

Vermont Governor Signs Ban the Box Legislation; Connecticut Governor Expected to Sign Such Law

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Vermont Governor Peter Shumlin has made the Green Mountain State the most recent state in the nation to implement statewide “ban the box” legislation. Connecticut may soon follow, once Governor Dannel Malloy has sign legislation passed by the state legislature on May 4, 2016.

The laws restrict employers in the states from inquiring about a job applicant’s criminal background on an initial employment application.

Vermont Law

Governor Shumlin signed the “ban the box” legislation (H. 261) on May 3, 2016. This follows his 2015 executive order implementing a “ban the box” hiring policy for state jobs. In his press release on the signing of H. 261, Governor Shumlin said, “Banning the box is all about breaking down barriers and giving those Vermonters who have paid their debt to society a fair chance at finding a good job.” The new law takes effect on July 1, 2017.

H. 261 prohibits an employer from requesting “criminal history record information,” including arrests, convictions or sentences, on the initial employment application form, unless the individual is applying for a position for which state or federal law creates a mandatory or presumptive disqualification for employment, based on convictions for certain offenses, or the employer is subject to an obligation imposed by state or federal law not to employ an individual convicted of certain offenses.

Employers may still question applicants about their prior criminal records during a job interview or once the applicant has been deemed otherwise qualified for the position. The prospective employee, if eligible for the position under state or federal law, must be given the opportunity to explain the criminal history record information and the circumstances regarding any convictions.

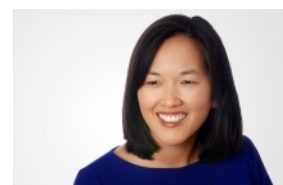
An employer who violates the Vermont law will be subject to a civil penalty of up to \$100 per violation.

Connecticut Law

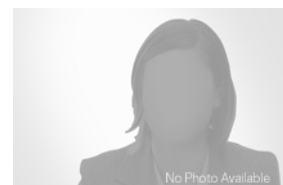
“An Act Concerning Fair Chance Employment” prohibits Connecticut employers from inquiring about an applicant’s criminal history, including prior arrests and criminal charges or convictions, on a job application. Passed by the Connecticut legislature on

May 4, 2016, the “Ban the Box Bill” is expected to be signed by Governor Dannel Malloy. If signed, the bill will take effect on January 1, 2017, and Connecticut will become the latest state to limit inquiries into an applicant’s criminal history.

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latest state to limit inquiries into an applicant's criminal history.

The bill adds the following to Section 31-51i of the general statutes:

[n]o employer shall inquire about a prospective employee's prior arrests, criminal charges or convictions on an initial employment application, unless (1) the employer is required to do so by an applicable state or federal law, or (2) a security or fidelity bond or an equivalent bond is required for the position for which the prospective employee is seeking employment.

The new provision applies to all employers regardless of size, including both state and local public entities. The bill also allows employees and prospective employees to file complaints with the state Labor Commissioner.

Next Steps

Employers should prepare now to comply with the new laws.

- Remember to revise employment application materials no later than the effective date (January 1, 2017, for Connecticut employers; July 1, 2017, for Vermont employers), to remove all inquiries regarding an applicant's prior arrests, criminal charges, or convictions.
- Make sure that key employees in the hiring process are educated about the new provision.
- Check local city ordinances. For instance, certain municipalities, such as Hartford and New Haven, Connecticut, prohibit private employers who are vendors to the cities from conducting criminal background checks prior to making conditional offers of employment, among other limitations.
- For multi-state employers, look for similar provisions in other jurisdictions. An increasing number of states and local jurisdictions have imposed restrictions on the timing of criminal background checks, whether for public agencies, city vendors, or all employers. Understand how ban the box laws of other jurisdictions may affect the hiring process, including on-line applications and advertisements.
- Remember that background checks must still be conducted in a non-discriminatory fashion. The Equal Employment Opportunity Commission likely will scrutinize background check procedures for disparate impact based on protected class status, in particular, based on race and national origin. Moreover, some jurisdictions limit employers' right to use criminal background information or require employers to follow certain procedures when using such information.

In addition to the states, many cities have adopted ban the box legislation, including Austin, New York, and Philadelphia. (See our articles, [Austin, Texas, Passes Ordinance Banning Pre-Offer Inquiry into Applicant's Criminal History](#), [New York City Update: New Developments in Paid Sick Leave](#), [Consideration of Criminal Background Information](#), and [Philadelphia's Amended Ban-the-Box Law Effective March 14](#).)

Jackson Lewis attorneys are available to answer questions about ban the box legislation, related municipal ordinances, and background checks in general.



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April 12, 2016

Austin, Texas, Passes Ordinance Banning Pre-Offer Inquiry into Applicant's Criminal History

Austin, Texas, has enacted a city ordinance prohibiting employers from asking about or considering a job applicant's criminal history before making a conditional offer of employment. Austin is the first city in the South to enact such a "Fair Chance" or "Ban the Box" law. Under the new Austin ordinance,... [Read More](#)

March 23, 2016

New York City Update: New Developments in Paid Sick Leave, Consideration of Criminal Background Information

New York City continues to refine existing obligations imposed on New York City employers and propose new ones. The City has: (i) enacted its first set of amendments to the New York City Earned Sick Time Act's (ESTA) administrative rules originally issued in July 2014; and (ii) proposed initial rules related to the... [Read More](#)

February 29, 2016

Philadelphia's Amended Ban-the-Box Law Effective March 14

Amendments to Philadelphia's "Ban the Box" legislation, the Fair Criminal Records Screening Standards, will go into effect on March 14, 2016. The amendments expand the reach of existing law to more businesses. They also restrict the look-back period for background checks and reliance on criminal records as a basis for... [Read More](#)