



Ban-The-Box Comes To Maryland

Insights

2.11.20

Maryland has just joined a growing number of states and local jurisdictions — including Baltimore, Montgomery County, and Prince George’s County — in banning private employers from requesting information about an applicant’s criminal history in job applications. Thanks to the state legislature overriding the governor’s veto, it appears the ban-the-box law has taken effect immediately, so the time is now to make sure you are in compliance with Maryland’s newest employment statute.

The Law

In March 2019, the Maryland General Assembly passed Senate Bill 839 and House Bill 994, which banned employers from requiring job applicants to disclose certain criminal history information before inviting them to participate in a first in-person interview. Governor Larry Hogan vetoed the bill on May 24, 2019, stating that the legislation would result in “costly,” “time-consuming,” and ultimately fruitless human resources work and permitted local jurisdictions to create a burdensome patchwork of more restrictive laws on the same topic. Governor Hogan also stated that the legislation did not differentiate between potentially violent felonies and less serious misdemeanors and did not include exemptions for occupations related to an applicant’s criminal conviction.

But the General Assembly overruled the Governor’s veto on January 30. As a result, Maryland employers with 15 or more employees may no longer require an applicant to disclose whether they have a criminal record or have been accused of a crime before their first in-person interview. Employers may only make this inquiry during the applicant’s first in-person interview or thereafter.

As written and originally passed, the statute had an effective date of January 1, 2020. That has not been altered in any way, and therefore it appears that the new law has taken immediate effect.

Exceptions

Not all employers are required to comply with Maryland’s new law. Employers who are required to collect criminal history information under other federal or state laws may continue to do so. Employers who provide programs, services or direct care to minors or vulnerable adults may also conduct criminal screening earlier in the application process than is allowed under the new law. Finally, local jurisdictions may enact more restrictive laws governing criminal history screening.

Enforcement

The Commissioner of Labor and Industry has enforcement power under the new law. Upon receipt of a written complaint by an applicant or employee, the Commissioner may investigate whether there

has been a violation. If an employer has violated the law, the Commissioner will order compliance and may assess a penalty of up to \$300 for each subsequent violation. Employers may not retaliate against an applicant or employee who reports a violation.

How To Comply

Maryland employers should remove from their job applications questions about an applicant's criminal record or about accusations of criminal behavior made against the applicant. You should also ensure that recruiters, screeners, and anyone else who performs a screening function for you does not ask about the applicant's criminal history during phone interviews or at any point before the first in-person interview.

We will continue to monitor further developments and provide updates as the law takes effect, so you should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. For more information about lawful use of criminal history in hiring or how this new law will affect your organization, contact any attorney in our [Washington, D.C. Metro office](#) in Bethesda or your Fisher Phillips attorney.

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

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