

NEW INDIANA ARREST AND CONVICTION EXPUNGEMENT LAW: EFFECTIVE JULY 1, 2013

A NEW INDIANA CRIMINAL RECORDS LAW AFFECTS EMPLOYERS

A new Indiana law ([House Enrolled Act No. 1482](#)) that protects the rights of individuals whose arrests and convictions have been expunged by court order will take effect on July 1, 2013. This new law will affect employers in Indiana because it prohibits employers from discriminating against anyone because of an arrest or conviction that has been expunged. An employer who does discriminate or asks about arrests or convictions that have been expunged would be guilty of a Class C infraction and may be held in contempt of court.

The new law establishes a procedure where persons who have been arrested or convicted can petition a court to expunge the records after a certain number of years have gone by, depending on the seriousness of the offence. This law is in addition to Indiana's so-called "Legal Lie" law that caused some controversy last year. See our [HR Insights Blog](#) post from March 28, 2012 [Indiana Criminal History Information – A New Restriction for Indiana Employers](#).

PROVISIONS THAT AFFECT EMPLOYERS

Here are the provisions that affect employers:

No Discrimination

- It is unlawful discrimination for any person to:
 - Suspend;
 - Expel;
 - Refuse to employ;
 - Refuse to admit;
 - Refuse to grant a license; or
 - Otherwise discriminate against any person because of a conviction or arrest record expunged or sealed under the law.

Negligent Hiring Defense

- In judicial or administrative proceedings that allege negligence or other fault, the order of expungement can be introduced to show that due care was used in hiring or retaining the person whose record was expunged.
- A person's conviction that has been expunged cannot be used as evidence in an action for negligent hiring against the employer who relied on the order.

Questions on Job Applications

The new law also suggests language for use in all Indiana employment Applications:

- In any application for employment, a license or other right or privilege, a person may be questioned about a previous criminal record only in terms that exclude expunged convictions or arrests such as:

"Have you ever been arrested or convicted of a crime that has not been expunged by a court?"

CAUTION AND HEADS UP

However, Indiana employers should **not** take this suggested language literally. Inquiry into arrest records has generally been ill advised for decades. As we have previously reported, the [EEOC](#) and the [OFCCP](#) have weighed in recently on the use of conviction records. The bottom

line for Indiana employers whose employment applications seek past conviction information – those applications should be reviewed before July 1 to make sure the inquiry **excludes** records that have been **expunged** by a court.

Please contact Steve Lyman at slyman@hallrender.com or your regular Hall Render attorney for any questions or assistance in reviewing your employment applications.