

CINCINNATI BUSINESS COURIER

Don't ban question about convictions

DAVID CROALL
Porter Wright Morris & Arthur LLP

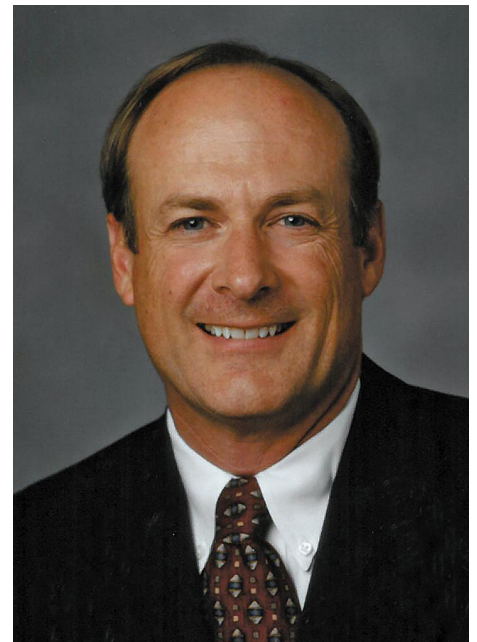
Last week, Ohio became the most recent state to remove a question about past criminal convictions from its civil service job application. And, there is legislation pending in Ohio's legislature that would extend that decision to all public-sector employers throughout the state. Ohio is just the most recent state to join the so-called "ban the box" movement, which has been gaining momentum over the past several years. Several states have even mandated that private-sector employers remove the question about conviction history from their job applications.

I think I understand the arguments advanced by "ban the box" advocates: The question may deter well-qualified applicants from applying; an employer may miss out on good candidates by failing to consider applicants who have a prior conviction; excluding those with convictions from consideration may be discriminatory toward males and/or minorities; it is wrong to allow the worst thing a person ever did to burden his/her life forever; etc. I have no problem with the state deciding, in its role as a large employer, to

remove the question from its own civil service application form. But I still think it would be a step too far for the state to attempt to impose that decision on all employers, especially private-sector employers.

As an owner of a small business (a partner in a law firm), I know how difficult it can be to make well-informed hiring decisions. And as an employment lawyer who advises and represents employers of all sizes, I help clients deal with the consequences of regrettable hiring decisions on a regular basis. While I do not generally advise that any employer use a past conviction as a total disqualifier from further consideration for any applicant, I do think it is fair and appropriate for an employer to ask the question and to consider the answer as one factor or data-point in the applicant's overall set of skills, experience and qualifications.

The conviction question is really no different than asking the applicant to disclose the reasons he or she has left previous employment. If I can properly consider the fact that an applicant has quit (or been terminated from) three jobs in the past five years, why shouldn't I be able to properly consider a criminal



David Croall is partner-in-charge of the Cincinnati office of Porter Wright Morris & Arthur LLP.

conviction from four years ago, or even longer ago if I consider it relevant to the position I may conclude that the conviction is sufficiently unrelated to the relevant job responsibilities, and the applicant's other qualifications sufficiently good, that I would move the applicant to the next step in the hiring process or even make an offer of employment. But it seems to me that it should be the private employer's decision whether to ask the question and to determine how much weight to give the answer.

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