



Governor Christie Agrees to “Ban the Box” in New Jersey

Client Advisories

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Many employers in New Jersey have the check-off box on their employment application that asks an applicant, in some form or another, whether or not he or she has ever been arrested or convicted of a felony, crime, misdemeanor and/or a disorderly persons offense. However, that is about to change. On August 11, 2014, Governor Christie signed the Opportunity to Compete Act, also known as the “Ban the Box” law (the “Act”). The Act places restrictions on employers’ use of criminal history information when screening job applicants, and is intended to remove barriers for individuals with criminal records. This new law will take effect on March 1, 2015.

Generally, ban the box efforts are those that seek to remove from a job application an inquiry regarding whether or not the individual has ever been arrested or convicted of a crime. However, the bill, when first introduced back in early 2013, went far beyond a simple “ban the box” legislative effort. For example, the original version of the bill prohibited an employer from considering an individual’s criminal history until after a conditional offer of employment had been made, and had several administrative hurdles an employer had to go through if it was going to rescind a conditional offer of employment based on the individual’s criminal history. That older version of the bill never made it to Governor Christie’s desk.

A modified - “softened” - version of the bill was reintroduced in early 2014, passed by the Legislature in June and signed into law by Governor Christie on August 11, 2014. The key provision is that the law prohibits employers from inquiring about an individual’s criminal history during the “initial employment application process.” So, employment applications cannot ask for any criminal convictions. In addition, applicants cannot be asked about criminal convictions at any point through the end of the first interview (whether in person or otherwise). However, once the first interview is over, the new law does not prohibit any inquiry into criminal convictions. So, employers may inquire about criminal history, and request a criminal background check, once the first interview is complete. Critically, this law does not prohibit an employer from refusing to hire an employee based on his/her criminal convictions, as long as the criminal history is not sought from the employee “too early” in the hiring process.

The law has several other provisions. At any point in the job application process, it prohibits employers from considering arrests that did not result in conviction or that are not pending at the time of the application. The law also prohibits employer from posting job advertisements stating that they would not consider individuals who have been arrested or convicted of a crime.

The law does not apply to most small employers, as employers with less than 15 employees are exempt. In addition, certain employers are exempt, regardless of size, as the law does not apply to employment positions in law enforcement, homeland security, corrections, the judiciary, emergency management, or other positions where a criminal history background check is required by law, rule or regulation.

Employers are subject to statutory fines of \$1,000 for the first offense, \$5,000 for the second offense, and \$10,000 for each subsequent offense. The law does not provide an individual denied employment with a private cause of action. Additionally, the Act specifically preempts any prior ban the box ordinances adopted by county or municipal government, other than ordinances that apply to county or municipal employees. So, this law is welcome news for private employers in Newark, Jersey City and Atlantic City, who have been subject to stricter ban the box ordinances over the past two years.

As noted above, the law will not take effect until March 1, 2015. Accordingly, it would be wise for employers to now begin reviewing their applications and application process to ensure compliance with the Act. A good start would be to remove any and all criminal history inquiries from the application. Additionally, employers must remember that once they are permitted to make criminal history inquiries, they must continue to ensure compliance with all federal, state and local laws, including but not limited to, the Fair Credit Reporting Act.

If you have any questions about this advisory or other labor and employment matter, please contact any member of the **Labor and Employment Department of Archer** in Haddonfield, N.J., at (856) 795-2121, in Philadelphia, Pa., at (215) 963-3300, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, or in Wilmington, Del., at (302) 777-4350.

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