

## OUR INSIGHTS

### Austin Passes "Ban the Box" Ordinance

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On March 24, 2016, the Austin City Council passed an ordinance that will significantly restrict many employers from making employment decisions about applicants or employees based on their criminal histories. The Fair Chance Hiring Ordinance, commonly known as a “ban the box” resolution, will take effect on April 3, 2016 and will prohibit employers from stating in job postings that an applicant’s criminal history automatically disqualifies him or her from a job. The ordinance also prevents covered employers from asking about a potential employee’s criminal background before the employer makes an offer of employment “conditioned solely on the employer’s evaluation of the individual’s criminal history.” This prevents an employer from requesting an applicant’s criminal history in a job application or running a background check prior to making a job offer.

The ordinance also prohibits an employer from refusing to hire, refusing to promote, or revoking a job offer unless the individual’s criminal history provides the employer “a good faith belief that the individual is unsuitable for the job based on an individualized assessment conducted by the employer.” The individualized assessment must include an evaluation of:

1. the nature and gravity of any offenses in the individual’s criminal history;
2. the length of time since the offense and completion of the sentence; and
3. the nature and duties of the job for which the individual has applied.

If the employer takes adverse action based on an individual’s criminal history, it must also inform the individual in writing that the adverse action was based on his or her criminal history.

To be covered by the ordinance, an employer must have at least 15 employees working in Austin for each working day in 20 or more calendar weeks in the current or preceding calendar year. Federal, state, and local governments and agencies are exempt from the ordinance.

Violations of the ordinance do not provide individuals a civil right of action, but violations do subject employers to administrative penalties of up to \$500 per violation. Violations in the first year in which the ordinance is in effect will only result in written warnings.

Employers with the requisite 15 employees in Austin for the required amount of time should review their job applications, removing any inquiries about applicants’ criminal histories. If covered employers perform background searches before providing offers of employment, they should reorder the process for

Austin-based applicants so conditional job offers are delivered prior to running background searches. Finally, employers should know of other geographic areas with similar “ban the box” restrictions (like [Portland](#) and [New York City](#)) and be mindful to this growing trend nationwide.

Austin’s Fair Chance Hiring Ordinance and the “ban the box” laws in other jurisdictions, including all federal and state background check requirements, are summarized in the firm’s [O-D Comply: Background Checks](#) and [O-D Comply: Employment Applications](#) subscription materials, which are updated and provided to [O-D Comply](#) subscribers as the law changes.

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## **Daniel A. Verrett (Austin)**



Daniel represents employers in all aspects of labor & employment litigation filed in state and federal court, arbitration, or before state and federal administrative agencies. Daniel also routinely provides advice in matters such as compliance with anti-discrimination laws, disability accommodation issues, family and medical leave, and wage and hour compliance. Daniel received his J.D. summa cum laude from the University of Houston Law Center. Daniel previously interned with the Honorable Sim...

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