



# Kansas City Decides 2018 Is The Year For Private Employers To “Ban the Box”

## 5-STEP PLAN TO COME INTO COMPLIANCE

Insights

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The City Council in Kansas City, Missouri just passed an extension of its 2013 public sector “ban the box” rule, which will soon be extended to apply to private sector employers. The new ordinance will go into effect on June 9, 2018, requiring most businesses operating in the city to adjust their hiring practices.

What do you need to know in order to come into compliance before the effective date? What follows are some frequently asked questions about the new law, along with a five-step plan to ensure you are on the right side of the law once it becomes effective.

### **What Does “Ban the Box” Mean For Kansas City Employers?**

“Ban the Box” refers to the prohibition against employers inquiring about a job applicant’s criminal history on the initial employment application. In other words, any inquiry on the employment application, which typically appears as a “box” to check asking an applicant whether they have ever been convicted of a crime. Like many other cities and states across the country, Kansas City’s ordinance will “ban the box,” but it will also take it a step further.

Under the new rules of Section 38-104, Kansas City employers with six or more employees—public and private—will also be prohibited from making hiring or promotional decision inquiries into a prospective employee’s criminal history until after determining that the individual is otherwise qualified for the position, and only after the applicant has been interviewed for the position.

Once a proper inquiry is made, you must make an individualized assessment considering all the available information including the frequency, recentness, and severity of a criminal record, and that the criminal record was reasonably related to the duties and responsibilities of the position. Once you follow all of these steps, you may make an adverse hiring or promotional employment decision based on an applicant’s criminal history.

### **Can Employers Still Ask About A Job Applicant’s Criminal Background Before Hiring An Applicant?**

Yes. It is important for Kansas City employers to understand that the new law, passed on February 2, will not prevent you from inquiring about an applicant’s criminal background. It will only delay when

the inquiry can occur and will impact the steps to take before making an adverse hiring or promotion decision.

### **Are Employers Required To Hire Applicants With Prior Criminal Convictions?**

No. There are two distinct exceptions to the law when you learn of an applicant's criminal record. First, the new prohibitions will not apply to positions where you are required to exclude applicants with certain criminal convictions from employment due to local, state, or federal law or regulation. Second, you may decide to not hire an applicant based on criminal record information if the offenses are reasonably related to the duties and responsibilities of the position.

### **What Happens If Employers Violate The Law?**

Kansas City's "ban the box" new ordinance amends Chapter 38 of the Kansas City Human Relations Act. Therefore, the Kansas City Human Relations department will handle complaints alleging violations of the new ordinance.

If the city finds probable cause that there is a violation, and the matter cannot be voluntarily conciliated, then it will be referred to the city counselor for possible prosecution in municipal court. If the court finds violations, the remedies will also be the same as those for other Human Relations Act violations, including civil penalties, reinstatement, back pay, and actual damages.

### **Five Things Kansas City Employers Need To Do To Comply**

You have time to adjust your hiring processes to comply with Kansas City's ordinance before it goes into effect on June 9. Here are five steps you should take to make sure you are in compliance:

#### *1. Amend Your Job Applications*

If you have not already done so, review your standard job application to ensure that all questions about criminal history are removed.

#### *2. Educate Your Recruiters And Hiring Managers On Avoiding Illegal Inquires*

Educate recruiters and hiring managers that criminal history should be added to the list of prohibited topics to avoid at the interview stages (along with other obvious topics as religion, disability, age, etc.).

#### *3. Change The Sequence Of Inquiring About An Applicant's Criminal History*

If your company's standard practice is to request a third party to conduct a background check on your applicants, make sure that you adjust the timing of these inquiries. After June 9, the inquiries can only be carried out after it is determined that an applicant is qualified for the position and you have conducted an interview.

#### *4. Conduct An Individualized Assessment Based On All Available Information*

You should prepare how to conduct an individualized assessment when you are faced with the inevitable situation when an applicant's background check uncovers a criminal history. The

inevitable situation when an applicant's background check uncovers a criminal history. The Kansas City ordinance requires you to consider and demonstrate your decision based on all available information including:

- > the frequency of the criminal history;
- > the recentness and severity of the criminal record;
- > and whether the criminal record is reasonably related to the duties and responsibilities of the employment being sought.

## 5. *DOCUMENT!!!*

Finally, make sure you amp up your documentation efforts at all stages of the hiring and promotional process so you are in a position to prove compliance with the new law. If you decide to not extend a job offer to an applicant based on criminal history, you would be well served to create an internal document explaining your decision-making process. Make sure you address the totality of the circumstances factors identified above and document your reasons for coming to the conclusion to reject the applicant.

## Conclusion

If you have any questions about this new law, or how it may affect your business, please contact your Fisher Phillips attorney or one of the attorneys in our [Kansas City](#) office at 816-842-8770.

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*This Legal Alert provides an overview of a specific new city law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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