

Maryland's Montgomery County Amends, Expands Its 'Ban-the-Box' Law

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Maryland's Montgomery County has enacted an [amendment](#) to the county's ban-the-box legislation that increases restrictions on employers during the hiring process. The Amendment will take effect on February 19, 2021.

The original Montgomery County [ordinance](#), which took effect on January 1, 2015, prohibits employers with at least 15 full-time employees in Montgomery County from conducting a criminal background check on a job applicant, or otherwise inquiring about the criminal or arrest history of an applicant, prior to the *completion of a first interview*. (See our article, [Maryland, Missouri Localities Enact Ban-the-Box Laws Limiting Private Employers' Criminal Background Inquiries on Applicants](#).) The new amendment significantly expands this restriction and covers smaller employers.

Restrictions, Exemptions, and Requirements

Under the Amendment, employers (including the Montgomery County government) with at least one employee (not limited to full-timers) in Montgomery County may not require a job applicant to disclose (or ask a job applicant or others) whether the applicant has an arrest record or conviction record or has been accused of a crime or conduct a criminal record check on the applicant before a *conditional offer of employment*, unless the employer is covered by an applicable exemption under the law. For example, if an earlier inquiry is required by another federal or state law or local regulation, an employer may do so. Employers that provide programs, services, or direct care related to minors or vulnerable adults also are exempt.

In addition, the Amendment provides that *at no time* can an employer require an applicant to disclose whether:

1. The applicant has been arrested, or has an arrest record, for a matter that did not result in a conviction; or
2. The applicant has an arrest record or a conviction record for, or otherwise has been accused of:
 - a. A first conviction for:
 - i. Trespass (under Sections 6-402 or 6-403 of the Criminal Law Article of the Maryland Code);
 - ii. Disturbance of the peace (under Section 10-201 of the Criminal Law Article of the Maryland Code); or
 - iii. Assault in the second degree (under Section 3-203 of the Criminal Law Article of the Maryland Code);
 - b. A conviction of a misdemeanor if at least three years have passed since:

- i. The date of the conviction; and
 - ii. The date that any period of incarceration for the misdemeanor ended; or
- c. A matter for which records:
- i. Are confidential under Section 3-8A-27 of the Courts and Judicial Proceedings Article of the Maryland Code; or
 - ii. Have been expunged under Sections 10-101-10-110 of the Criminal Procedure Article of the Maryland Code.

The Amendment expressly prohibits employers from considering certain items relating to confidential and expunged conviction records when making hiring selections and even when making promotion decisions.

Employers also are prohibited from retaliating against anyone alleging a violation of the Amendment or testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing related to a violation of the Amendment.

The Amendment does not prevent employers from pursuing a dialogue with an applicant about the existence of a conviction or arrest record when voluntarily disclosed by the applicant and it is not otherwise in response to a question by the employer. Employers, however, need to be mindful of any legal considerations before making an employment decision, in whole or in part, based upon such information, including what steps may be required under background check laws.

The Amendment does not apply to the United States, any state, or any other local government, other than the Montgomery County government.

Enforcement and Penalties

The Montgomery County Executive Director is authorized to enforce the Amendment and is required to adopt regulations to inform prospective employees and employers of their rights and responsibilities under the Amendment. To date, those regulations have not been published.

Any person aggrieved by an employer under the Amendment and Ordinance can file a complaint with the Executive Director. Damages and penalties available under the Ordinance are available to aggrieved persons for violations of the Amendment. Under the Ordinance, employers (except the County) also are subject to civil penalties for violations of up to \$1,000 for each violation.

State and Other Local Ban-the-Box Laws

Maryland enacted a state-wide ban-the-box law that took effect on February 29, 2020. (See our article, [Maryland Becomes Latest State to 'Ban the Box'](#).) Baltimore City and Prince George's County also have their own ban-the-box laws.

Jackson Lewis attorneys are available to employers to discuss ban-the-box laws and other workplace issues.

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