

Oregon Governor Signs 'Ban the Box' Legislation

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Legislation restricting employers from inquiring about an applicant's criminal background during the initial stages of the application process has been signed into law by Governor Kate Brown on June 26, 2015. The "Ban the Box" law, H.B. 3025, will take effect on January 1, 2016.

The legislation applies to all employers, unless they are exempt from the new law. Exempt employers include:

- Those who are required by federal, state, or local law to consider an applicant's criminal history;
- Those who are law enforcement agencies;
- Those in the criminal justice system (not defined by this law); and
- Those seeking a nonemployee volunteer.

This legislation prohibits an employer from requiring an applicant:

to disclose on an employment application a criminal conviction;

to disclose, prior to an initial interview, a criminal conviction; or

if no interview is conducted, to disclose, prior to a conditional offer of employment, a criminal conviction.

The legislation does not prohibit employers from notifying applicants that they will later be required to disclose convictions or that a criminal background check will be performed as part of the hiring process. The legislation expressly states that it does not foreclose an employer from considering convictions when making hiring decisions.

The legislation, however, does not provide for a private right of action against a covered employer, which was provided for in a prior version of the bill. Rather, the applicant may file an administrative charge with the Oregon Bureau of Labor and Industries.

Oregon employers should review their employment applications and their application processes, including interview guides, sample questions, and job postings, to ensure compliance with the legislation's requirements. Further, employers should plan new processes for conducting criminal background procedures. Jackson Lewis attorneys are available to assist in such efforts.

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