



Beyond Banning the Box – Philadelphia Continues to Restrict the Use of Criminal Background Checks in Hiring

Insights

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Philadelphia has long been at the forefront of legislation limiting the use of criminal background checks in the hiring process, but, recently, Philadelphia expanded its existing legislation. In 2012, Philadelphia enacted the commonly-referred-to "Ban the Box" legislation, prohibiting employers from inquiring about a job applicant's criminal history before or during the applicant's first interview. The law also prohibits employers from making any inquiry at any time about an arrest or accusation that did not result in a criminal conviction. Recently, outgoing Philadelphia Mayor Michael Nutter signed an update to the city's Ban the Box legislation.

The "update" expands the prohibition on inquiries about criminal history until after a conditional offer of employment has been made. After the conditional offer is made, the employer can conduct a criminal background check. However, the check can still only extend back seven years and can only inquire as to convictions, not arrests. Once the background check is complete, employers must then take several factors into consideration, including how much time has elapsed since a conviction and whether the criminal conviction is related to the offeree's job duties. If the employer decides to rescind the offer as a result of an individual's criminal history, the employer must notify the offeree in writing and provide the individual with a copy of the criminal history report. The applicant then has ten business days to dispute the accuracy of the report or provide an explanation for the information contained in the report.

This expansion brings Philadelphia's law in line with places like New Jersey, San Francisco, and New York City, and highlights the trend of restricting employers' access to and consideration of criminal histories. According to the National Employment Law Project, nineteen states and over 100 cities and counties have adopted some form of "Ban the Box" legislation. The expanded law also reflects and incorporates national guidance provided by the Equal Employment Opportunity Commission as well as the federal Fair Credit Reporting Act. In short, Philadelphia's "update" of its Ban the Box legislation is just the most recent indication of the ever-increasing scrutiny surrounding employers' use of criminal history in hiring and firing decisions. Therefore, going forward, it is advisable that all Pennsylvania employers, including those outside of Philadelphia, take a close look at the Ban the Box legislation its requirements.

Please contact your regular Fisher Phillips attorney for comprehensive details on this new law and to ensure that your policies remain compliant with these new restrictions.

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