

# One Minute Memo®



## New York City Joins Movement to “Ban The Box” In Hiring Practices

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On June 10, 2015, the New York City Council voted to prohibit private employers from asking job applicants questions about criminal convictions on job applications. Under the Fair Chance Act (the “Act”) an employer may ask about an applicant’s criminal history and conduct a criminal background check ONLY after extending the conditional offer. If the employer then withdraws the offer, it must explain its decision to the applicant in writing and hold the position open for three (3) business days so that the applicant can respond.

Mayor De Blasio has already announced his support of the Act, which he is expected to sign shortly. The law would go into effect 120 days later.

The Act comes shortly after New York City prohibited employers from using credit checks in making employment decisions (see our post on that issue [here](#)), and demonstrates that New York City is the latest in a growing national trend to “ban the box” on employment applications. Fifteen states and nearly 100 cities nationwide have enacted similar legislation and/or signed similar executive orders making it unlawful for state, city, county and other local agencies to inquire about an applicant’s criminal history on employment applications. As discussed previously [here](#), [here](#), and [here](#), many jurisdictions have adopted “ban the box” laws prohibiting criminal history inquiries until after a first interview, or later in the hiring process.

The Act prohibits employers from asking such questions on a written application, in an interview, or otherwise or searching public records or consumer reports that contain criminal background information. After the conditional offer, employers who obtain criminal background information about the applicant and take adverse action based on that information must comply with a detailed notice procedure by:

- (1) Providing a copy of the relevant inquiry to the job applicant (in a form to be determined by the New York City Commission on Human Rights);
- (2) Performing the analysis required by New York State Correction Law Article 23-A to determine whether there is a direct relationship between the prior criminal history and the position.

(3) Providing a copy of the multi-factor Article 23-A analysis to the applicant in writing. The employer must state the reasons for the decision to withdraw the conditional offer and provide any supporting documentation.

(4) Holding the position open for three business days after giving the applicant the inquiry and analysis so that the applicant can respond with additional or mitigating information.

The law contains several exemptions. For example, it does not apply to positions where federal, state or local laws require criminal background checks, or to positions where a criminal conviction precludes employment.

As discussed [here](#), private employers can expect additional cities and states to adopt “ban the box” legislation that reaches into the private sector. In 2012, the Equal Employment Opportunity Commission endorsed removing questions or checkboxes regarding criminal convictions from job applications. Based on the growing momentum for “ban the box” legislation, employers should reevaluate their pre-employment and hiring practices. In particular, employers should review their employment applications to ensure that any questions comply with local and state law. Impacted employers also should ensure that all hiring and recruiting personnel are aware of “ban the box” laws - whether they currently apply to them or not.

Currently, six states have enacted “ban the box” laws that apply statewide to private employers: Hawaii, Illinois, Massachusetts, Minnesota, New Jersey and Rhode Island. In addition, many cities and counties now extend “ban the box” laws to private employers. These cities include Baltimore, Buffalo, Chicago (also IL statewide), Columbia (Missouri), Montgomery County (Maryland), Philadelphia, Prince George’s County (Maryland), Rochester (New York), San Francisco, Seattle and Washington, D.C. The majority of these laws have been enacted within the last three years. Like the New York City law, four jurisdictions require that criminal history not be asked about until after a conditional offer. These include: Hawaii, Baltimore, Columbia, MO, and Washington, D.C. The remaining laws allow employers to ask about criminal history at other points in the hiring process, but not on the employment application.

“Ban the box” legislation likely will continue to expand in 2015. Employers with questions regarding “ban the box” should consult with counsel.

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**Seyfarth Shaw LLP One Minute Memo® | June 12, 2015**

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