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LEGAL ALERT

New Jersey Bans the Box: Rules About Learning the Criminal Histories of Jobs Applicants Are Changing

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 beginning on March 1, 2015. New Jersey is the latest state to join a growing number of states that have enacted what is commonly referred to as "Ban the Box" bills.

The New Jersey Opportunity to Compete Act, which Governor Chris Christie signed on August 11, 2014, prohibits employers from inquiring about a job candidate's criminal record until after the employer has conducted an initial interview of the applicant. After the initial interview, which does not have to be in person, the employer may inquire into the applicant's criminal background. However, an employer may not refuse to hire an applicant based upon a criminal record, or any relevant part thereof, that has been expunged or erased by executive pardon.

Notably, if a job applicant voluntarily discloses information regarding his or her criminal history, the employer is permitted to make inquiries into the applicant's criminal record before or during the first interview.

Employers are also prohibited from publishing any advertisements soliciting applications for employment which explicitly state that the employer will not consider any applicant who has been arrested or convicted of one or more crimes or offenses.

There Are Exceptions

The Act carves out several critical exceptions. The restrictions set forth in the Opportunity to Compete Act do 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, nothing in the Act prohibits an employer from making inquiries into an applicant's criminal record during the initial application process if the applicant is legally precluded from holding the employment position based on an arrest or conviction, or if the employer is legally restricted from engaging in specified business activities based on the criminal records of its employees. Lastly, the Act does not apply to any positions specifically designated by the employer as part of a program or systematic effort to encourage hiring people with prior criminal histories.



Act Preempts Existing Laws

Employers should also be aware that the Act specifically preempts any ordinance, resolution, law, rule or regulation related to employer inquiries of job applicants' criminal histories that were adopted by the governing body of a county or municipality prior to the effective date of the Act, unless the ordinances were adopted to regulate municipal operations. In other words, starting on March 1, 2015, the new law will preempt Newark's local ordinance banning the box.

The Act imposes civil penalties on employers as the *sole* remedy for violating the Act. Employers could face penalties of \$1,000 for the first violation, \$5,000 for the second violation, and \$10,000 for each subsequent violation, collectible by the Commissioner of Labor and Workforce Development.

What Should An Employer Do?

Employers doing business in the State of New Jersey should conduct a thorough review of their initial employment application process to ensure that no inquiries are made into the job applicant's criminal history until after the initial interview. The new law presents a prime opportunity to review hiring policies and train all individuals involved in the hiring process on how to comply with the New Jersey Opportunity to Compete Act.

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

This Legal Alert provides information about a specific new 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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