

New York City Council Passes Ban-the-Box Legislation

On June 10, 2015, the New York City Council passed legislation, the Fair Chance Act (Act), requiring that private employers remove criminal conviction questions from job applications. The Act makes it a violation of the city's Human Rights Law for private employers to ask about a job applicant's criminal background before giving the applicant a conditional offer of employment. Although numerous jurisdictions have passed a similar law for public employers, only a small number have extended the restrictions, known as "ban-the-box," to private employers. New York City Mayor Bill de Blasio is expected to sign the bill, which would take effect 120 days after enactment.

New York City's Fair Chance Act

The Fair Chance Act brings New York City's private employers in line with a similar 2011 New York City law covering public employers. The Act, which applies only to employers with four or more employees, makes it illegal for a covered employer to "make any inquiry or statement related to the pending arrest or criminal conviction record of any person who is in the process of applying for employment with such employer or agent thereof until after such employer or agent thereof has extended a conditional offer of employment to the applicant." After an employee is interviewed and is extended a conditional job offer, the employer is allowed to ask about criminal history, which could initiate a related background check. However, if the company decides to withdraw the offer afterward, it must give the applicant a written explanation of the decision and hold the position open for three days to give the applicant a chance to respond. During the three-day period, the applicant has a chance to address any negative or incorrect marks in the record or provide the employer with proof of rehabilitation.

The Act does not apply to jobs where criminal background checks would bar employment, such as law enforcement, certain positions of public trust, and other jobs in which certain convictions could justifiably disqualify an applicant. Additionally, it does not require that employers hire people with criminal records, nor does it prevent employers from running background checks. Instead, the Fair Chance Act simply delays the background check until an applicant can demonstrate their qualifications.

Spread of Ban-the-Box Legislation

Ban-the-box legislation has gained traction in the past five years as the number of Americans with criminal and arrest records has grown to an estimated 70 million. More than 100 cities and counties and 17 states have adopted ban-the-box legislation. However, only a handful of these jurisdictions—Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, and Rhode Island, along with D.C. and cities like San Francisco, Chicago, and now New York—have passed laws that govern how private employers address the issue of an applicant's criminal background.

The Fair Chance Act adds to existing legislation in New York City, which already prohibits its agencies and human services contractors from asking whether a job applicant has been convicted of a crime. Additionally, the New York State Corrections Law provides that employers in the state cannot use unrelated convictions when making employment decisions. The Correction Law requires that employers look to a number of factors to determine if there is a connection between the conviction and the job applied for, rather than summarily denying the applicant because he or she has a criminal record of any kind.

Labor & Employment

Some large national retailers have uniformly banned the box of their own accord by removing conviction questions from job applications. Employers should consult with counsel to ensure that application policies conform with applicable laws and regulations in relevant jurisdictions.

For more information on existing ban-the-box legislation, see our client briefings covering [Illinois](#), and [Washington, D.C., and New Jersey](#).

Related Professionals

If you have questions, please contact any of the Winston & Strawn Labor and Employment Department attorneys listed below or your usual Winston & Strawn LLP contact.

BEIJING

Matthew Durham

CHARLOTTE

Wood W. Lay

CHICAGO

Derek G. Barella
Shane W. Blackstone
John M. Dickman
Daniel J. Fazio
C. R. Gangemi, Jr.
Aviva Grumet-Morris
William G. Miossi
Michael L. Mulhern
Michael P. Roche
Rex L. Sessions
Cardelle B. Spangler
Joseph J. Torres

GENEVA

Vanessa Alarcon Duvanel
Franz Stirnimann Fuentes

HONG KONG

Simon C.M. Luk

LOS ANGELES

Julie M. Capell
Michael S. Chamberlin
Monique Ngo-Bonnici
Laura R. Petroff
Amanda Sommerfeld
Marcus A. Torrano
Emilie C. Woodhead

NEW YORK

Deborah S.K. Jagoda
Scott Landau
Stephen L. Sheinfeld
William M. Sunkel

PARIS

Sébastien Ducamp
Barbara Hart

SAN FRANCISCO

Joan B. Tucker Fife
Julie L. Hall

SHANGHAI

Matthew Durham
Laura Hua Luo
Brinton M. Scott

WASHINGTON, D.C.

William G. Miossi

These materials have been prepared by Winston & Strawn LLP for informational purposes only. These materials do not constitute legal advice and cannot be relied upon by any taxpayer for the purpose of avoiding penalties imposed under the Internal Revenue Code. Receipt of this information does not create an attorney-client relationship. No reproduction or redistribution without written permission of Winston & Strawn LLP.