

Management Alert



New Jersey Joins “Ban the Box” Movement and Chris Christie Safeguards Employers

By Christopher Lowe and Alnisa Bell

This alert contains updated information. Please use this version.

On Monday, Governor Chris Christie signed the Opportunity to Compete Act (A1999) into law, which is designed to restrict employers from asking about prior criminal convictions on job applications. Christie enthusiastically hailed New Jersey as “a state that believes every life is precious” and stated, “everyone deserves a second chance . . . Today, we’re banning the box!”

The law, which **becomes effective March 1, 2015**, applies to employers with 15 or more employees¹ over 20 calendar weeks and who do business, employ persons, or take applications for employment within the state of New Jersey. The law prohibits employers from asking any questions (whether oral or written) about an applicant’s criminal record during the initial application process, unless the employment is for a position in law enforcement, corrections, the judiciary, homeland security, emergency management, or any other employment position where a criminal history check is required by law, rule or regulation, or where, by law, rule or regulation an arrest or conviction would preclude the person from holding such employment, or for a position designated by the employer as part of program to encourage employment of persons with arrest or conviction records.²

In short, subject to the limited exceptions outlined above, employers may inquire into criminal history only after the first interview has been conducted, whether in person or by other means. Employers may then refuse to hire an applicant based on criminal history properly uncovered, unless the criminal record or relevant portion thereof has been expunged or erased through executive pardon. Of course, an employer’s rejection of an applicant must be consistent with other applicable laws, rules and regulations.

Furthermore, an employer is prohibited from publishing any advertisement for employment that explicitly provides that the employer will not consider persons who have been arrested or convicted of one or more crimes or convictions. Notwithstanding, this does not apply to an advertisement that solicits applicants for positions exempted under the law, as discussed above.

Most importantly, perhaps, the law provides strong protections for employers. Specifically, it creates no private right of action, sets no standard of care or duty for employers with respect to other laws, and deems inadmissible any evidence that an employer violated the law, except in an action by the Commissioner of Labor and Workforce Development to enforce the law.

An employer who violates this law shall be held liable for a civil penalty not to exceed \$1,000 for the first violation, \$5,000 for the second violation, and \$10,000 for each subsequent violation.

As you may be aware, the new law underwent several major revisions before being signed into law. Earlier versions placed more burdensome restrictions on employers, including, among other things, requiring employers to consider in good faith additional factors (e.g. accuracy of the criminal record, rehabilitation efforts, the nature of the offense, and the duties and settings of the job sought or held) before making an adverse employment decision; and outlining certain offenses/crimes that an employer could/could not consider when making an adverse employment decision. Employers should be mindful that such requirements still exist in other states, as well as under the federal law.

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¹ The law is not clear as to whether the employer has to have 15 or more employees within the State of New Jersey. However, a reasonable reading of the statute, along with court interpretations of similar language in other NJ statutes, suggests that the employer need only have 15 employees in any state(s) to be covered.

² Employers are entitled to make inquiries should the applicant voluntarily disclose his/her criminal background.

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