

## New Jersey Governor Christie Signs Ban the Box Law

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On August 11, 2014, New Jersey Governor Chris Christie signed into law the “The Opportunity to Compete Act”—also referred to as the “ban the box” law—adding New Jersey to the growing list of states where employers are prohibited from asking criminal conviction questions on initial employment applications. This law is much more limited than prior similar bills introduced in New Jersey and, while restricting employers’ ability to inquire about criminal history information, does not impose the more onerous requirements found in other states’ laws.

The key provisions of the new law are:

1. The law becomes effective March 1, 2015 (the first day of the seventh month after enactment).
2. The law only applies to businesses that employ 15 or more individuals. We presume that only one employee needs to be employed within the State of New Jersey, as is the case with other similar employment protection laws in New Jersey.
3. Employers are prohibited from posting job advertisements stating that they will not consider anyone who has been arrested or convicted of a crime, unless the advertisement solicits applicants for a position exempt from the Act (as detailed below).
4. Employers are prohibited from inquiring about an applicant’s criminal history until the **initial application process** is completed. The initial application process is considered complete after the employer has conducted a first interview of the applicant. After that point, employers may make inquiries about an applicant’s criminal history.
5. The law does not cover voluntary disclosures of criminal history. Once an applicant voluntarily discloses the information, employers are permitted to make inquiries about the applicant’s criminal history.
6. Employers are not precluded from refusing to hire someone based on criminal history information they uncover after the initial application process is completed, unless the criminal record or relevant portion thereof has been expunged or erased through executive pardon. However, an employer’s rejection of an applicant for employment based on his or her criminal history must comply with other applicable laws or regulations (and additional considerations may be required under federal law, as detailed below).

The law also sets forth several exceptions. In particular, the law does not apply if the employment sought or being considered is a position in law enforcement, corrections, the judiciary, homeland security, or emergency management or if the employer is seeking to employ those who have criminal records. In addition, employers will not be held to the law's prohibitions if an individual is legally prohibited from holding a particular position based on a conviction or arrest or if the employer is "restricted from specified business activities" based on the criminal records of its employees.

Critically, the law provides that municipalities may not adopt an ordinance, rule, resolution, or regulation regarding criminal histories in the employment process (except for ordinances regulating municipal operations) and further provides that any current laws, rules, ordinances, or regulations regarding criminal histories in the employment context are preempted. This means, for instance, that Newark's "ban the box" law will become preempted on March 1, 2015.

With regard to penalties, employers found to have violated the Act may only incur civil penalties (\$1,000 for first violations, \$5,000 for second violations, and \$10,000 for subsequent violations); aggrieved applicants may *not* file civil causes of action for alleged violations of the Act.

Finally, employers who tracked prior versions of this bill will note that the enacted version eliminates the requirement that employers consider, and discuss in good faith with applicants, information regarding the accuracy of the criminal record information, the degree of rehabilitation, the nature of the offense, how long ago the offense occurred, and the duties and setting of the job. That said, multistate employers will note that these requirements do exist across the river in New York, pursuant to Article 23A, and all employers will recognize such factors from the EEOC's 2012 Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964.

We recently summarized the final version of this Act in the July 2014 issue of the New Jersey eAuthority, which you may review for additional information on the new law.

If you have any questions regarding the ordinance or its impact on your workplace, contact the authors of this article, the Ogletree Deakins attorney with whom you normally work, or the Client Services Department at [clientservices@ogletreedeakins.com](mailto:clientservices@ogletreedeakins.com).

Note: This article was also published in the August 12, 2014 issue of the New Jersey eAuthority.

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