

“Ban the Box” Coming to the Big Apple...

2 min read

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On June 29, 2015, New York City Mayor Bill de Blasio signed into law an amendment to the New York City Human Rights Law that requires private employers to remove criminal-convictions questions from job applications and defer background inquiries to the point of a conditional job offer. This “Ban the Box” law prohibits NYC employers from making any inquiry or statement concerning an applicant’s arrest or criminal record until after the employer has extended a conditional job offer to the applicant. The law construes the terms “inquires” and “statements” very broadly, and also expressly prohibits searches of publicly available records and many consumer reports.

What does the law require?

Under the law, after an employee is interviewed and is extended a conditional job offer, an employer is allowed to ask about an applicant’s criminal history and to conduct a background check, as is permissible with any other applicant. However, if the employer decides to withdraw the offer afterward, it must give the applicant a written explanation of the decision and to hold the position open for at least seven business days to give the applicant an opportunity to respond. During this period, the applicant has the chance to address any negative or incorrect marks in the record or provide the employer with a proof of rehabilitation.

This law brings private employers in line with the city government’s own policies. As with the other laws, there’s nothing requiring an employer to hire someone despite a criminal history, and it 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.

How does this impact New York City employers?

However, the law has serious implications for employers. The law’s requirement that an employer extend a conditional offer to an applicant prior to inquiring about the applicant’s criminal or arrest record effectively provides the applicant with a “smoking gun” if the employer decides not to hire the applicant after learning of the applicant’s arrest or criminal record.

Further, any employer who violates the law will also be regarded as having unlawfully discriminated against the applicant on the basis of their criminal record unless the employer can present clear and convincing evidence otherwise. Simply put, if an employer unlawfully inquires into an applicant’s criminal history and does not hire

the applicant, the employer will be presumed to have discriminated against that applicant on the basis of the applicant's criminal history (if there is such a history). In addition, an employer who violates this statute will be liable to an aggrieved person for damages of at least \$1,000.

When does the law change?

The new "ban the box" rules go into effect on September 27, 2015.

If you have any questions regarding this law, please contact your regular Hinshaw employment attorney.

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