

NEW JERSEY'S "BAN THE BOX" LAW: FAQs FOR EMPLOYERS

Insights

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The New Jersey Opportunity to Compete Act, better known as "Ban the Box," will go into effect in less than a month, making this a great time for employers to review their employment applications and hiring procedures to ensure that they will be in compliance with the new law. The following Frequently Asked Questions will help employers get up to speed on the law's requirements.

When does the law go into effect?

New Jersey's Ban the Box law will go into effect on March 1, 2015.

What does "Ban the Box" mean for employers?

As of March 1, New Jersey employers with 15 or more employees will be prohibited from inquiring into a job applicant's criminal history in the initial employment application. In other words, any inquiry into a candidate's criminal background, which typically appears as a "box" asking an applicant whether he or she has ever been convicted of a crime, must be removed from the employment application.

Can employers still ask about a job applicant's criminal background before hiring a candidate?

Yes. It is important for employers to understand that the new law does not prevent employers from inquiring about an applicant's criminal background, it only delays when the inquiry can occur. Under the new law,

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employers may ask about an applicant's criminal history after the employer has conducted an initial interview of the applicant. The first interview need not be conducted in person.

Are there any exceptions?

Yes. The law carves out several exceptions. The new law does not apply to employment positions in law enforcement, corrections, the judiciary, homeland security, emergency management, or other positions where a criminal history background check is required by law, rule or regulation. Furthermore, the new law does not apply if the applicant is legally precluded from holding the employment position based on an arrest or conviction of certain crimes, or if the employer is legally restricted from engaging in specified business activities based on its employees' criminal records. Lastly, Ban the Box does not apply to any positions specifically designated by the employer as part of a systematic effort to encourage hiring people with prior criminal histories.

Are employers required to hire applicants with prior criminal convictions?

No. Nothing in the New Jersey Opportunity to Compete Act requires employers to hire job applicant with criminal records. However, in order to ensure full compliance with the New Jersey law as well as federal laws, employers should conduct an "individualized assessment" before disqualifying an applicant based on his or her criminal record. Employers are cautioned to consider the following factors when making an assessment: 1) the nature and gravity of the offense or conduct; 2) the amount of time that has passed since the offense and/or completion of the sentence; and 3) the nature of the job or position sought. Employers also should consider the circumstances surrounding the offense, rehabilitation efforts (e.g. education and training) and employment or character references.

Will I have to comply with Newark's Ban the Box after March 1, 2015?

No, as long as you are a private employer. The New Jersey Opportunity to Compete Act replaces and

prohibits adoption of any county or municipal ordinance, resolution, law, rule or regulation related to employer inquires of job applicants' criminal histories (other than those regulating municipal operations), including Newark's local ordinance banning the box.

What happens if employers violate the law?

Employers could face civil penalties of \$1,000 for the first violation, \$5,000 for the second violation, and \$10,000 for each subsequent violation, enforced by the Commissioner of Labor and Workforce Development. This is the *sole* remedy for violating the Opportunity to Compete Act.

What should employers do?

First, employers doing business in the State of New Jersey should review their initial employment application and eliminate any inquiries into the job applicant's criminal history, or instruct New Jersey applicants not to answer the question. Second, employers should conduct a thorough review of their hiring policies to ensure that all individuals involved in the hiring process understand that they can ask about an applicant's criminal history only after the initial interview. Lastly, employers should review their advertisements soliciting applications for employment and remove any language that explicitly states the employer will not consider an applicant who has been arrested or convicted of one or more crimes or offenses.

For more information contact your Fisher Phillips attorney or any attorney in the firm's New Jersey office at (908) 516-1050.

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