

ANDERSON KILL NEW JERSEY ALERT



New Jersey Passes ‘Ban the Box’ Law — Barring Early Criminal Checks on Job Applicants

By Bennett Pine

Joining a growing trend, on August 11, 2014, Gov. Chris Christie signed the Opportunity to Compete Act, a species of so-called “ban the box” laws which bars New Jersey employers from asking job applicants about their criminal history at the early stages of the employment process. Removing such questions (e.g., “Have you ever been convicted of a crime?”) at the job application stage is part of a growing national movement to “ban the box” regarding criminal conviction inquiries.

Purpose and Details

The New Jersey legislature found that the use of criminal background checks by employers has become more prevalent in recent years as part of the hiring process; that individuals with criminal histories represent a large proportion of job seekers; that such background checks act as a significant barrier to permitting such persons to enter, re-enter, contribute and become productive members of the workforce; and that striking a fair balance will improve the economic viability, health and security of the state.

Who is Covered

The law covers employers who employ at least 15 employees over 20 calendar weeks and who do business, employ persons or take employment applications within New Jersey; and includes job placement, referral and employment agencies. There are exceptions for law enforcement, corrections, homeland security, judiciary and other positions where a criminal history background check is required by law, rule or regulation.

What Is Prohibited

Under the new law, employers are forbidden from (1) publishing a job advertisement or posting stating that the employer will not consider applicants who have been arrested or convicted of one or more offenses, (2) requiring a job applicant to complete an employment application that makes any inquiries regarding the applicant’s criminal record, or (3) making any oral or written inquiry regarding an applicant’s criminal

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record during the “initial employment application process.”

The “initial employment application process” is the period beginning when an applicant first makes inquiry to the employer about a prospective employment position or vacancy, and ending when the employer has conducted a first interview of a job applicant in person or by other means.

What Is Allowed

An employer permissibly may inquire into and consider the criminal history of the applicant *after* the employer has conducted an initial employment interview or if the applicant voluntarily discloses his or her criminal record during the initial employment application process.

Penalties

Employers and employment agencies that violate the New Jersey law face civil penalties of up to \$1,000 for the first violation, up to \$5,000 for a second violation, and \$10,000 for each subsequent violation. No private cause of action is created.

Effective Date

The New Jersey law will take effect on March 1, 2015.

Growing Trend

According to the law’s sponsors, five other states (Hawaii, Illinois, Massachusetts, Minnesota and Rhode Island) have similar ban the box laws that cover private employers. According to the National Employment Law Project, 12 states and 60 cities and counties have such laws applicable to public employment. San Francisco has just adopted such a ban the box law and New York is expected to follow suit shortly.

Recommendation

New Jersey employers should be well aware of the new ban the box restrictions and should take appropriate steps to ensure that improper inquiries or restrictions regarding an applicant’s criminal background are removed from job advertisements, job applications and interviews that take place during the “initial employment applications process.” It is permissible, however, to make such inquiries thereafter. Employers have until March 1, 2015, to implement this distinction in their employment application and selection procedures.▲

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