

Louisiana has become another State to regulate employer use of criminal record information for employment purposes.

Under a new law, expunged records of arrests of convictions are now considered confidential and no longer part of the public record. Those records also cannot be made available to any person or entity except: “To members of law enforcement or criminal justice agencies or prosecutors investigating, prosecuting or enforcing criminal law or for other statutory purposes. •Upon entry of a court order. •To the person whose record has been expunged, or his or her counsel. •To members of law enforcement or criminal justice agencies, prosecutors or judges for the purpose of defending against civil litigation resulting from wrongful arrest or other civil litigation, and the expunged record is necessary to the defense. “ In addition, the law does allow numerous State Agencies to receive information about an expunged record.

In addition to providing for confidentiality of expunged records, the new law expressly states that “no person whose record of arrest or conviction that has been expunged shall be required to disclose to any person that he was arrested or convicted of the subject offenses, or that the record of the arrest of conviction has been expunged.” As a result, job applicants with expunged records may legally answer “no” in response to employment application questions concerning expunged arrests or convictions.

In addition to restrictions concerning use of criminal records, employers also must consider certain State laws restricting the use of credit information and compliance with Federal and State fair credit reporting laws, including the Fair Credit Reporting Act.

As such, an employer should consider a privileged review of hiring and background screening practices, including employment applications, job advertisements and announcements, background screening consent forms, and training and guidelines applicable to those

responsible for conducting job interviews and making or influencing hiring or other personnel decisions.