



JULY 2014

'BAN THE BOX' LEGISLATION PASSED BY NEW JERSEY LEGISLATURE

By Christina A. Stoneburner

Employers in New Jersey may soon need to amend job applications and alter interviewing practices to ensure they are not improperly asking applicants about criminal histories. The New Jersey Legislature has passed A1999, entitled the "Opportunity to Compete Act." The law is now on its way to Governor Chris Christie's desk.

The act, colloquially referred to as the "Ban the Box" law, prohibits employers with 15 or more employees from having any questions inquiring about an applicant's criminal convictions on job applications. Employers also may not ask applicants about criminal convictions until after the first interview is completed.

The law defines an applicant as any person inquiring about employment or a job vacancy and includes a current employee. That means that if a current employee is seeking a promotion or posting for a vacant position, the employer cannot ask about criminal convictions until after a first interview for the position. If an applicant voluntarily discloses information about a criminal history prior to the completion of the first interview, the employer is permitted to ask for details about the applicant's criminal history.

Employers may still refuse to hire applicants who either refuse to consent to the criminal background check or who have certain criminal convictions. The law does not set forth specific time limits for how far back an

employer can consider a conviction or which convictions may be considered, except that any records expunged or pardoned may never be considered by the employer.

The good news for employers is that this law, if signed, will preempt the Newark Ban the Box Ordinance, which requires formal documentation of the consideration given to certain factors and has an appeal process. Under the state law, there is no formal consideration of certain factors to determine if the criminal conviction is job-disqualifying. Employers should, however, continue to make sure that they are using the Equal Employment Opportunity Commission's (EEOC) Enforcement Guidance for the use of criminal background checks to determine if a conviction is job-disqualifying.

The law explicitly states that there is no private cause of action, but enforcement is solely by the Division of Labor and Workforce Development. The law also provides for civil penalties of up to \$10,000 per violation.

We will keep you informed when Governor Christie takes action on the law. In the meantime, employers with questions about this new law may contact Christina A. Stoneburner at 973.994.7551 or cstoneburner@foxrothschild.com, or any member of Fox Rothschild's Labor and Employment Department.

Attorney Advertisement

© 2014 Fox Rothschild LLP. All rights reserved. All content of this publication is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact marketing@foxrothschild.com for more information or to seek permission to reproduce content. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.

www.foxrothschild.com

California | Colorado | Connecticut | Delaware | District of Columbia | Florida | Nevada | New Jersey | New York | Pennsylvania