

## New Jersey and Philadelphia Ban the Box Legislative Update

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Several months ago we reported that New Jersey and Philadelphia joined the so-called “ban-the-box” movement by enacting legislation restricting employers’ ability to inquire about applicants’ criminal history. Since that briefing, New Jersey has issued final regulations relating to the Opportunity to Compete Act, and Philadelphia has revised the Fair Criminal Screening Standards Ordinance.

### New Jersey – Opportunity to Compete Act Final Regulations

The regulations, which take effect immediately, clarify a number of issues of particular significance to employers:

- **Covered Employers** — The Act applies to employers with 15 or more employees in any location, not just in New Jersey. Any employer that does business, employs persons, or takes applications for employment within New Jersey is covered.
- **Multi-State Employment Applications** — Employers may use a common multi-state application and do not need an application specific to New Jersey applicants. If the common application includes a criminal record inquiry, the application must also include an instruction to New Jersey applicants not to answer the question.
- **Applicant Internet Searches** — Employers may not conduct Internet or other public record searches concerning an applicant’s criminal record before the initial application process is complete.
- **Interns and Apprentices** — Both paid and unpaid interns and apprentices are included within the definition of “employee” and are covered by the Act.
- **Interviews** — The term “interview” is clarified to mean “any live, direct contact by the employer with the applicant, whether in person, by telephone, or by video conferencing, to discuss the employment being sought or the applicant’s qualifications.” Once a first interview has been conducted, subsequent interviewers can make criminal history inquiries, even where the first interview occurred earlier that same day.
- **Penalties for Violations** — The Division of Labor and Workforce Development will not collect any assessed penalties until after a final administrative determination has been issued, thus providing employers with both notice and an opportunity to be heard.

- **Deliberative Process** — Employers are not required to engage in a deliberative process prior to making a criminal history inquiry and may ultimately refuse to hire an applicant based upon that applicant's criminal history.

## Philadelphia – Fair Criminal Records Screening Act Update

Philadelphia's original version of its ban-the-box ordinance, which took effect in 2012, prohibited employers from inquiring about criminal convictions in employment applications or prior to the first interview. The ordinance revisions expand both the scope of protection for applicants and the scope of prohibited activity for employers. Key provisions include:

- **Covered Employers** — The Ordinance covers all employers with one or more employees.
- **Timing of Inquiries** — Employers are prohibited from conducting a criminal background check before a conditional offer of employment has been made.
- **Deliberative Process** — Employers must engage in a deliberative process and consider guidelines when deciding whether to refuse to hire an applicant based upon that applicant's criminal history.
- **Period of Review** — Employers may not examine an applicant's criminal history going back more than seven years, not including incarceration.
- **Applicant Notification** — Employers are required to provide written notification to applicants that are rejected based on their criminal background, as well as a copy of the applicant's criminal history report.

In light of these updates and guidance, employers should review their employment applications and hiring policies to ensure compliance.

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