Virginia Enacts “Ban the Box” Legislation for Marijuana Possession Arrests, Charges, and Convictions

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As we have previously reported here, here, and here, Virginia has enacted several new labor and employment laws that are poised to dramatically change the legal landscape for employers in Virginia. In addition to the laws discussed above, Virginia has also enacted “ban the box” legislation for simple possession of marijuana.

On May 21, 2020, Governor Ralph Northam signed a bill decriminalizing simple possession of marijuana. Though possessing marijuana in Virginia remains unlawful, the new law only provides a civil penalty of $25. The new law takes effect on July 1, 2020.

In addition to decriminalizing possession of marijuana, the new law prohibits employers from requiring job applicants to disclose any information regarding an arrest, criminal charge, or conviction for simple possession of marijuana, and the new law gives applicants a statutory right to refuse to answer any questions or provide any information concerning any such arrest, criminal charge, or conviction.
Though the new law does not appear to provide applicants with a private cause of action, Virginia employers are subject to criminal penalties if they willfully violate the new law. Under the new law, any individual who willfully violates these prohibitions could be charged with a Class 1 misdemeanor for each violation—which would carry fines and possible jail time.

Given these changes—including the risk of potential criminal prosecution—employers in Virginia should review and revise their job applications and hiring practices to ensure that they do not require an applicant to disclose any arrests, criminal charges, and/or convictions for simple possession of marijuana.

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