

One Minute Memo®



Baltimore Bans the Box For Private Employers

By *Pamela Q. Devata* and *Paul Kehoe*

On May 15, 2014, Mayor Stephanie Rawlings Blake signed Baltimore's Fair Criminal-Record Screening Practices ordinance, which bans private employers from inquiring about or conducting a criminal background check on an applicant until a conditional offer has been extended. The restriction applies to any employer with 10 or more employees within the city of Baltimore. The restriction does not apply to facilities serving minors or vulnerable adults. Unlike some other ban the box laws, the Baltimore ordinance does not require that employers provide any additional notices to applicants other than those required under the Fair Credit Reporting Act, nor does it limit how far back an employer can review. Penalties for noncompliance include a fine not to exceed \$500 and/or 90 days imprisonment for each offense.

Baltimore joins Hawaii, Massachusetts, Minnesota, Rhode Island and some local jurisdictions, including Philadelphia, PA, Seattle, WA, Buffalo, NY, Newark, NJ, San Francisco, CA, Richmond, CA, and Louisville, KY that have adopted similar ban the box measures. Baltimore also joins Newark, NJ and Hawaii in restricting employers from conducting background checks until a conditional offer of employment has been issued.

Many other jurisdictions, both on the state and local levels, are currently considering ban the box laws for private employers. While dozens more jurisdictions have adopted ban the box laws for public employment, the clear trend is extending similar requirements to private employers. In addition, the EEOC recommends as a best practice that all employers remove criminal history questions from employment applications until later in the hiring process.

Private employers should review their employment applications to ensure compliance. While each of the ban the box laws is different relative to when the criminal history question may be asked, what types of convictions can be asked about, how far back an inquiry may extend, and what exceptions apply, employers should have discussions with their background screening providers to ensure that they are only obtaining information that they can use in a hiring decision.

There are still many questions surrounding the application and administration of these new and proposed "ban-the-box" laws. Employers with questions regarding their particular employment practices should consult with counsel.

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