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"Ban the Box" Laws

"Ban the Box" is the name associated with a campaign by civil rights groups and fair chance advocates. The goal of this initiative is to see the checkbox that asks about an applicant's criminal history be removed from the employment application. Several statewide and local laws have already been enacted and many of them contain provisions requiring employers to do more than simply remove the checkbox.

This information is presented for general educational purposes and is provided solely for the convenience of its readers. It is not a substitute for legal advice. Consultation with qualified legal counsel is recommended for all matters of employment law.

California

Effective January 1, 2018, employers with five or more employees are prohibited from asking about an applicant's criminal records or conviction history until that applicant has received a conditional offer of employment. Then, and only then, may an employer inquire as to the applicant's criminal history.

The California Fair Employment and Housing Act (FEHA) issued final regulations, effective July 1st 2017, on the consideration of criminal history in employment decisions and this bill confirms what was provided therein. Specifically, that it is an unlawful employment practice under FEHA for a California employer to consider, distribute, or disseminate information about any of the following:

- Arrest not followed by a conviction (except in limited circumstances);
- Referral to or participation in a pretrial or post-trial diversion program;
- Convictions that have been sealed, dismissed, expunged or statutorily eradicated pursuant to law.

The legislation goes further to require employers who intend to deny employment because of a criminal record to make an individualized assessment of that applicant. They must consider the age, nature, and gravity of the offense and do so with particular regard to the position for which the applicant has applied. This assessment should be consistent with EEOC Guidelines in the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964.

If an employer makes a preliminary determination based on the assessment to deny employment, the employer must notify the applicant of the reasons for that preliminary decision in writing and must include the following:

- The conviction item that is the basis for the potential denial.
- A copy of the conviction history report.
- Explanation of the right to respond, and time limit thereof, which shall include the right to submit evidence disputing the accuracy of the report, evidence of rehabilitation or mitigating circumstances, or both.

The applicant has five business days to respond with a dispute of accuracy or information that supports mitigation or rehabilitation. If, within the five business days, the applicant notifies the employer in writing of a dispute or mitigating circumstances, then the applicant shall have five additional business days to respond to the notice.

The employer shall consider information submitted by the applicant during the pre-adverse process prior to making a final decision on hiring the applicant. If that final decision is to deny employment, an employer must notify the applicant in writing with the following information:

1. The final denial.
2. Any existing procedure the employer has to challenge the decision or request reconsideration.
3. The right to file a complaint with the Department of Fair Employment and Housing.

Full text of the California law

California – Los Angeles

Effective January 22, 2017, The Los Angeles Fair Chance Initiative prohibits employers located or doing business in the City of Los Angeles with ten or more employees from inquiring about an applicant's criminal history until a conditional offer of employment has been made. Employers are required to provide written assessment(s) to the applicant before taking adverse action using, at a minimum, the EEOC factors related to criminal records.

The ordinance has additional posting and recordkeeping requirements. Employers are required to state in all job ads and solicitations that they will consider for employment qualified applicants with criminal histories in a manner consistent with the law. In addition, employers are required to post a notice informing applicants of the provisions of the law at every workplace in the City. The notice must also be provided to each labor union or representative of workers with which they have an agreement that is applicable to employees within Los Angeles. Records and documents related to the job application, written assessments and reassessments must be retained for three years following the receipt of the initial application.

The law provides exceptions in the following circumstances:

- The employer is required by law to obtain information regarding past convictions.
- The applicant is required to possess or use a firearm in the course of employment.
- An applicant convicted of a crime is prohibited by law from holding the position.
- The employer is prohibited by law from hiring an applicant convicted of a crime.

The ordinance also includes a 'whistleblower' provision, prohibiting employers from taking adverse action against any employee who lodges a complaint of non-compliance with the City.

Full text of the Los Angeles law

California - San Francisco

Effective August 13, 2014, employers are prohibited from inquiring about an applicant's criminal history prior to the first live interview or until after a conditional offer of employment is made. The law applies to all companies that employ 20 or more persons worldwide and to employee positions that average 8 hours of work performed a week in San Francisco regardless of where the employer is located.

Prior to any inquiry, the applicant must be provided with a notice of his or her rights under the Fair Chance Ordinance (FCO), which is in addition to the FCRA Summary of Rights and the California specific disclosure required under the Investigative Consumer Reporting Agencies Act (ICRAA). The notice is also required to be posted where it is "readily

accessible" to job applicants and employees and must be made available in English, Spanish, Chinese, Tagalog and any other language spoken by at least 5% of the employees at the workplace or jobsite.

The FCO also prohibits employers from ever considering the following:

- An arrest not leading to a conviction, except for unresolved arrests;
- Participation in a diversion or deferral of judgment program;
- A conviction that has been dismissed, expunged, otherwise invalidated, or inoperative;
- A conviction in the juvenile justice system;
- An offense other than a felony or misdemeanor, such as an infraction;
- A conviction that is more than 7 years old (unless the position being considered supervises minors or dependent adults).

Additionally, the law incorporates an individual assessment component which requires that employers consider the following when reviewing an applicant's criminal history:

- Satisfactory completion of terms of probation or parole;
- References from post-conviction employers;
- Education/training since conviction;
- Participation/completion of rehabilitative treatment, e.g. drug, alcohol;
- Letters of recommendation from various sources;
- Mitigating factors: Coercive conditions that lead to conduct; Intimate physical or emotional abuse that contributed to conduct; Untreated substance abuse or mental illness that contributed to the conviction.
- Directly related convictions only which have a direct and specific negative bearing upon the applicant's ability to perform the job.

Pre-adverse action must be taken prior to refusing to hire an applicant based in whole or in part on the results of a background check, including sending the applicant a copy of the report, advising the applicant about what in the record was the basis for possible adverse action, providing at least 7 days for the applicant to dispute the record, and keeping the position open during that waiting period.

Full text of the San Francisco law

Connecticut

Effective January 1, 2017 all employers in the state of Connecticut with one or more employees are prohibited from inquiring about an applicant's criminal history on an initial employment application. The law provides exceptions in the following circumstances:

- the employer is required to do so by an applicable Federal or State law, or
- a security or fidelity bond or an equivalent bond is required for the position for which the prospective employee is seeking employment.

Even if these exceptions exist, an applicant may not be asked to disclose information about either arrests, charges, or convictions that have been erased.

If the question of criminal history is asked on an employment application after the initial application or under one of the exceptions listed above, the form must contain a notice in clear and conspicuous language that:

- the applicant is not required to disclose the existence of any arrest, criminal charge or conviction, the records of which have been erased;
- that the criminal records subject to erasure are records pertaining to a finding of delinquency or that a child was a member of a family with service needs, an adjudication as a youthful offender, a criminal charge that has been dismissed or nolled, a criminal charge for which the person has been found not guilty or a conviction for which the person received an absolute pardon, and
- that any person whose criminal records have been erased shall be deemed to have never been arrested and may swear so under oath.

No employer shall deny employment based solely on an applicant's prior record which has been erased or if the applicant has received a provisional pardon or certificate of rehabilitation.

The law also establishes a "fair chance employment task force" that will study issues related to employment opportunities of those individuals with criminal records.

Full text of the Connecticut law

Hawaii

Effective in 1998, Hawaii became the first state to introduce a "ban the box" law, prohibiting employers from inquiring about an applicant's criminal history prior to a conditional offer of employment. After the conditional offer is made, employers are allowed to conduct a background check, but may only consider conviction records that have occurred within the most recent 10 years, excluding periods of incarceration.

These requirements do not apply to those employers who are permitted to inquire into an applicant's criminal history pursuant to any federal or state law.

Full text of the Hawaii law

Illinois

The state of Illinois, as well as the city of Chicago and Cook County all have "ban the box" laws.

Effective January 1, 2015, it is unlawful for public and private employers in Illinois with fifteen or more employees to inquire about, or require disclosure of, the criminal history of an applicant until the individual has been determined qualified for the position and notified of an impending interview, or until after a conditional job offer is made. Under the following situations, employers are exempt from the requirements:

- An employer is required to exclude applicants with certain criminal convictions under federal or state law;
- If certain criminal convictions would automatically disqualify an applicant from obtaining a standard fidelity bond or equivalent bond which is required for the position; and
- If an employer hires individuals licensed under the Emergency Medical Services Systems Act.

Full text of the Illinois law

Illinois - Chicago

Effective January 1, 2015, employers within Chicago city limits may look into a job applicant's criminal history only after notifying the applicant of an impending interview, or after a conditional job offer has been made. After the notification of interview or conditional job offer, if an employer finds the applicant has a criminal conviction, the employer must then consider the following:

- The nature of the applicant's offense(s) and sentencing;
- The number of convictions, length of time since the applicant's most recent conviction and age at which he/she was last convicted;
- The relationship between the applicant's crimes and nature of the position for which he/she applied;
- Evidence of rehabilitation, treatment, and counseling; and
- The extent to which the applicant was honest and cooperative about his convictions.

If the employer subsequently chooses to deny or rescind the offer of employment, based entirely or partially on the applicant's criminal history, the employer must inform the applicant of this basis at the time he/she is informed of the decision.

Exceptions to Chicago's "ban the box" law include:

- Jobs where federal or state law disqualifies the applicant based on his/her convictions;
- Jobs requiring a standard fidelity bond (or equivalent) disqualify a candidate based on his/her prior convictions;
- Positions for individuals licensed under the Emergency Medical Services (EMS) Systems Act.

Full text of the Chicago law

Illinois - Cook County

Effective July 29, 2015, all employers, regardless of size, are prohibited from inquiring about an applicant's criminal record prior to an interview or, if no interview is conducted, prior to a conditional offer of employment. The law states explicitly that an applicant's criminal record must not automatically disqualify the applicant from employment and employers must consider the following factors prior to rescinding the conditional offer of employment:

- The nature of the offense or offenses;
- The number of convictions;
- The length of time that has passed following the last conviction;
- The relationship between the crime(s) and nature of the position; and
- The age of the applicant at the time of the most recent conviction.

If after making the appropriate considerations the employer decides not to hire the applicant based in whole or in part on the criminal history or record, the employer must inform the applicant of this at the same time he or she is informed of the decision not to hire.

The following exceptions apply to certain employers and positions:

- Employers that are subject to the Illinois Job Opportunities for Qualified Applicants Act, 820 ILCS 75/1 et seq., or agents of employers or employment agencies seeking qualified employees on behalf of such an employer;

- Positions for which a satisfactory criminal background is an established bona fide occupational requirement of a particular position or a particular group of employees;
- Positions for which federal or state law requires an Employer to exclude Employees with certain criminal convictions;
- Positions for which a standard fidelity bond or an equivalent bond is required and an Employee's conviction of one or more specified criminal offenses would disqualify the applicant from obtaining such a bond; and
- Positions for which licensure under the Emergency Medical Services (EMS) Systems Act, 210 ILCS 50/1 et seq is required.

A listing of cities and towns in Cook County can be found here

Full text of the Cook County law

Maryland

Currently, there is no statewide "ban the box" law in Maryland. However, the city of Baltimore, as well as Montgomery and Prince George's Counties each have their own law.

Maryland - Baltimore

Effective August 13, 2014, employers with 10 or more full-time equivalent employees are prohibited from inquiring about an applicant's criminal history until a conditional job offer has been made. Exception is provided where:

- An inquiry into criminal history is required or authorized by an applicable Federal, State, or City law or regulation; or
- The facility or employer provides programs, services, or direct care to minors or to vulnerable adults.

The Baltimore Community Relations Commission is charged with investigating alleged violations. Employers who are found to have violated the law may face criminal penalties of up to a $500 fine and 90 days in prison for each violation.

Full text of the Baltimore law

Maryland - Montgomery County

Effective January 1, 2015, private employers with 15 or more full-time employees within the county must wait to inquire into an applicant's criminal history until the conclusion of the first interview. Compliance requires an employer who intends to rescind a conditional job offer based on an applicant's arrest or conviction record to:

- Provide the applicant or employee with a copy of any criminal record report;
- Notify the applicant of the intention to rescind the offer and state the items that are the basis for the intention to rescind the offer;
- Delay rescinding the conditional offer for 7 days to permit the applicant to give notice of inaccuracy of any items on which the intention to rescind the conditional offer is based.

Exemptions apply to:

- Employers who are required to conduct checks to comply with federal, state, or county law;
- County Police, Fire and Rescue Service or the Department of Corrections and Rehabilitation;
- Employers providing programs, services, or direct care to minors or vulnerable adults; and
- Employers hiring for a position that requires a federal government security clearance

A listing of cities and towns in Montgomery County can be found here.

Full text of the Montgomery County law

Maryland - Prince George's County

Effective January 20, 2015, employers with at least twenty-five full-time employees within the county can no longer ask about an applicant's criminal history until after the first interview. This law applies to anyone seeking paid employment as well as to those seeking vocational or educational training, regardless of compensation.

If an employer chooses to rescind a conditional offer of employment based on criminal history, the employer must:

- Conduct an individualized assessment considering only specific offenses that may demonstrate unfitness to perform the duties of the position sought, as well as time elapsed since specific offense and evidence of inaccuracy in the record;
- Provide the applicant with a copy of the background screening report and their intention to rescind the offer;
- Specify the "items" that are the basis for the intention to rescind the offer;
- Delay rescinding the offer of employment for 7 days to permit the applicant to notify employer of inaccuracies on which intention to rescind the offer of employment is based; and
- Rescind the offer in writing

The law provides exceptions for the following situations:

- The employer provides programs, services, or direct care to minors or "vulnerable adults";
- Employers required to inquire about a candidate's criminal convictions based on federal, state, or county regulations;
- Employment application is to various county agencies or to positions that, in the judgment of the County, have access to confidential or proprietary business or personal information, money or items of value, or involve emergency management.

The Director of the Human Relations Commission is charged with enforcement.

A listing of cities and towns in Prince George's County can be found here

Full text of the Prince George's County law

Massachusetts

Effective May 4, 2012, employers are prohibited from inquiring about an applicant's criminal history on an initial application form. An employer may inquire about any criminal convictions on an applicant's application form if:

(i) the applicant is applying for a position for which any federal or state law or regulation creates mandatory or presumptive disqualification based on a conviction for 1 or more types of criminal offenses; or

(ii) the employer or an affiliate of such employer is subject to an obligation imposed by any federal or state law or regulation not to employ persons, in either 1 or more positions, who have been convicted of 1 or more types of criminal offenses.

Full text of the Massachusetts law

****UPDATE**** *July 2017*

Effective July 2017, the DCJIS implemented amended regulations for the Massachusetts Criminal Offender Record Information (CORI) law that was enacted in May of 2012, 803 CMR 2.00. The new regulations have serious impacts on Massachusetts employers, who continue to face challenges in their access to and use of criminal history information.

The most notable change involves additional steps in the adverse action process. The consumer shall be provided with a pre-adverse action disclosure that complies with federal and state laws and regulations and includes:

- a copy of the consumer report, which includes the source of the criminal history information and the subject's CORI or criminal history information;
- a Summary of Your Rights Under the Fair Credit Reporting Act;
- a copy of the organization's CORI policy (if applicable);
- the specific information in the subject's CORI or criminal history information that is the basis for the potential adverse action;
- notification and an opportunity to dispute the accuracy of the information contained in the CORI or criminal history information (not needed in licensing decisions); and
- when CORI is considered as part of a potential adverse action, provide the subject with a copy of DCJIS information regarding the process for correcting CORI.

Documentation of all steps is also required under the new regulations.

Minnesota

Effective January 1, 2014, employers of any size are prohibited from inquiring about an applicant's criminal history until the applicant is selected for an interview, or, if no interview will be conducted, until a conditional offer of employment has been made.

The law provides an exemption for those employers who are prohibited under federal or state law from hiring an individual who has been previously convicted of a crime.

Full text of the Minnesota law

Missouri

Currently, Missouri has no statewide "ban the box" law. However, the city of Columbia has its own law.

Missouri - Columbia

Effective December 1, 2014, employers are prohibited from asking about an applicant's criminal history until after a conditional offer of employment has been made. Applicants may then still be disqualified from the position based on their record, leaving it up to the employer to evaluate the severity and nature of the crime(s) committed.

Exceptions to Columbia's "ban the box" ordinance extend to:

- Employers required to exclude candidates with certain criminal convictions based on local, state, or federal regulations;
- Jobs requiring a standard fidelity bond (or equivalent) which may disqualify a candidate based on his/her prior convictions; and
- Positions for individuals licensed under the Emergency Medical Services (EMS) Systems Act.

Full text of the Columbia law

New Jersey

The state of New Jersey has a "ban the box" law that preempts any existing or future city or county laws and effectively negated a previous Newark "ban the box" ordinance.

On December 7, 2015, final regulations and guidance were published for clarification and response to public comment.

Effective March 1, 2015, employers with 15 or more employees, regardless of where the employees actually reside, are prohibited from inquiring about an applicant's criminal history, including conducting internet searches, until after an initial interview has taken place. It is also unlawful to state in job advertisements that applicants with convictions or criminal histories will not be considered. The law defines an interview as any live contact with the applicant either in person, by telephone, or by video-conference to discuss the position or the applicant's qualifications.

Multi-state employers are allowed to continue the use of a standardized application that includes a question regarding criminal history, provided that the question is preceded by a statement that directs applicants for a position which will be located, either in whole or in substantial part, within New Jersey not to answer the question.

The law extends to all direct employees, including interns and apprentices. Independent contractors, however, are not protected and employers are allowed to inquire about their criminal history without restriction. If the question arises as to whether the applicant is seeking a position as an employee or independent contractor, the Department of Labor considers the following criteria:

- the level of control over the individual performing services;
- whether the service is outside the usual course of the business, or outside the place of business, of the employer; and
- whether the applicant is "customarily engaged in an independently established trade, occupation, profession, or business

Special consideration should be given to the nature of an employer's relationship with employee leasing or staffing agencies, as the relationship will dictate when the inquiry into criminal history is allowed. If the employer and agency are considered separate employers, each must conduct interviews prior to the inquiry.

There are exemptions in place for jobs in law enforcement and where the position being sought requires by law that a criminal background check be conducted.

Full text of the New Jersey law

New York

Currently, there is no statewide "ban the box" law in New York. However, New York City, Buffalo, and Rochester all have their own "ban the box" laws. Additionally, New York State's Correction Law, Article 23A, must be complied with when using criminal history information during the hiring process.

All New York employers will consider NYS Article 23-A when assessing the applicant's criminal history. Under Article 23-A, an employer may not deny employment unless it can:

- Draw a direct relationship between the applicant's criminal record and the prospective job; or
- Show that employing the applicant "would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public."

To claim the direct relationship exception, an employer must first draw some connection between the nature of conduct that led to the conviction(s) and the potential position. If a direct relationship exists, an employer must evaluate the Article 23-A factors to determine whether the concerns presented by the relationship have been mitigated.

To claim the unreasonable risk exception, an employer must begin by assuming that no risk exists and then show how the Article 23-A factors combine to create an unreasonable risk. Otherwise, this exception would cover all convictions not directly related.

The Article 23-A factors are:

- That New York public policy encourages the licensure and employment of people with criminal records;
- The specific duties and responsibilities of the prospective job;
- The bearing, if any, of the person's conviction history on her or his fitness or ability to perform one or more of the job's duties or responsibilities;
- The time that has elapsed since the occurrence of the events that led to the applicant's criminal conviction, not the time since arrest or conviction;
- The age of the applicant when the events that led to her or his conviction occurred, not the time since arrest or conviction;
- The seriousness of the applicant's conviction history;
- Any information produced by the applicant, or produced on the applicant's behalf, regarding her or his rehabilitation or good conduct;
- The legitimate interest of the employer in protecting property and the safety and welfare of specific individuals or the general public.

New York - Buffalo

Effective January 1, 2014, employers are prohibited from inquiring about an applicant's criminal history prior to the completion of an application and an initial interview. The following employers are exempt from the requirements of this law:

- Employers with fewer than 15 employees;
- Law enforcement agencies;
- Schools and providers of direct services to children, young adults, senior citizens, and the physically or mentally disabled;
- Employers hiring for licensed trades or professions, including interns and apprentices for such positions;
- Employers who hire for positions where certain convictions or violations are a bar to employment under New York or federal law.

Full text of the Buffalo law

New York - New York City

Effective October 27, 2015, employers with four or more employees are prohibited from inquiring into or otherwise considering an applicant's criminal history on an initial employment application or in any other form prior to extending a conditional offer of employment.

Prior to taking adverse action based on an applicant's criminal history, employers are required to:

- Provide a written copy of the inquiry to the applicant;
- Perform an analysis of the applicant under Article 23-A of the NYS correction law and provide a written copy of the analysis using the Commission's Fair Chance Act Notice form;
- Allow the applicant no less than 3 business days to respond after providing the inquiry and analysis. During this time the position must be held open for the applicant.

The law provides the following exemptions:

- Does not apply to any actions taken by employers or their agents pursuant to any state, federal, or local law that requires criminal background checks for employment purposes or bar employment based on criminal history;
- Does not apply to various public employment positions, including but not limited to law enforcement agencies.

Full text of the New York City law

New York - Rochester

Effective November 18, 2014, employers with four or more employees are prohibited from inquiring about an applicant's criminal history until after an initial interview, or, if no interview is conducted, until after a conditional offer of employment has been made.

Exceptions apply when specifically authorized by any other applicable law, or for City Police and Fire Departments.

Full text of the Rochester law

Oregon

The state of Oregon, as well as the city of Portland have "ban the box" laws.

Effective January 1, 2016, all employers are prohibited from excluding an applicant from an initial interview solely because of a past criminal conviction. An employer excludes an applicant from an initial interview if the employer:

- Requires an applicant to disclose on an employment application a criminal conviction;
- Requires an applicant to disclose, prior to an initial interview, a criminal conviction; or
- If no interview is conducted, requires an applicant to disclose, prior to making a conditional offer of employment, a criminal conviction

Subsequent to abiding by the above noted provisions, nothing prevents an employer from considering an applicant's conviction history when making a hiring decision.

Employers under the following circumstances are exempt and may inquire about criminal history at any time during the hiring process:

- Employers who are required under federal, state or local law, including corresponding rules and regulations, to consider an applicant's criminal history;
- To an employer that is a law enforcement agency;
- To an employer in the criminal justice system; or
- To an employer seeking a non-employee volunteer.

Full text of the Oregon law

Oregon - Portland

Effective July 1, 2016, employers with six or more employees who perform work for a majority of the time in the City of Portland are prohibited from inquiring about an applicant's criminal history until after a conditional offer of employment has been made.

It is also unlawful for an employer to exclude an applicant from consideration based solely on his or her criminal history. The law requires that an employer conduct an individualized assessment to determine if the specific offense or conduct has a direct relationship to the position in question or business necessity before rescinding the conditional offer of employment. An individualized assessment must take into account the following:

- The nature and gravity of the criminal offense;
- The time that has elapsed since the criminal offense took place; and
- The nature of the employment held or sought.

Employers are also limited in the types of criminal history that they can consider. The following records cannot be considered:

- Arrests not leading to a conviction, except where a crime is unresolved or charges are pending;
- Convictions that have been judicially voided or expunged; or
- Charges not involving physical harm or attempted physical harm that have been resolved through the completion of a diversion or deferral of judgment program.

An employer can rescind a conditional offer of employment based on the applicant's criminal history if an employer determines in good faith that the conduct is job related for the position and consistent with business necessity. When rescinding the conditional offer of employment, the employer must notify the applicant in writing of the decision and identify the criminal convictions upon which the decision to rescind was based.

Exemptions from the ordinance mirror the State exemptions and are as follows:

- If federal, state, or local law, including corresponding rules and regulations, requires the consideration of an applicant's criminal history:
- To an employer that is a law enforcement agency;
- To an employer in the criminal justice system; or
- To an employer seeking a non-employee volunteer.

Additionally, for the following positions, an employer may consider an applicant's criminal history at any point in the hiring process, but must comply with all other requirements:

- The position involves the direct access or provision of services to children, the elderly, persons with disabilities, persons with mental illness, or individuals with alcohol and drug dependence or substance abuse disorders;
- The position has been determined by administrative rule to present public safety concerns or a business necessity;
- The position is designated as part of a federal, state, or local government program designed to encourage the employment of applicants with criminal backgrounds.

Full text of the Portland law

Pennsylvania

Currently, Pennsylvania has no statewide "ban the box" law. However, the city of Philadelphia has had its own law since 2011, which underwent revisions in 2016.

Pennsylvania - Philadelphia

Effective March 14, 2016, employers, regardless of size, are prohibited from inquiring about an applicant's criminal history until after a conditional offer of employment has been made.

Employers may then only consider conviction records that have occurred less than 7 years from the date of the inquiry. Any period of confinement may not be included in the 7-year calculation. Additionally, employers may not reject an applicant based on his or her criminal record unless the employer can conclude, after conducting an individualized assessment, that the record bears a relationship to the position sought and there is a business necessity for exclusion. An individualized assessment must include the following considerations:

- The nature of the offense;
- The time that has passed since the offense;
- The applicant's employment history before and after the offense and any period of incarceration;
- The particular duties of the job being sought;
- Any character or employment references provided by the applicant; and
- Any evidence of the applicant's rehabilitation since the conviction.

These prohibitions do not apply if inquiries into criminal history or adverse action taken as a result of criminal history are specifically authorized or mandated by other laws or regulations.

After conducting the assessment, if an employer decides to rescind the conditional offer of employment they must:

- Notify the applicant in writing of the decision and the basis for it;
- Provide the applicant a copy of the criminal history report; and
- Allow the applicant 10 business days to provide evidence that the information is inaccurate or to provide an explanation.

The law also includes a notification component, requiring that employers post a summary of these requirements in a form to be supplied by the Philadelphia Commission on Human Relations (Commission). The notice must be positioned in a conspicuous place both on the employer's website and premises where applicants and employees will be most likely to notice and read it.

Full text of the Philadelphia law

Rhode Island

Effective January 1, 2014, employers are prohibited from inquiring about an applicant's criminal convictions prior to the first interview with the applicant. A conviction is defined as any verdict or finding of guilt after a criminal trial or any plea of guilty or nolo contendere to a criminal charge. The law provides exemption for positions in law enforcement as well as under the following circumstances:

- If a federal or state law or regulation creates a mandatory or presumptive disqualification from employment based on a person's conviction of one or more specified criminal offenses, an employer may include a question or ask whether the applicant has ever been convicted of any of those offenses.
- If a standard fidelity bond or an equivalent bond is required for the position and his or her conviction of one or more specified criminal offenses would disqualify the applicant from obtaining such a bond, an employer may include a question or ask whether the applicant has ever been convicted of any of those offenses.

Full text of the Rhode Island law

Texas

Currently, Texas has no statewide "ban the box" law. However, the city of Austin has its own law.

Texas - Austin

Effective April 4, 2016, Austin's Fair Chance Ordinance prohibits private employers from inquiring about an applicant's criminal history until after making a conditional offer of employment. This law affects employers with at least 15 employees who work primarily within the City for each working day in 20 or more calendar weeks in the current or preceding calendar year.

Agencies working on behalf of employers must also abide by the requirements and restrictions, and the law applies to all types of employment, including, but not limited to, temporary, seasonal, contract, and apprenticeship work.

After a conditional offer of employment is made, an employer may proceed with a background check, but may not take adverse action based on the applicant's criminal history unless "the employer has determined that the individual's criminal history bears a direct relation to the duties and responsibilities of the job and makes the individual unsuitable for the job." This individualized assessment must consider:

- The nature of the criminal history;
- The length of time that has passed since the offense or release;
- The relationship of the crimes(s) to the position.

If, after proper assessment, an employer decides to rescind the offer, they must inform the applicant in writing that the decision was based on the individual's criminal history.

Full text of the Austin law

Vermont

Effective July 1, 2017, employers are prohibited from requesting information about criminal history on an initial application form. Employers may inquire about a prospective employee's criminal history during an interview or once the applicant has been deemed otherwise qualified for the position. Inquiring about criminal history on an application is allowable under the following circumstances:

- The prospective employee is applying for a position for which any federal or state law or regulation creates a mandatory or presumptive disqualification based on a conviction for one or more types of criminal offenses; or
- The employer or an affiliate of the employer is subject to an obligation imposed by any federal of State law or regulations not to employ an individual, in either one or more positions, who has been convicted of one or more types of criminal offenses; and
- The questions on the application form are limited to the types of criminal offenses creating the disqualification or obligation.

If an employer inquires about a prospective employee's criminal history and the prospective employee is still eligible for the position under applicable federal or state law, he or she must be given an opportunity to explain the information and circumstances regarding any convictions, including post-conviction rehabilitation.

Full text of the Vermont law

Washington

Currently, Washington has no statewide "ban the box" law. However, the cities of Seattle and Spokane have their own laws.

Washington - Seattle

Effective November 1, 2013, all employers and those acting as agents of employers are prohibited from inquiring about an applicant's criminal history until after the employer has identified qualified applicants. No employer may advertise, publicize or implement any policy or practice that automatically or categorically excludes an applicant with an arrest or conviction record from employment in any position that will be performed at least 50% of

the time within the City of Seattle. Once the qualified applicants have been identified, an employer may then proceed with a criminal background check with the following limitations on the use of the arrest or conviction records:

- An arrest is not proof that a person has engaged in unlawful conduct. Employers shall not carry out a tangible adverse employment action solely based on an applicant's arrest record;
- Employers shall not carry out tangible adverse employment action solely based on the conduct relating to an arrest unless the employer has a legitimate business reason for taking such action;
- Employers shall not carry out a tangible adverse employment action solely based on an applicant's criminal conviction record or pending criminal charge, unless the employer has a legitimate business reason for taking such action.

A legitimate business reason exists when an employer, based on information known at the time of an employment decision, believes in good faith that the nature of the criminal conduct underlying the conviction or pending charge:

- Will have a negative impact on the applicant's fitness or ability to perform the position sought;
- Will harm or cause injury to people, property, business reputation, or business assets.

Employers must consider the following factors in establishing a legitimate business reason for excluding the applicant from consideration:

- The seriousness of the underlying criminal conviction or pending criminal charge;
- The number and types of convictions or pending criminal charges;
- The time that has elapsed since the conviction or pending criminal charge, excluding periods of incarceration;
- Any verifiable information related to the individual's rehabilitation or good conduct, provided by the individual;
- The specific duties and responsibilities of the position sought; and
- The place and manner in which the position will be performed.

Before taking adverse employment action, based solely on an applicant's criminal conviction record, the conduct relating to an arrest record, or pending criminal charge, an employer must first identify to the applicant the record or information on which they are relying, as well as hold the position open and provide the applicant a minimum of two business days to explain or correct the information.

Full text of the Seattle law

Washington – Spokane

Effective May 28, 2018, all Spokane employers are prohibited from:

- Advertising applicable employment opportunities in a way that excludes people with arrest or conviction records;
- Including any questions in an employment application, asking about (orally or in writing), or obtaining through a criminal background check (or otherwise) any information about arrests or convictions until after the applicant has participated in an in-person or video interview or received a conditional offer of employment;
- Using, distributing, or disseminating an employee's arrest or conviction record, except as required by law;
- Disqualifying an applicant from employment solely because of a prior arrest or conviction; unless the conviction is related to the responsibilities of the job being applied for;
- Disqualifying an applicant for the failure to disclose a criminal record prior to initially determining the applicant is otherwise qualified for the position.

The ordinance follows the lead of Spokane County, where they passed similar legislation for county employers in September of this year. The ordinance does not apply in certain situations, including: an employer hiring an employee who will have unsupervised access to children, a vulnerable adult, or other vulnerable person; an employer who is required under federal or state law to inquire into, consider, or rely on an applicant's arrest or conviction record for employment purposes; to any General Authority Washington law enforcement agency; or where criminal background checks are specifically permitted or required under state or federal law.

Full text of the Spokane law

Washington, D.C.

Effective December 17, 2014, employers with 11 or more employees cannot check an applicant's criminal records until after a conditional job offer is made. The prohibitions of this act do not apply under the following circumstances:

- Where a federal or district law or regulation requires the consideration of an applicant's criminal history for the purposes of employment;
- To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories; or
- To any facility or employer that provides programs, services, or direct care to minors or vulnerable adults.

The act limits the types of records that can be considered, prohibiting employers from inquiring about or requiring an applicant to disclose arrests that did not result in a conviction, with the exception of those that are pending judgment. In order to rescind a conditional offer of employment based on criminal history, employers must have a "legitimate business reason" and consider the following factors in coming to that conclusion:

- The specific duties and responsibilities necessarily related to the position sought or held by the applicant;
- The bearing, if any, of the criminal offense for which the applicant was previously convicted will have on his or her fitness or ability to perform one or more such duties or responsibilities;
- The time which has elapsed since the occurrence of the criminal offense;
- The age of the applicant at the time of the occurrence of the criminal offense;
- The frequency and seriousness of the criminal offense; and
- Any information produced by the applicant, or produced on his or her behalf, in regard to his or her rehabilitation and good conduct since the occurrence of the criminal offense.

If an applicant believes that the offer of employment was rescinded based on his or her criminal conviction history, the applicant may request (within 30 days after the adverse action) that the employer provide (within 30 days of the request):

- A copy of all records procured by the employer in consideration of the applicant, including criminal records; and
- A notice that advises the applicant of his or her opportunity to file an administrative complaint with the Office of Human Rights.

Full text of the Washington DC law
