General Editor’s note: Is a job applicant’s criminal history relevant to employment? The law and employer practice in recruitment

The employer has decided on a preferred candidate to fill a position and then discovers that the applicant has committed a crime in the past. In recruiting for jobs, employers occasionally ask the applicant questions about his or her criminal history, even where there is no legal requirement to do so, as for example, under mandatory schemes for people who work with children to show a “clean” criminal history.

Questions arise:
1. Is such criminal history relevant to the decision to employ a person?
2. In what circumstances might a person’s criminal record be relevant?
3. How should employers approach this matter and what does the law say?
4. How should any records be kept about an applicant’s criminal history?

This issue of Employment Law Bulletin outlines the contemporary and topical issue of the pitfalls for employers who decide to make criminal record checks where the law does not oblige them to do so.

There are many relevant laws — privacy laws and discrimination laws, for example — which the employer must be aware of in the context of checking a job applicant’s criminal record. The articles as part of this special issue explore these laws and also examine what spent conviction legislation tells us about what offences can be ignored (and not disclosed by the applicant) because they are old and “spent”. How do employers in practice regard the checking of criminal records? This is discussed in the articles.

Further, the evidence about why a criminal record should not be a barrier to employing a job applicant is discussed — and will inform employers and may provide solutions to relieving job shortages in some industries.

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