

One Minute Memo®



Georgia Governor's Executive Order Latest in Growing National Trend to "Ban The Box" in Hiring Practices

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On February 23, 2015, Georgia Governor Nathan Deal signed an executive order prohibiting state agencies from asking job applicants about their criminal histories on employment applications. Although Governor Deal's executive order does not apply to private employers, the executive order is the latest in a growing national trend to "ban the box" on employment forms. In what is known as "ban the box" legislation, fourteen states and nearly 100 cities nationwide have enacted similar legislation 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 adopting "ban the box" laws allow criminal histories to be considered in hiring decisions, but only after the candidate's application has been accepted and an initial interview has been offered.

Private employers must also be aware of the growing momentum for "ban the box" legislation in cities and states in which they do business. At present, 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, at least twenty-five cities and counties now extend "ban the box" laws to private employers. These cities include Baltimore, Buffalo, Chicago (also statewide), Newark (also statewide), Philadelphia, San Francisco, Seattle and Washington, D.C. The majority of these laws have been enacted within the last three years.

The Georgia "ban the box" executive order has a similar purpose to other "ban the box" legislation. In his executive order, Governor Deal concluded that requiring job applicants to disclose convictions on initial employment applications creates a barrier to employment. By "banning the box," Georgia intends to prevent state agencies from automatically disqualifying a candidate because of a prior conviction. Instead, the Georgia executive order seeks to allow a job applicant with a conviction record the opportunity to explain his or her criminal history as part of an in-person job interview.

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. The EEOC's position indicates their view that federal civil rights laws regulate employment decisions based on an applicant's criminal history. 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.

“Ban the box” legislation likely will continue to expand in 2015. Thus, even private employers not currently subject to such legislation should consider reviewing and revising their employment applications and should keep abreast of proposed “ban the box” legislation that may apply to them. Employers with questions regarding “ban the box” should consult with counsel.

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Seyfarth Shaw LLP One Minute Memo® | February 25, 2015

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