

## New York City Adopts “Ban the Box”

“Ban the Box” laws have been gaining traction across the country, with New York City Mayor Bill de Blasio recently signing into law the Fair Chance Act. Due to the increasing number of states and localities that are adopting these laws, employers should generally be aware of Ban the Box laws and ensure that their application and hiring practices comply with the laws of their jurisdictions.

### Background

Ban the Box initiatives, named for the box on employment applications requiring applicants to disclose whether they have ever been convicted of a crime, are aimed at curbing employment discrimination on the basis of arrest or criminal conviction. By restricting how employers obtain and use criminal history, the hope is that employers will consider applicants based on their qualifications and experience before learning of past arrests or convictions. Advocates believe that these laws will lead to increased employment of persons who have had contact with the criminal justice system and ultimately decrease recidivism rates.

The restrictions imposed on employers vary, but Ban the Box laws generally prohibit employers from asking applicants about their arrest or criminal records during the initial stages of the hiring process, including on the employment application. Several cities in New York State have adopted such laws, including Rochester, Buffalo, and Syracuse.

### Ban the Box Laws in New York State

Last year, laws in Rochester and Buffalo went into effect prohibiting private employers from inquiring about criminal record information during the initial application process. Buffalo employers cannot inquire into an applicant’s criminal history prior to the first interview. In Rochester, the law goes a step further by prohibiting employers from asking about an applicant’s criminal background before the end of the first interview.

Syracuse’s law, which went into effect earlier this year, only applies to city contractors and prohibits questions on criminal history before the candidate has had the chance to demonstrate the requisite skills and is likely to be hired.

New York City’s recently enacted Ban the Box ordinance will take effect on October 27th and is more restrictive than similar laws in other localities. The New York ordinance prohibits employers from inquiring about an applicant’s criminal history until after a conditional offer of employment has been extended. The law also defines “inquiry” as not only including questions on a written application or interview but also searching public information sources to obtain information about criminal history.

Ban the Box ordinances typically provide exemptions to certain types of employers in an effort to balance the legitimate needs of the business with the desire to decrease the effects of bias. New York City’s ordinance, for example, provides exemptions for employers who are required to complete background checks by law, as well as certain government agencies like Police Departments.

### Implications

Private employers should determine whether they are subject to Ban the Box laws and, if so, be aware of how and when an applicant’s criminal history may be obtained and used. Written applications, interview questions, and background check practices should be reviewed for compliance with the state and local laws. Additionally, all employers should monitor new legislation at the local, state, and federal levels for new Ban the Box initiatives that may impose further restrictions on the inquiry and use of applicants’ criminal background in hiring practices.

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Employers who are not yet affected by Ban the Box laws should still review and revise hiring practices to ensure compliance with federal and state laws banning discrimination and regulating the use of criminal history information. For example, New York State prohibits private employers from discriminating against applicants on the basis of criminal conviction records, and state and federal Fair Credit Reporting Acts impose certain obligations on employers who use applicants' criminal records. Employers need to be aware of all requirements and ensure that they are using criminal history appropriately.

## Conclusion

Ban the Box laws, such as those recently adopted by New York City, require employers to review how and when they inquire about an applicant's criminal history and to adjust their hiring practices as necessary.

If you would like our assistance, or if you have any questions about this LEGALcurrents<sup>®</sup>, please contact a member of our Labor & Employment practice group at (585) 232-6500. ■



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