



New Jersey Enacts 'Ban-The-Box' Law

On August 11, 2014, the Governor of New Jersey signed into law the Opportunity to Compete Act (OCA), which restricts employers from asking about criminal convictions on an applicant's job application or during the applicant's initial job interview. New Jersey's version of the "ban-the-box" law **will become effective March 1, 2015**. Here are what employers in New Jersey need to know:

1. The law **prohibits** employers from requiring an applicant to complete an employment application that inquires into an applicant's criminal record during "the initial employment application process." Employers are also prohibited from making "any oral or written inquiry regarding an applicant's criminal record during the initial employment application process."
2. The new law defines the term "**employer**" as "any person, company, corporation, firm, labor organization, or association which has **15 or more employees over 20 calendar weeks** and does business, employs persons, or takes applications for employment within" the state of New Jersey, "including the State, any county or municipality, or any instrumentality thereof." The law defines an "**applicant for employment**" as any person inquiring about employment or a job opening, including current employees. An applicant also includes any person whom an employer recruits or considers for a position.
3. The "**initial employment application process**" begins when an applicant first makes an inquiry to an employer about a prospective position or job vacancy or when an employer first makes any inquiry to an applicant about a prospective position or job vacancy. This process ends when an employer has conducted a first interview, whether in person or by any other means. **Thus, employers may inquire into an applicant's criminal background after the initial application is submitted and the first interview with the applicant is completed.**
4. The OCA does not apply to employment positions in law enforcement, corrections, the judiciary, homeland security, emergency management or if the employer is seeking to employ those who have criminal records. In addition, the OCA does not protect individuals if they are legally

prohibited from holding certain positions based on a conviction or arrest or if the employer is restricted from certain business activities based on the criminal records of its employees.

5. Subject to the above exemptions, employers may not **advertise** that they will not consider any applicant who has been arrested or convicted of one or more crimes or offenses.
6. An applicant waives his or her right to the protections of the OCA if they make a **voluntary disclosure** of a criminal record during the initial employment application process. The OCA allows employers to make inquiries into a criminal background during the initial employment application process in the case of a voluntary disclosure.

There are two particularly important takeaways from the newly enacted OCA. First, the OCA **DOES NOT** “preclude an employer from refusing to hire an applicant for employment based on the applicant’s criminal record, unless the criminal record or relevant portion thereof has been expunged or erased through executive pardon.” **Accordingly, employers may still refuse to hire an applicant based on a criminal record, as long as this decision is made after the initial application process and interview.** Second, the OCA **DOES NOT** provide for a private right of action against an employer who is alleged to have violated the law. Instead, the New Jersey Commissioner of Labor and Workforce Development can impose a civil penalty in an amount not to exceed \$1,000 for the first violation, \$5,000 for the second violation, and \$10,000 for each subsequent violation.

In light of the passage of the OCA, employers in New Jersey should review and revise their hiring practices and procedures relating to the use of an applicant’s criminal history. This should include a review of all job advertisements and job applications, as well as additional training to employees who conduct job interviews or participate in the hiring process.

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