - 10 points for disabled veterans
 - BOLI informal position: 100 Point Scale
 - Minimum passing score allowed
 - Don't have to add preference score if minimum is not met.

Veterans' Preference

- Interview BMP

- If possible, don't let interviewers know who is a veteran.
- Have HR add preference points later.
- May weight certain traits important to the job.

Veterans' Preference

- Each competitive stage subject to preference.
- If veteran's final score is equal to or greater than non-veteran, you must appoint the veteran.
- Veteran still subject to non-competitive hiring conditions (background checks, etc.)

Veterans' Preference

- Veterans not selected and who make a written request are entitled to an explanation of the reason they were not selected.

Questions? Thoughts?