

## **NEW RULES FOR EMPLOYERS IN THE DISTRICT OF COLUMBIA**

Two recent pieces of legislation will impact employers in the District of Columbia: the Wage Theft Prevention Amendment Act of 2014<sup>1</sup> (“Wage Theft Act”) and the Fair Criminal Record Screening Amendment Act of 2014<sup>2</sup> (“Criminal Screening Act”). Key provisions of the new legislation are summarized below. If you have any questions or need compliance assistance please contact our office.

### **NEW EMPLOYEE WRITTEN NOTICE AND EXPANDED PENALTIES**

Under the Wage Theft Act, all employers in the District will be required to provide a written notice to every employee containing detailed employer business contact information as well as specific employee wage information within 90 days of the Act’s effective date<sup>3</sup>, whenever the information in the notice changes, and upon a new employee’s hiring. The Mayor’s office is required to issue a sample notice within 60 days of the Act becoming effective. As proof of compliance, every employer must retain copies of the written notice furnished to employees that must be signed and dated by the employer and by the employee acknowledging receipt of the notice. Employers could be assessed a \$500 fine for each missing notice.

The Wage Theft Act also expands the penalties for non-compliance with other District of Columbia wage and hour laws, including loss of a business license, possible imprisonment and misdemeanor charges, and increased fines.

Further, the Wage Theft Act streamlines the process for an employee to sue an employer for retaliation under the Living Wage Act through an administrative process that takes away the need for a civil action. The administrative process can penalize the employer up to a civil penalty of \$10,000. Employees may also be rewarded with front pay, lost compensation, attorney’s fees, reinstatement, and other forms of equitable relief.

### **NEW RESTRICTIONS ON CRIMINAL INQUIRIES DURING THE HIRING PROCESS**

Under the Criminal Screening Act, employers with more than ten (10) employees in the District are restricted from inquiring about an applicant’s criminal history.<sup>4</sup> With limited exceptions, covered employers are prohibited from inquiring about or requiring an applicant to disclose a criminal conviction until after making a conditional offer of employment. Further, covered employers are prohibited from inquiring about an applicant’s arrests or criminal charges which are not then pending against the applicant and which did not result in a conviction. Following the extension of a conditional offer of employment, an employer may only withdraw the

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<sup>1</sup> Wage Theft Act may be viewed here:

[http://lms.dccouncil.us/\\_layouts/15/uploader/download.aspx?legislationid=31203&filename=B20-0671-Engrossment.pdf](http://lms.dccouncil.us/_layouts/15/uploader/download.aspx?legislationid=31203&filename=B20-0671-Engrossment.pdf)

<sup>2</sup> Criminal Screening Act may be viewed here:

[http://lms.dccouncil.us/\\_layouts/15/uploader/Download.aspx?legislationid=30954&filename=B20-0642-Engrossment.pdf](http://lms.dccouncil.us/_layouts/15/uploader/Download.aspx?legislationid=30954&filename=B20-0642-Engrossment.pdf)

<sup>3</sup> Barring Congressional action, the Wage Theft Act should become effective in mid-January 2015.

<sup>4</sup> Barring Congressional action, the Criminal Screening Act should become effective in mid-December 2014.

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conditional offer to an applicant or take an adverse action against an applicant based on criminal history only for a legitimate business reason.

The employer's determination of a legitimate business reason must be reasonable in light of the following factors:

- (1) The specific duties and responsibilities necessarily related to the employment sought or held by the person;
- (2) The bearing, if any, that criminal offense or offenses for which the person was previously convicted will have on his or her fitness or ability to perform one or more such duties or responsibilities;
- (3) The time which has elapsed since the occurrence of the criminal offense or offenses;
- (4) The age of the person at the time of the occurrence of the criminal offense;
- (5) The frequency and seriousness of the criminal offense;
- (6) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct since the occurrence of the criminal offense; and
- (7) The public policy that it is beneficial generally for ex-offenders to obtain employment.

An applicant may file a complaint with the District of Columbia Office of Human Rights for alleged violation of this law, but there is no private right of action. The possible fines range from \$1,000 to \$5,000, depending on the employer's number of employees.

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