

# Retail Labor and Employment Law

News, Updates, and Insights for Retail Employers

## New Jersey Strengthens “Ban the Box” Protections for Applicants

By Gregory D. Green on January 3, 2018

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On December 20, 2017 New Jersey Gov. Chris Christie signed a bi-partisan bill that effectively makes asking about expunged criminal records off-limits during the initial employment application process.

The law, an amendment to the New Jersey Opportunity to Compete Act (“OTCA”), generally referred to as the “Ban the Box” law, applies to employers with 15 or more employees over 20 calendar weeks who do business, employ persons, or take applications for employment within New Jersey. The OTCA generally prohibits employers from making any oral or written inquiry about an applicant’s criminal background during the initial employment application process.

The amendment, which became effective with signing, goes farther. Now, covered employers are barred from seeking information about the current and expunged criminal records of applicants during the early stages of the employment application process. In addition to barring employers from making oral or written inquiries, the amendment also bars employers from doing online searches for an applicant’s criminal record or expunged criminal record.

In New Jersey individuals who have been convicted of a prior criminal offense up to and including certain felony offenses, may apply to the New Jersey Superior Court to have their record expunged. Waiting times for expungement ranges from no waiting time to 10 years after conviction or dismissal. For example, the full waiting period for a felony is 10 years (the court may consider an application after 5 years), 5 years for a misdemeanor (the court may consider an application after 3 years), 1 year for a Young Drug Offender, and 6 months for a dismissal following successful completion of diversion.

Employers may ask about criminal records and any expungements after the initial employment application process. Currently, NJ law does not prohibit employers from refusing to hire an individual because of his or her criminal history, including expunged offenses.

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