

Ban the Box movement

How to prepare for laws that give criminal offenders another chance

Ban the Box, a movement designed to provide additional opportunities to job candidates who have an arrest or conviction, is gaining steam. According to the National Employment Law Project, one in four Americans have either an arrest or conviction on their record, in most cases for nonviolent offenses. Ban the Box offers the vast majority of these individuals a second chance at an opportunity for employment.

The law does not require an employer to hire any candidate with a criminal background nor does it forbid employers from conducting background checks. Ban the Box simply requires employers to wait until later in the hiring process to ask the applicant about his or her criminal record.

“After the first interview, a potential employer may inquire about any criminal convictions the applicant may have,” says Michael B. Dubin, a member at Semanoff Ormsby Greenberg & Torchia, LLC. “The interview does not need to be a formal in person interview; it can be a telephone interview.”

Smart Business spoke with Dubin about Ban the Box legislation, how it affects employers and what penalties could arise from not following the law.

What is Ban the Box?

Ban the Box is a law that has been adopted in various states and municipalities that prohibits employers from inquiring about criminal convictions or arrests during the application process and the first interview. The law also prohibits employers from making personnel decisions based on arrests or criminal accusations that do not result in a conviction. Ban the Box was enacted by

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the City of Philadelphia in 2011, and with certain limited exceptions, applies to all city and private employers with 10 or more employees in the city. It was also recently signed into law in New Jersey and will take effect throughout the State of New Jersey on March 1, 2015 for all employers that have 15 or more employees and do business, employ persons, or take applications for employment in New Jersey.

How does Ban the Box affect employers?

Prior to the conclusion of the first interview, including on the employment application, employers are prohibited from inquiring about: (1) any arrest or criminal charge that did not result in a conviction and is not still open in court; and (2) criminal convictions.

After the first interview, employers are prohibited from inquiring about and/or making any adverse employment decisions based on any arrest or criminal charge that did not result in a conviction and is not still open in court. If an employer does not conduct interviews, then it is not permitted to conduct any criminal background inquiry.

There are several exceptions, for example, when an employer is mandated by state or federal law to consider criminal histories of applicants, such as when hiring law enforcement.

What are the penalties for violating Ban the Box laws?

Penalties differ by location. In Philadelphia, violators are subject to a fine of up to \$2,000 per violation. In New Jersey, violators will be subject to a civil penalty not to exceed \$1,000 for the first violation and \$10,000 for each subsequent violation.

What must employers do to ensure they comply with Ban the Box laws?

Employers should review their form job applications and job posting advertisements to ensure they do not ask about criminal arrests or convictions. Any such inquiry should be removed.

Employers should also review the law in each state and municipality in which they either do business or have employees to ensure compliance. Human Resource personnel and hiring managers should be properly trained regarding Ban the Box laws and instructed as to what can and cannot be asked of job candidates and when criminal background inquiries may be made.

As the trend is moving toward more states and municipalities enacting Ban the Box legislation, multi-state and nationwide employers should be extra vigilant in ensuring compliance. The consequences of failing to do so could be extremely expensive for employers. ●