

PHILADELPHIA STRENGTHENS BAN-THE-BOX LAW: KEY UPDATES + 7 STEPS FOR EMPLOYERS

Insights
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Employers in Philadelphia may need to update their hiring processes to comply with new rules on criminal history inquiries. Recent changes to the city's ban-the-box ordinance will significantly expand who is covered, clarify key definitions and procedures, and add more robust notice, retaliation, and enforcement provisions. Here's what you need to know ahead of the January 6 effective date and seven steps you can take now to prepare.

Quick Background

Philadelphia's Fair Criminal Record Screening Standards Ordinance has been in place since 2011. This law – which is also known as a “fair chance” or “ban-the-box” ordinance – puts limits on the questions employers can ask job applicants about their criminal history. The goal is to remove barriers to employment for people with criminal records.

Mayor Parker just approved amendments on October 8 that afford job applicants more protections by covering more workers, clarifying definitions, creating new notice requirements, and strengthening enforcement capabilities for the Philadelphia Commission on Human Relations (PCHR). The amendments are set to take effect on January 6, 2026.

Broad Workplace Coverage

The expanded ban-the-box law applies to nearly all private employers with operations in Philadelphia, as well as city agencies, though there are some exceptions for law

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enforcement agencies and domestic services performed in private homes.

Employment broadly means:

- any occupation, vocation, job, work for pay, or employment, including temporary or seasonal work, contracted work, contingent work and work through the services of a temporary or other employment agency; or
- any form of vocational or educational training with or without pay.

In addition to employees, the amendments extend protections to:

- independent contractors;
- transportation network company drivers;
- rideshare drivers; and
- other gig economy workers.

Moreover, the definition of “employment process” includes more than just the initial hiring stage. It covers re-employment, continued employment, promotions, raises, and termination decisions. This means employers will need to ensure compliance through all aspects of the employment relationship, not just during the selection process.

Key Changes and Clarifications

In addition to expanding workplace coverage, the amendments also revise how and when employers may ask about and review criminal background information. Here’s a breakdown of the essentials in the existing and new law:

- **Inquiries:** Before asking about criminal convictions, you’ll need to make a conditional offer of employment, promotion, or rehire.
- **Key Terms:** The new law clarifies terms like convictions, exonerations, felonies, misdemeanors, summary offenses, and incarceration.
- **Time Limit:** Employers can still consider felonies within seven years, but misdemeanors can only be considered within four years. And summary offenses may not be considered at all.

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- **No Sealed or Expunged Records:** You can't consider records that have been sealed or expunged. If such records appear in a background check or driver record, you should allow the job applicant to show proof of expungement or sealing.
- **Individualized Assessment:** Rather than having a blanket policy against hiring workers with criminal records or certain types of offenses, employers need to conduct an individualized assessment that includes considerations like the nature of the offense, time passed and rehabilitation, employment references, and job duties.
- **Pending Criminal Charges:** You may ask employees about pending criminal charges when you have reasonably reliable information about a charge that relates to specific job duties. You may ask employees to report pending charges if you have a written policy on the offenses that are reportable. Still, any adverse actions must be justified. It's best to consult with legal counsel before doing so.
- **Expanded Anti-Retaliation Provisions:** Philadelphia's amended ban-the-box law includes stronger anti-retaliation provisions and creates a rebuttable presumption of retaliation if an adverse action is taken within 90 days of a protected activity. To overcome the presumption, be prepared to show that you acted in good faith and took the adverse action for legitimate reasons.
- **Higher Risks:** The revised law comes with higher penalties, new liquidated damages, and stronger rights for job applicants and employees to sue.

This is just an overview of the changes. [You can read the details of the new ordinance here.](#)

Notice Requirements

If you decide to tell job applicants during the employment process, including in a job ad, that you conduct background checks, you'll need to state that any consideration of the background check will be "an individualized assessment based on the applicant or employee's specific record and the duties and requirements of the specific job."

Additionally, if you plan to deny an applicant or employee based on their criminal record, you'll need to notify them in

writing before making a final decision. The notice should include:

- the specific convictions you considered and a copy of the records you used;
- a summary of the employee's rights under the Fair Criminal Record Screening Standards Ordinance;
- a statement that you will consider evidence of errors, rehabilitation, and mitigation, as well as the type of evidence that may be offered; and
- information on how to submit relevant evidence.

You'll be required to give the applicant 10 business days to respond before making a final employment decision.

Notably, the PCHR is expected to create model forms for employers covering the required notice, summary of rights, and statement regarding evidence.

What Employers Should Consider Doing Now

You only have a few months to ensure your policies and practices are compliant with the new requirements. Here's a seven-step action plan to help you prepare before the January 6 deadline:

- 1. Review HR Forms and Practices:** Be sure that job applications, internal candidate and promotion paperwork, and related selection processes are compliant with all new and existing requirements.
- 2. Create Notice and Documentation Policies:** Ensure your criminal background forms, notifications, and documentation practices comply with all federal, state, and local requirements for conducting investigations, as well as considering and taking adverse action.
- 3. Provide Training:** Educate your HR staff, recruiters, and hiring managers on the new requirements. Make sure they understand the new law covers gig workers and other independent contractors.
- 4. Recordkeeping:** Maintain and retain proper documentation of individualized assessments, risk evaluations, and notices.

5. Ensure Consistency: Consider creating a single clearinghouse within your organization to review and approve all individualized assessment decisions. This will help create a more consistent decision-making process and reduce the chances that a disgruntled applicant will be able to advance a discrimination claim based on a disparate treatment theory.

6. Be Prepared for an Investigation: If a complaint is filed, you should be ready to provide the PCHR with an explanation of how you conducted the individualized assessment and documentation related to any adverse employment decisions.

7. Reach Out to Counsel: Philadelphia's amended ban-the-box ordinance includes complex requirements for employers that conduct criminal background investigations. Your attorney can help you create a robust plan to ensure compliance.

Conclusion

We will continue to monitor workplace developments impacting your business, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. If you have questions about whether your policies comply, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Philadelphia office](#).