

One Minute Memo®



Oregon To Join The Growing National Trend To “Ban The Box” In Hiring Practices

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Oregon will soon become the seventh state to enact “ban the box” legislation prohibiting private employers from inquiring about the criminal histories of job applicants on employment applications. On June 25, 2015, Oregon Governor Kate Brown signed into law House Bill 3025, which makes it an unlawful employment practice for an employer to exclude an applicant from an initial interview solely because of a past criminal conviction. House Bill 3025 expressly prohibits employers from asking about prior criminal convictions on an employment application. The new Oregon law takes effect **January 1, 2016**.

“Ban the box” legislation continues to gain steady momentum nationwide. 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. After House Bill 3025 takes effect, Oregon will join Hawaii, Illinois, Massachusetts, Minnesota, New Jersey and Rhode Island as states where “ban the box” legislation applies statewide to private employers. In addition, more than twenty-five cities and counties also extend “ban the box” laws to private employers, including as discussed [here](#), New York City. Private employers also must comply with “ban the box” legislation in 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.

Oregon’s “ban the box” law is similar to other “ban the box” legislation. Under the law, employers may not require job applicants to disclose criminal convictions prior to an initial interview. If no interview is conducted, the law prohibits employers from disclosing criminal convictions prior to making a conditional offer of employment. Employers remain free, however, to inquire about and consider an applicant’s conviction history before making the final hiring decision as long as an interview is conducted. By “banning the box,” Oregon and other jurisdictions intend to prevent employers from automatically disqualifying a candidate at the start of the hiring process because of a prior conviction. As is the case with other “ban the box” legislation, certain categories of Oregon employers are excluded from coverage, including law enforcement agencies, employers seek nonemployee volunteers, and other employers who are required by federal, state or local law to consider an applicant’s criminal history.

Private employers can expect additional cities and states to adopt “ban the box” legislation. For now, Oregon employers and companies that do business in Oregon must take care to ensure compliance with the new law when it becomes effective in 2016. Based on the growing momentum for “ban the box” legislation, employers outside of Oregon and other “ban the box” jurisdictions should also 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 will continue to expand in 2015 and beyond. Employers with questions regarding “ban the box” should consult with their counsel to ensure they are complying with the numerous laws regulating the use of criminal history in employment.

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